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

Subpart A—GENERAL

§ 10.1 Introduction.

(a) *Purpose.* The Native American Graves Protection and Repatriation Act (Act) of November 16, 1990, recognizes the rights of lineal descendants, Indian Tribes, and

Native Hawaiian organizations in Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

(1) The Act and these regulations provide systematic processes to:

(i) Protect Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony; and

(ii) Restore Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants, Indian Tribes, and Native Hawaiian organizations.

(2) The Act and these regulations require consultation with lineal descendants, Indian Tribes, and Native Hawaiian organizations.

(3) Consistent with the Act, these regulations require deference to the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

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

(1) These regulations require certain actions by:

(i) Any institution or State or local government agency (including any institution of higher learning) within the United States that receives Federal funds and has possession or control of a holding or collection;

(ii) Any Federal agency that has possession or control of a holding or collection or that has responsibilities on Federal or Tribal lands;

(iii) Indian Tribes on Tribal lands in Alaska and the continental United States; and

(iv) The State of Hawai‘i Department of Hawaiian Home Lands (DHHL) on Tribal lands in Hawai‘i.

(2) Lineal descendants, Indian Tribes, and Native Hawaiian organization may, but are not required to, consult, submit claims for disposition, or submit requests for repatriation.

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

(d) *Duty of care*. These regulations require a museum, Federal agency, or DHHL to care for, safeguard, and preserve any human remains or cultural items in its custody or in its possession or control. A museum, Federal agency, or DHHL must:

(1) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items;

(2) Make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items; and

(3) Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about

human remains or cultural items. Research of any kind on human remains or cultural items is not required by the Act or these regulations.

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

(1) Written documents must be sent by one of the following:

- (i) Email, with proof of receipt,
- (ii) Personal delivery with proof of delivery date,
- (iii) Private delivery service with proof of date sent, or
- (iv) Certified mail.

(2) Communication to the Manager, National NAGPRA Program, must be sent electronically to nagpra_info@nps.gov. If electronic submission is not possible, physical delivery may be sent to 1849 C Street NW, Mail Stop 7360, Washington, DC 20240. If either of these addresses change, a notice with the new address must be published in the *Federal Register* no later than 7 days after the change.

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

(1) Days mean calendar days. If a deadline falls on a Saturday, Sunday, or Federal holiday, the action is deemed timely if taken no later than the next calendar day that is not a Saturday, Sunday, or Federal holiday. For purposes of this part, Federal holidays include any days during which the Federal government is closed because of a Federal holiday, lapse in appropriations, or other reasons.

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

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

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

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

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

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

(j) *Information collection.* The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned control number 1024-0144. A Federal agency may not conduct

or sponsor, and you are not required to respond to, the collection of information under this part unless the Federal agency provides a currently valid OMB control number.

(k) *Severability*. If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of the regulations and their applicability to other people or circumstances are intended to continue to operate to the fullest possible extent.

§ 10.2 Definitions for this part.

Act means the Native American Graves Protection and Repatriation Act.

Ahupua‘a (singular and plural) means a traditional land division in Hawai‘i usually extending from the uplands to the sea.

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

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

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

ARPA Public lands means lands owned and administered by the United States

Government as part of:

- (1) The national park system,
- (2) The national wildlife refuge system,
- (3) The national forest system, and

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

Assistant Secretary means the official of the Department of the Interior designated by the Secretary of the Interior as responsible for exercising the Secretary of the Interior's authority under the Act.

Consultation or consult means the exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to:

- (1) seek, discuss, and consider the views of all parties;
- (2) strive for consensus, agreement, or mutually acceptable alternatives; and
- (3) enable meaningful consideration of the Native American traditional

knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

Cultural affiliation means there is a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity. Cultural affiliation may be identified clearly by the information available or reasonably by the geographical location or acquisition history of the human remains or cultural items.

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

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

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

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

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

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

Federal lands means any lands other than Tribal lands that are controlled or owned by the United States Government. For purposes of this definition, control refers to lands not owned by the United States Government, but in which the United States Government has a sufficient legal interest to permit it to apply these regulations without

abrogating a person's existing legal rights. Whether the United States Government has a sufficient legal interest to control lands it does not own is a legal determination that a Federal agency must make on a case-by-case basis. Federal lands include:

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

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

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

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

(1) *Associated funerary object* means any funerary object related to human remains that were removed and the location of the human remains is known. Any object made exclusively for burial purposes or to contain human remains is always an associated

funerary object regardless of the physical location or existence of any related human remains.

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

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

(ii) Related to specific individuals or families,

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

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

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

(1) Academic interest,

(2) Accession,

(3) Catalog,

(4) Comparison,

(5) Conservation,

(6) Education,

(7) Examination,

(8) Exhibition,

- (9) Forensic purposes,
- (10) Interpretation,
- (11) Preservation,
- (12) Public benefit,
- (13) Research,
- (14) Scientific interest, or
- (15) Study.

Human remains means any physical part of the body of a Native American individual. This term does not include human remains to which a museum or Federal agency can prove it has a right of possession.

(1) Human remains reasonably believed to be comingled with other materials (such as soil or faunal remains) may be treated as human remains.

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

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

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

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

Lineal descendant means:

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

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

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

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

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

(1) A Tribe is an Indian Tribe.

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

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

Native American traditional knowledge means knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by or confidential to individual Native Americans, Indian Tribes, or the Native Hawaiian Community. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, linguistic, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity. Native American traditional knowledge is expert opinion.

Native Hawaiian organization means any organization that:

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

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

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

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

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

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

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

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

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

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

Person means:

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

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

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

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

include procurement of property or services by and for the direct benefit or use of the United States Government or Federal payments that are compensatory.

Repatriation means a museum or Federal agency relinquishes possession or control of human remains or cultural items in a holding or collection to a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Review Committee means the advisory committee established under the Act.

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

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

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

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

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

Traditional religious leader means a person needed to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Tribal lands means:

- (1) All lands that are within the exterior boundaries of any Indian reservation,
- (2) All lands that are dependent Indian communities, and
- (3) All lands administered by the Department of Hawaiian Home Lands (DHHL) under the Hawaiian Homes Commission Act of 1920 (HHCA, 42 Stat. 108) and Section 4 of the Act to Provide for the Admission of the State of Hawai‘i into the Union (73 Stat. 4), including “available lands” and “Hawaiian home lands.”

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

Unclaimed human remains or cultural items means human remains or cultural items removed from Federal or Tribal lands whose disposition has not occurred under this part.

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

§ 10.3 Determining Cultural Affiliation.

Throughout this part, cultural affiliation ensures that disposition or repatriation of human remains or cultural items is based on a reasonable connection with an Indian Tribe

or Native Hawaiian organization. Cultural affiliation must be determined by the information available, including information provided by an Indian Tribe or Native Hawaiian organization. Cultural affiliation does not require exhaustive studies, additional research, or continuity through time. Cultural affiliation is not precluded solely because of reasonable gaps in the information available.

(a) *Step 1: Collect information available.* A museum, Federal agency, or DHHL must collect information it holds about human remains or cultural items, including, but not limited to, records, catalogues, relevant studies, and other pertinent data. Additional information may be provided by an Indian Tribe or Native Hawaiian organization.

(1) One or more of the following equally relevant types of information about human remains or cultural items may be available:

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

(x) Other relevant information or expert opinion, including Native American traditional knowledge.

(2) A lack of any type of information does not preclude a determination of cultural affiliation. One type of information may be used to determine cultural affiliation when no other relevant information is available.

(b) *Step 2: Identify the required criteria.* Using the information available, including information provided by an Indian Tribe or Native Hawaiian organization, a museum, Federal agency, or DHHL must identify the three criteria for cultural affiliation.

(1) Each of the following criteria must be identified in the information available:

(i) One or more earlier groups connected to the human remains or cultural items,

(ii) One or more Indian Tribes or Native Hawaiian organizations, and

(iii) A relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.

(2) One type of information may be sufficient to reasonably identify the required criteria when no other relevant information is available. For example, geographical information about human remains or cultural items may identify:

(i) The earlier groups of people connected to a geographical location,

(ii) The Indian Tribe or Native Hawaiian organization connected to a geographical location, and

(iii) A relationship of shared group identity between the two traced through time.

(c) *Step 3: Make a determination of cultural affiliation.* A museum, Federal agency, or DHHL must make a written record of its determination of cultural affiliation that briefly describes the information available under paragraph (a) of this section and the criteria identified under paragraph (b) of this section.

(1) The determination must be one of the following:

(i) Cultural affiliation is identified clearly by the information available,

(ii) Cultural affiliation is identified reasonably by the geographical location or acquisition history, or

(iii) Cultural affiliation cannot be clearly or reasonably identified.

(2) Cultural affiliation of human remains or cultural items may be with more than one Indian Tribe or Native Hawaiian organization. For example, an identifiable earlier group may have a relationship to more than one Indian Tribe or Native Hawaiian organization, or two or more earlier groups may be connected to human remains or cultural items and a relationship may be reasonably traced to two or more Indian Tribes or Native Hawaiian organizations that do not themselves have a shared group identity. In Hawai‘i, two or more Native Hawaiian organizations may be part of the same Native Hawaiian Community, but may have distinct beliefs, protocols, and other cultural practices passed down through different familial, cultural, and geographical lineages.

(d) *Joint disposition or repatriation.* When a museum, Federal agency, or DHHL determines cultural affiliation of human remains or cultural items with two or more Indian Tribes or Native Hawaiian organizations, any Indian Tribe or Native Hawaiian organization with cultural affiliation may submit a claim for disposition or a request for repatriation. Any Indian Tribe or Native Hawaiian organization with cultural affiliation may agree to joint disposition or joint repatriation of the human remains or cultural items. Claims or requests for joint disposition or joint repatriation of human remains or cultural items are considered a single claim or request and not competing claims or requests. A single claim or request may be on behalf of multiple Indian Tribes or Native Hawaiian

organizations. Disposition or repatriation statements required under this part must identify all joint claimants or requestors.

(e) *Competing claims or requests.* When there are competing claims for disposition or competing requests for repatriation of human remains or cultural items, a museum, Federal agency, or DHHL must determine the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation. In support of a competing claim or request, each claimant or requestor may provide information to show by a preponderance of the evidence that it has a stronger relationship of shared group identity to the human remains or cultural items.

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

(i) The Indian Tribe whose cultural affiliation is clearly identified by the information available.

(ii) The Indian Tribe whose cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains or cultural items.

(iii) The Indian Tribe whose cultural affiliation is reasonably identified by only the geographical location of the human remains or cultural items.

(iv) The Indian Tribe whose cultural affiliation is reasonably identified by only the acquisition history of the human remains or cultural items.

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

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

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

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

(iv) The Native Hawaiian organization with cultural affiliation to either:

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

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

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

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

(vii) Any other Native Hawaiian organization with cultural affiliation.

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

§ 10.4 General.

Each Indian Tribe, Native Hawaiian organization, Federal agency, and the State of Hawai‘i Department of Hawaiian Home Lands (DHHL) that has responsibility for Federal or Tribal lands must comply with the requirements of this subpart. Any permit, license, lease, right-of-way, or other authorization issued for an activity on Federal or Tribal lands must include a requirement to report any discovery of human remains or cultural items under §10.5 of this part. Prior to any excavation of human remains or cultural items on Federal or Tribal lands, a written authorization is required under §10.6 of this part. When human remains or cultural items are removed from Federal or Tribal lands, a disposition statement is required under §10.7 of this part.

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

Table 1 to §10.4(a): Appropriate official.

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

Tribal lands of an NHO	DHHL or a Native Hawaiian organization that has agreed in writing to be responsible for its Tribal lands
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(b) *Plan of action.* When a Federal agency or DHHL has responsibility for a discovery or excavation on Federal or Tribal lands, a plan of action is required. A plan of action is not required when an Indian Tribe or Native Hawaiian organization has responsibility for a discovery or excavation on Tribal lands. The Federal agency or DHHL must prepare a plan of action before any planned activity that is likely to result in a discovery or excavation of human remains or cultural items. The likelihood of a discovery or excavation must be based on previous studies, discoveries, or excavations in the general proximity of the planned activity and in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization. If not part of a planned activity, a plan of action is required after a discovery of human remains or cultural items. After consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization, the Federal agency or DHHL must approve and sign a plan of action.

(1) *Step 1 – Initiate consultation.* Before a planned activity or after a discovery, the Federal agency or DHHL must identify consulting parties and invite the parties to consult.

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

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

(A) A description of the planned activity or discovery and its geographical location by county and State,

(B) The names of all consulting parties, and

(C) A proposed timeline and method for consultation.

(2) *Step 2 – Consult on the plan of action.* The Federal agency or DHHL must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on the plan of action may continue until the Federal agency or DHHL sends a disposition statement to a claimant under §10.7(c)(5) of this subpart.

(i) In response to a consulting party, the Federal agency or DHHL must ask for the following information, if not already provided:

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

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

(ii) Consultation must address the content of the plan of action under paragraph (b)(3) of this section.

(iii) The Federal agency or DHHL must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the content of the plan of action.

(3) *Step 3 – Approve and sign the plan of action.* Before a planned activity or after a discovery, the Federal agency or DHHL must approve and sign a plan of action and must provide a copy to all consulting parties. At a minimum, the written plan of action must include:

(i) A description of the planned activity or discovery and its geographical location by county and State;

- (ii) A list of all consulting parties under paragraph (b)(1) of this section;
 - (iii) A record of consultation under paragraph (b)(2) of this section;
 - (iv) The preference of consulting parties for:
 - (A) Stabilizing, securing, and covering human remains or cultural items in situ, or
 - (B) Protecting, securing, and relocating human remains or cultural items, if removed;
 - (v) The duty of care under §10.1(d) for any human remains or cultural items; and
 - (vi) The timeline and method for:
 - (A) Informing all consulting parties of a discovery,
 - (B) Evaluating the potential need for an excavation, and
 - (C) Completing disposition, to include publication of a notice of intended disposition, under §10.7 of this part.
- (c) *Comprehensive agreement.* A Federal agency or DHHL may develop a written comprehensive agreement for all land managing activities on Federal or Tribal lands, or portions thereof, under its responsibility. The written comprehensive agreement must:
- (1) Be developed in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization identified under paragraph (b)(1) of this section;
 - (2) Include, at minimum, a plan of action under paragraph (b)(3) of this section;
 - (3) Be consented to by a majority of consulting parties under paragraph (b)(2) of this section. Evidence of consent means the authorized representative's signature on the agreement or by official correspondence to the Federal agency or DHHL; and
 - (4) Be signed by the Federal agency or DHHL.

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

§ 10.5 Discovery.

When a discovery of human remains or cultural items on Federal or Tribal lands occurs, any person who knows or has reason to know of the discovery must inform the appropriate official for the Indian Tribe, Native Hawaiian organization, Federal agency, or DHHL and the additional point of contact. The appropriate official must respond to a discovery and, if applicable, certify when an activity may resume.

(a) *Report any discovery.* Any person who knows or has reason to know of a discovery of human remains or cultural items on Federal or Tribal lands must:

(1) Immediately report the discovery in person or by telephone to the appropriate official and any additional point of contact shown in Table 1 of this section;

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

Where the discovery is on...	the appropriate official is the representative for the...	and the additional point of contact is the ...
Federal lands in the United States*	Federal agency with primary management authority	Any Indian Tribe or Native Hawaiian organization with potential cultural affiliation, if known.

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

(2) Make a reasonable effort to secure and protect the human remains or cultural items, including, as appropriate, stabilizing or covering the human remains or cultural items; and

(3) No later than 24 hours after the discovery, send written documentation of the discovery to the appropriate official and the additional point of contact shown in Table 1 to paragraph (a)(1) of this section stating:

- (i) The geographical location by county and State,
- (ii) The contents of the discovery, and
- (iii) The steps taken to secure and protect the human remains or cultural items.

(b) *Cease any nearby activity.* If a discovery is related to an activity (including but not limited to construction, mining, logging, or agriculture), the person responsible for the activity must:

- (1) Immediately stop any activity that could threaten the discovery;
- (2) Report the discovery according to paragraph (a) of this section; and

(3) In the written documentation of the discovery required under paragraph (a)(3) of this section include:

- (i) The related activity and any potential threats to the discovery, and
- (ii) Confirmation that all activity around the discovery has stopped and must not resume until the date in a written certification issued under paragraph (e) of this section.

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

- (1) The appropriate official must make a reasonable effort to:
 - (i) Secure and protect the human remains or cultural items,
 - (ii) Verify that any activity around the discovery has stopped, and
 - (iii) Notify the additional point of contact shown in Table 1 to paragraph (a)(1) of this section.

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

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

writing to be responsible for discoveries, DHHL is responsible for completing the requirements in paragraph (d) and (e) of this section for any discoveries on those Tribal lands of an NHO.

(d) *Approve and sign a plan of action.* When a Federal agency or DHHL has responsibility for a discovery on Federal or Tribal lands, a plan of action is required. A plan of action is not required when an Indian Tribe or Native Hawaiian organization has responsibility for a discovery on Tribal lands. The Federal agency or DHHL must carry out the plan of action for any human remains or cultural items that are removed.

(1) No later than 30 days after receiving written documentation of a discovery, the Federal agency or DHHL, in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization, must approve and sign a plan of action under §10.4(b) of this part.

(2) This requirement does not apply if, before receiving written documentation of the discovery, the Federal agency or DHHL signed:

- (i) A plan of action under §10.4(b) of this part; or
- (ii) A comprehensive agreement under §10.4(c) of this part.

(e) *Certify when an activity may resume.* No later than 30 days after receiving written documentation of a discovery, the appropriate official must send a written certification if the discovery is related to an activity (including but not limited to construction, mining, logging, or agriculture). Written certification must be sent to the person responsible for the activity and the additional point of contact shown in Table 1 to paragraph (a)(1) of this section. The written certification must provide:

- (1) A copy of the signed plan of action or comprehensive agreement with redaction of any confidential or sensitive information;
- (2) Instructions for protecting, securing, stabilizing, or covering the human remains or cultural items, if appropriate; and
- (3) The date (no later than 30 days after the date of the written certification) on which lawful activity may resume around the discovery.

§ 10.6 Excavation.

When an excavation of human remains or cultural items on Federal or Tribal lands is needed, the appropriate official must comply with this section when authorizing the excavation. A permit under Section 4 of ARPA (16 U.S.C. 470cc) is required when the excavation is on Federal or Tribal lands that are also ARPA Indian lands or ARPA Public lands, and there is no applicable permit exception or exemption under the ARPA uniform regulations at 18 CFR 1312, 32 CFR 229, 36 CFR 296, or 43 CFR 7. When the excavation is on Federal or Tribal lands that are not ARPA Indian lands or ARPA Public lands, an equivalent permit from the relevant jurisdiction is required, if applicable.

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

- (1) At minimum, the written authorization must document:
 - (i) The reasonable steps taken to evaluate the potential need for an excavation of human remains or cultural items; and

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

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

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

(b) *On Federal or Tribal lands.* When a Federal agency or DHHL has responsibility for an excavation on Federal or Tribal lands, a plan of action and a written authorization are required. When an Indian Tribe or Native Hawaiian organization has responsibility for an excavation on Tribal lands, no plan of action is required and the Indian Tribe or Native Hawaiian organization must comply with paragraph (a) of this section.

(1) *Approve and sign a plan of action.* Prior to authorizing an excavation, the Federal agency or DHHL, in consultation with the lineal descendant, Indian Tribe, or Native Hawaiian organization, must approve and sign a plan of action under §10.4(b) of

this part. The Federal agency or DHHL must carry out the plan of action for any human remains or cultural items that are excavated and removed.

(i) This requirement does not apply if, prior to authorizing the excavation, the Federal agency or DHHL signed:

(A) A plan of action under §10.4(b) of this part; or

(B) A comprehensive agreement under §10.4(c) of this part.

(ii) For an excavation on Tribal lands, the plan of action must include written consent to the excavation by the appropriate Indian Tribe or Native Hawaiian organization.

(2) *Authorize an excavation.* At minimum, the written authorization must include:

(i) A copy of the signed plan of action or comprehensive agreement with redaction of any confidential or sensitive information,

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

(iii) Any permit that the Federal agency or DHHL legally requires.

§ 10.7 Disposition.

When human remains or cultural items are removed from Federal or Tribal lands, as soon as possible (but no later than one year) after the discovery or excavation of the human remains or cultural items, the appropriate official must identify the lineal descendant, Indian Tribe, or Native Hawaiian organization that has priority for disposition of human remains or cultural items using this section.

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

(1) The known lineal descendant, if any, for human remains or associated funerary objects;

(2) The Indian Tribe or Native Hawaiian organization from whose Tribal lands the human remains or cultural items were removed;

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

(4) 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, the Indian Tribe with the strongest relationship to the human remains or cultural items, which is:

(i) The Indian Tribe recognized as aboriginally occupying the geographical location where the human remains or cultural items were removed, or

(ii) A different Indian Tribe who shows by a preponderance of the evidence a stronger relationship to the human remains or cultural items; or

(5) Any Indian Tribe or Native Hawaiian organization that requests transfer of the human remains or cultural items as unclaimed under paragraph (d) of this section.

(b) *On Tribal lands.* The Indian Tribe or Native Hawaiian organization from whose Tribal lands the human remains or cultural items were removed must identify the lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(1) The Indian Tribe or Native Hawaiian organization must complete and retain a written disposition statement to recognize:

(i) A lineal descendant (whose name may be withheld) has ownership or control of the human remains or associated funerary objects removed from Tribal lands, or

(ii) A lineal descendant could not be ascertained, and the Indian Tribe or Native Hawaiian organization has ownership or control of the human remains or cultural items removed from Tribal lands.

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

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

(4) After completing a disposition statement, nothing in the Act or this part:

(i) Limits the authority of an Indian Tribe or Native Hawaiian organization to enter into any agreement with the lineal descendant or another Indian Tribe or Native Hawaiian organization concerning the human remains or cultural items,

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

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

(c) *On Federal or Tribal lands.* When a Federal agency or DHHL has responsibility for disposition of human remains or cultural items from Federal or Tribal lands, the Federal agency or DHHL must inform and notify the lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section.

(1) *Step 1 – Inform consulting parties.* As soon as possible but no later than six months after removal of human remains or cultural items from Federal or Tribal lands, the Federal agency or DHHL must send a written document informing all consulting parties listed in the plan of action under §10.4(b)(3) of this part. Consultation on disposition of human remains or cultural items may continue until the Federal agency or DHHL sends a disposition statement to a claimant under paragraph (c)(5) of this section.

(i) The written document must include:

(A) A description of the human remains or cultural items, including the date and geographical location by county and State of removal; and

(B) The lineal descendant (whose name may be withheld), Indian Tribe, or Native Hawaiian organization identified as having priority for disposition of the human remains or cultural items.

(ii) For human remains or cultural items removed from Federal or Tribal lands whose disposition is not complete prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the Federal agency or DHHL must:

(A) Identify the lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition under paragraph (a) of this section; and

(B) No later than [INSERT DATE 212 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], send a written document under paragraph (c)(1)(i) of this section.

(iii) If the Federal agency or DHHL cannot identify any lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition of human remains or cultural items, the Federal agency or DHHL must report the human remains or cultural items as unclaimed under paragraph (d) of this section.

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

(i) A notice of intended disposition must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

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

(A) An abstract of the information in the written document under paragraph (c)(1)(i) of this section;

(B) The name, phone number, email address, and mailing address of the appropriate official for the Federal agency or DHHL who is responsible for receiving claims for disposition;

(C) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the Federal agency or DHHL may send a disposition statement to a claimant; and

(D) The date (to be calculated by the *Federal Register* one year from the date of publication) on which the human remains or cultural items become unclaimed human remains or cultural items if no claim for disposition is received from a lineal descendant, Indian Tribe, or Native Hawaiian organization.

(iii) No later than 21 days after receiving a notice of intended disposition, the Manager, National NAGPRA Program, must:

(A) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (c)(2)(ii) of this section; or

(B) Return to the Federal agency or DHHL any submission that does not conform to the requirements under paragraph (c)(2)(ii) of this section. No later than 14 days after the submission is returned, the Federal agency or DHHL must resubmit the notice of intended disposition.

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

Federal agency or DHHL a written claim for disposition of human remains or cultural items.

(i) A claim for disposition of human remains or cultural items must be received by the Federal agency or DHHL before a disposition statement for the human remains or cultural items is sent to a claimant under paragraph (c)(5) of this section or the transfer or reinterment of the human remains or cultural items under paragraph (d)(4) of this section. A claim for disposition received by the Federal agency or DHHL before the publication of the notice of intended disposition is dated the same date the notice was published.

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

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

(A) The claimant is identified in the notice of intended disposition with priority for disposition; or

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

(iv) One year after publishing a notice of intended disposition under paragraph (c)(2) of this section, if no lineal descendant, Indian Tribe, or Native Hawaiian organization has submitted a claim for disposition, the Federal agency or DHHL must report the human remains or cultural items as unclaimed under paragraph (d) of this section.

(4) *Step 4 – Respond to a claim for disposition.* No earlier than 30 days after publication of a notice of intended disposition but no later than 90 days after receiving a claim for disposition, the Federal agency or DHHL must send a written response to the claimant with a copy to any other party identified in the notice of intended disposition with priority for disposition.

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

(A) The claim meets the criteria under paragraph (c)(3) of this section. The Federal agency or DHHL must send a disposition statement to the claimant under paragraph (c)(5) of this section, unless the Federal agency or DHHL receives additional, competing claims for disposition of human remains or cultural items.

(B) The claim does not meet the criteria under paragraph (c)(3) of this section. The Federal agency or DHHL must provide a detailed explanation why the claim does not meet the criteria and an opportunity for the claimant to provide additional information to meet the criteria.

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

(ii) At any time before sending a disposition statement for human remains or cultural items under paragraph (c)(5) of this section, the Federal agency or DHHL may receive additional, competing claims for disposition of the human remains or cultural items that meet the criteria under paragraph (c)(3) of this section. The Federal agency or

DHHL must determine the most appropriate claimant using the priority for disposition under paragraph (a) of this section and the following procedures and deadlines:

(A) No later than 14 days after receiving a competing claim, the Federal agency or DHHL must send a written letter to each claimant identifying all claimants and the date each claim was received. In response, the claimants may provide additional information to show by a preponderance of the evidence that the claimant has a stronger relationship to the human remains or cultural items.

(B) No later than 180 days after informing the claimants of competing claims, the Federal agency or DHHL must send a written determination to each claimant identifying the most appropriate claimant(s).

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

(5) *Step 5 – Disposition of the human remains or cultural items.* No later than 90 days after responding to a claim for disposition that meets the criteria, the Federal agency or DHHL must send a written disposition statement to the claimant(s) and a copy to the Manager, National NAGPRA Program. A disposition statement must recognize the claimant(s) has ownership or control of the human remains or cultural items. In the case of joint claims for disposition, a disposition statement must identify and be sent to all claimants.

(i) After sending a disposition statement, the Federal agency or DHHL must:

(A) Consult with the claimant(s) on custody and physical transfer,

(B) Document any physical transfer, and

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

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

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

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

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

(d) *Unclaimed human remains or cultural items removed from Federal or Tribal lands.* When a Federal agency or DHHL has custody of unclaimed human remains or cultural items, the Federal agency or DHHL must report the human remains or cultural items.

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

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

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

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

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

(A) A description of the human remains or cultural items, including the date and geographical location by county and State of removal;

(B) The names of all consulting parties;

(C) If unclaimed under paragraph (d)(1)(i)(A) of this section, the name of each Indian Tribe or Native Hawaiian organization with priority for disposition under paragraph (a) of this section; and

(D) If unclaimed under paragraph (d)(1)(i)(B) of this section, the information considered under §10.3(a) of this part and the criteria identified under §10.3(b) of this part to explain why no Indian Tribe or Native Hawaiian organization with cultural affiliation could be identified.

(2) *Step 2 – Agree to transfer or decide to reinter human remains or cultural items.* At the discretion of the Federal agency or DHHL, a Federal agency or DHHL may:

(i) Agree in writing to transfer unclaimed human remains or cultural items to an Indian Tribe or Native Hawaiian organization;

(ii) Decide in writing to reinter unclaimed human remains or cultural items according to applicable laws and policies; or

(iii) At any time before transferring or reinterring human remains or cultural items under paragraph (d)(4) of this section, the Federal agency or DHHL may receive a claim for disposition of the human remains or cultural items and must evaluate whether the claim meets the criteria under paragraph (c)(3) of this section. Any agreement to transfer or decision to reinter the human remains or cultural items under this paragraph is stayed until the claim for disposition is resolved under paragraph (c) of this section.

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

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

(C) If the claim does not meet the criteria under paragraph (c)(3) of this section, the Federal agency or DHHL must respond in writing under paragraph (c)(4) and may proceed with transfer or reinterment under paragraph (d)(3) of this section.

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

(i) A notice of proposed transfer or reinterment must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

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

(A) An abstract of the information in the list of unclaimed human remains or cultural items under paragraph (d)(1)(ii) of this section;

(B) The Indian Tribe or Native Hawaiian organization requesting transfer of the human remains or cultural items or a statement that the Federal agency or DHHL agrees to reinter the human remains or cultural items;

(C) The name, phone number, email address, and mailing address of the appropriate official for the Federal agency or DHHL who is responsible for receiving claims for disposition; and

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

(iii) No later than 21 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, must:

(A) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (d)(3)(ii) of this section; or

(B) Return to the Federal agency or DHHL any submission that does not conform to the requirements under paragraph (d)(3)(ii) of this section. No later than 14 days after

the submission is returned, the Federal agency or DHHL must resubmit the notice of proposed transfer or reinterment.

(4) *Step 4 – Transfer or reinter the human remains or cultural items.* No earlier than 30 days and no later than 90 days after publication of a notice of proposed transfer or reinterment, the Federal agency or DHHL must transfer or reinter the human remains or cultural items and send a written statement to the Manager, National NAGPRA Program, that the transfer or reinterment is complete.

(i) After transferring or reintering, the Federal agency or DHHL must:

(A) Document the transfer or reinterment of the human remains or cultural items, and

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

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

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

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

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

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

§ 10.8 General.

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

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

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

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

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

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

(b) *Federal agency holding or collection.* A Federal agency must comply with this subpart for any holding or collection in its possession or control that may contain human remains or cultural items, including a previously lost or previously unknown holding or collection.

(1) A Federal agency must determine, given the relevant information, if a holding or collection:

- (i) Was in its possession or control on or before November 16, 1990; or
- (ii) Came into its possession or control after November 16, 1990, and was

removed from:

- (A) An unknown location, or
- (B) Lands that are neither Federal nor Tribal lands as defined in this part.

(2) A Federal agency may have custody of a holding or collection that was removed from Federal or Tribal lands after November 16, 1990, and must comply with §10.7(c) of this part.

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

cultural items must submit a statement describing that holding or collection to the authorized representatives of the Federal agency most likely to have possession or control and to the Manager, National NAGPRA Program.

(1) No later than 180 days following receipt of a museum's statement, the Federal agency must respond to the museum and the Manager, National NAGPRA Program, with a written acknowledgement of one of the following:

(i) The Federal agency has possession or control of the holding or collection;

(ii) The Federal agency does not have possession or control of the holding or collection; or

(iii) The Federal agency and the museum agree that they have joint possession or control of the holding or collection.

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

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

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

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

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

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

(1) A summary must include:

- (i) The estimated number and a general description of the holding or collection, including any potential cultural items;
- (ii) The geographical location (provenience) by county or State where the potential cultural items;
- (iii) The acquisition history (provenance) of the potential cultural items;
- (iv) Other information relevant for identifying:
 - (A) A lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation, and
 - (B) Any object as an unassociated funerary object, sacred object, or object of cultural patrimony; and
- (v) The presence of any potentially hazardous substances used to treat any of the unassociated funerary objects, sacred objects, or objects of cultural patrimony, if known.

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

Table 1 to §10.9(a)(2): Deadlines for compiling a summary.

If a museum or Federal agency...	...a summary must be submitted...
acquires possession or control of unassociated funerary objects, sacred objects, or objects of cultural patrimony	6 months after acquiring possession or control of the unassociated funerary objects, sacred objects, or objects of cultural patrimony.
locates previously lost or unknown unassociated funerary objects, sacred objects, or objects of cultural patrimony	6 months after locating the unassociated funerary objects, sacred objects, or objects of cultural patrimony.

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

(3) After [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], when a holding or collection previously included in a summary is transferred to a museum or Federal agency, the museum or Federal agency acquiring possession or control of the holding or collection may rely on the previously compiled summary.

(i) No later than 30 days after acquiring the holding or collection, the museum or Federal agency must send the previously compiled summary to the Manager, National NAGPRA Program.

(ii) No later than the deadline in Table 1 to paragraph (a)(2) of this section, the museum or Federal agency must compile a summary under paragraph (a)(1) of this section based on the previously compiled summary and additional information available. The museum or Federal agency must submit the summary to the Manager, National NAGPRA Program, and must initiate consultation under paragraph (b) of this section.

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

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

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

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

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

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

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

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

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

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

(ii) The names of all consulting parties, and

(iii) A proposed method for consultation.

(3) When a museum or Federal agency identifies a new consulting party under paragraph (b)(1) of this section, the museum or Federal agency must invite the party to consult. An invitation to consult under paragraph (b)(2) of this section must be sent:

(i) No later than 30 days after identifying a new consulting party based on new information; or

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

(c) *Step 3 – Consult on cultural items.* A museum or Federal agency must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on an unassociated funerary object, sacred object, or object of cultural patrimony may continue until the museum or Federal agency sends a repatriation statement for that object to a requestor under paragraph (g) of this section.

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

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

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

(2) Consultation must address identification of:

(i) Lineal descendants,

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

(iii) The types of objects that might be unassociated funerary objects, sacred objects, or objects of cultural patrimony, and

(iv) The duty of care under §10.1(d) for unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(3) The museum or Federal agency must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in paragraph (c)(2) of this section.

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

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

(1) A request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony must be received by the museum or Federal agency before the museum or Federal agency sends a repatriation statement for that unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section. A request for repatriation received by the museum or Federal agency before the deadline for compiling a summary in Table 1 to paragraph (a)(2) of this section is dated the same date as the deadline for compiling the summary.

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

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

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

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

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

(e) *Step 5 – Respond to a request for repatriation.* No later than 90 days after receiving a request for repatriation, a museum or Federal agency must send a written response to the requestor with a copy to any other consulting party. Using the information available, including relevant records, catalogs, existing studies, and the results of consultation, a museum or Federal agency must determine if the request for repatriation satisfies the criteria under paragraph (d) of this section. In the written response, the museum or Federal agency must state one of the following:

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

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

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

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

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

(1) A notice of intended repatriation must be sent to all requestors, any consulting parties, and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

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

- (i) An abstract of the information compiled under paragraph (a) of this section;
- (ii) The total number and brief description of the unassociated funerary objects, sacred objects, or objects of cultural patrimony (counted separately or by lot);
- (iii) The lineal descendant (whose name may be withheld), Indian Tribe, or Native Hawaiian organization requesting repatriation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony;
- (iv) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and
- (v) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to the requestor.

(3) No later than 21 days after receiving a notice of intended repatriation, the Manager, National NAGPRA Program, must:

- (i) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (f)(2) of this section; or
- (ii) Return to the museum or Federal agency any submission that does not conform to the requirements under paragraph (f)(2) of this section. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice of intended repatriation.

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

(g) Step 7 – Repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony. No earlier than 30 days and no later than 90 days after publication of a notice of intended repatriation, a museum or Federal agency must send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. In a repatriation statement, a museum or Federal agency must relinquish possession or control of the unassociated funerary object, sacred object, or object of cultural patrimony to the lineal descendant, Indian Tribe, or Native Hawaiian organization. In the case of joint requests for repatriation, a repatriation statement must identify and be sent to all requestors.

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

(i) Consult with the requestor on custody and physical transfer,

(ii) Document any physical transfer, and

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

(2) After a repatriation statement is sent, nothing in the Act or this part limits the authority of the museum or Federal agency to enter into any agreement with the requestor

concerning the unassociated funerary object, sacred object, or object of cultural patrimony.

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

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

(i) The lineal descendant, if any, or

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

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

(3) No later than 14 days after receiving a competing request, a museum or Federal agency must send a written letter to each requestor identifying all requestors and the date each request was received. In response, the requestors may provide additional information to show by a preponderance of the evidence that the requestor has a stronger relationship of shared group identity to the cultural items.

(4) No later than 180 days after informing the requestors of competing requests, a museum or Federal agency must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:

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

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

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

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

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

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

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

(iii) The most appropriate requestor cannot be determined, and repatriation is stayed under paragraph (i)(2) of this section. The museum or Federal agency must briefly describe the information considered and explain how the determination was made.

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

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

(i) No later than 14 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program,

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

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

(i) No later than 14 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program,

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

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

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

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

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

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

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

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

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

(G) Provide written documentation showing free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations to the study.

(ii) In response to the request, the Assistant Secretary must:

(A) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations that consented to the study,

(B) Send a written determination of concurrence or denial to the museum or Federal agency with a copy to the consulting parties, and

(C) If the Assistant Secretary concurs, specify in the written determination the date by which the scientific study must be completed.

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

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

§ 10.10 Repatriation of human remains or associated funerary objects.

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

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

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

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

(3) The geographical location (provenience) by county or State where the human remains or associated funerary objects were removed;

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

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

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

(b) *Step 2 – Initiate consultation.* As soon as possible after compiling an itemized list, a museum or Federal agency must identify consulting parties based on information available and invite the parties to consult.

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

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

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

(ii) The names of all consulting parties; and

(iii) A proposed timeline and method for consultation.

(3) When a museum or Federal agency identifies a new consulting party under paragraph (b)(1) of this section, the museum or Federal agency must invite the party to consult. An invitation to consult under paragraph (b)(2) of this section must be sent:

(i) No later than 30 days after identifying a new consulting party based on new information; or

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

(c) *Step 3 – Consult on human remains or associated funerary objects.* A museum or Federal agency must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on human remains or associated funerary objects may continue until the museum or Federal agency sends a repatriation statement for those human remains or associated funerary objects to a requestor under paragraph (h) of this section.

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

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

(2) Consultation must address identification of:

- (i) Lineal descendants;
- (ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation;
- (iii) The types of objects that might be associated funerary objects, including any objects that were made exclusively for burial purposes or to contain human remains; and
- (iv) The duty of care under §10.1(d) for human remains or associated funerary objects.

(3) The museum or Federal agency must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in paragraph (c)(2) of this section.

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

the limited purpose of determining cultural affiliation, including the geographical location or acquisition history, of the human remains or associated funerary objects.

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

(1) An inventory must include:

(i) The names of all consulting parties and dates of consultation;

(ii) The information, updated as appropriate, from the itemized list compiled under paragraph (a) of this section;

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

(A) A known lineal descendant (whose name may be withheld);

(B) The Indian Tribe or Native Hawaiian organization with cultural affiliation that is clearly identified by the information available about the human remains or associated funerary objects;

(C) The Indian Tribe or Native Hawaiian organization with cultural affiliation that is reasonably identified by the geographical location or acquisition history of the human remains or associated funerary objects; or

(D) No lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified. The inventory must

briefly describe the information considered under §10.3(a) of this part and the criteria identified under §10.3(b) of this part to explain how the determination was made.

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

Table 1 to §10.10(d)(2): Deadlines for completing an inventory.

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

(3) No later than [INSERT DATE 1,855 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], for any human remains or associated funerary objects listed in an inventory but not published in a notice of inventory completion prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a museum or Federal agency must:

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

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

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

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

(4) After [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], when a holding or collection previously included in an inventory is transferred to a museum or Federal Agency, subject to the limitations in 18 U.S.C. 1170 (a), the museum or Federal agency acquiring possession or control of the holding or collection may rely on the previously completed or updated inventory.

(i) No later than 30 days after acquiring the holding or collection, the museum or Federal agency must send the previously completed or updated inventory to initiate consultation under paragraph (b) of this section and notify the Manager, National NAGPRA Program.

(ii) No later than the deadline in Table 1 to paragraph (d)(2) of this section, the museum or Federal agency must complete an inventory under paragraphs (d)(1) and (d)(2) of this section based on the previously completed or updated inventory, additional information available, and the results of consultation.

(5) Any museum may request an extension to complete or update its inventory if it has made a good faith effort but is unable to do so by the appropriate deadline. A

request for an extension must be submitted to the Manager, National NAGPRA Program, before the appropriate deadline. The Manager, National NAGPRA Program must publish in the *Federal Register* a list of any museum who request an extension and the Assistant Secretary's determination on the request. A request for an extension must include:

- (i) Information showing the initiation of consultation;
- (ii) The names of all consulting parties and consent to the extension request from a majority of consulting parties, evidenced by a signed agreement or official correspondence to the museum;
- (iii) The estimated number of human remains and associated funerary objects in the holding or collection; and
- (iv) A written plan for completing or updating the inventory, which includes, at minimum:
 - (A) The specific steps required to complete or update the inventory;
 - (B) A schedule for completing each step and estimated inventory completion or update date;
 - (C) Position titles of the persons responsible for each step in the schedule; and
 - (D) A proposal to obtain any requisite funding needed to complete or update the inventory.

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

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

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

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

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

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

(e) *Step 5 – Submit a notice of inventory completion.* No later than six months after completing or updating an inventory under paragraph (d) of this section, a museum or Federal agency must submit a notice of inventory completion for all human remains or associated funerary objects in the inventory. The museum or Federal agency may include in a single notice any human remains or associated funerary objects having the same determination under paragraph (d)(1)(iii) of this section.

(1) A notice of inventory completion must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

(2) A notice of inventory completion must conform to the mandatory format of the *Federal Register* and include the following for all human remains or associated funerary objects in the notice:

(i) An abstract of the information compiled under paragraph (d)(1)(ii) of this section;

(ii) The determination under paragraph (d)(1)(iii) of this section;

(iii) The total number of individuals and associated funerary objects (counted separately or by lot);

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

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

(3) No later than 21 days after receiving a notice of inventory completion, the Manager, National NAGPRA Program, must:

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

(ii) Return to the museum or Federal agency any submission that does not conform to the requirements under paragraph (e)(2) of this section. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice of inventory completion.

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

(1) A request for repatriation of human remains or associated funerary objects must be received by the museum or Federal agency before the museum or Federal agency sends a repatriation statement for those human remains or associated funerary objects under paragraph (h) of this section. A request for repatriation received by the museum or Federal agency before the publication of the notice of inventory completion is dated the same date the notice was published.

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

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

(i) The requestor is identified in the notice of inventory completion, or

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

(g) *Step 7 – Respond to a request for repatriation.* No earlier than 30 days after publication of a notice of inventory completion but no later than 90 days after receiving a request for repatriation, a museum or Federal agency must send a written response to the requestor with a copy to any other party identified in the notice of inventory completion. Using the information available, including relevant records, catalogs, existing studies, and the results of consultation, a museum or Federal agency must determine if the request satisfies the criteria under paragraph (f) of this section.

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

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

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

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

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

(h) *Step 8 – Repatriation of the human remains or associated funerary objects.* No later than 90 days after responding to a request for repatriation that meets the criteria, a museum or Federal agency must send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. In a repatriation statement, a museum or Federal agency must relinquish possession or control of the human remains or associated funerary objects to a lineal descendant, Indian Tribe, or Native Hawaiian

organization. In the case of joint requests for repatriation, a repatriation statement must identify and be sent to all requestors.

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

(i) Consult with the requestor on custody and physical transfer,

(ii) Document any physical transfer, and

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

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

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

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

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

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

(2) No later than 14 days after receiving a competing request, a museum or Federal agency must send a written letter to each requestor identifying all requestors and the date each request for repatriation was received. In response, requestors may provide

additional information to show by a preponderance of the evidence that the requestor has a stronger relationship of shared group identity to the human remains or associated funerary objects.

(3) No later than 180 days after informing the requestors of competing requests, a museum or Federal agency must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:

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

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

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

(ii) The most appropriate requestor cannot be determined, and repatriation is stayed under paragraph (j)(2) of this section. The museum or Federal agency must briefly describe the information considered and explain how the determination was made.

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

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

(i) No later than 14 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program,

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

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

(i) No later than 14 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program,

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

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

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

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

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

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

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

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

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

(G) Provide written documentation showing free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations to the study.

(ii) In response to the request, the Assistant Secretary must:

(A) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations that consented to the study,

(B) Send a written determination of concurrence or denial to the museum or Federal agency with a copy to the consulting parties, and

(C) If the Assistant Secretary concurs, specify in the written determination the date by which the scientific study must be completed.

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

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

(k) *Transfer or reinter human remains or associated funerary objects.* For human remains or associated funerary objects with no lineal descendant or no Indian Tribe or Native Hawaiian organization with cultural affiliation, a museum or Federal agency, at its discretion, may agree to transfer or decide to reinter the human remains or associated funerary objects. The museum or Federal agency must ensure it has initiated consultation under paragraph (b) of this section before taking any of the following steps.

(1) *Step 1 – Agree to transfer or decide to reinter.* A museum or Federal agency may:

(i) Agree in writing to transfer the human remains or associated funerary objects to an Indian Tribe or Native Hawaiian organization;

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

(iii) Receive a request for repatriation of the human remains or associated funerary objects at any time before transfer or reinterment and must evaluate whether the request meets the criteria under paragraph (f) of this section.

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

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

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

(i) A notice of proposed transfer or reinterment must be sent to all consulting parties and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.

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

(A) An abstract of the information compiled under paragraph (d)(1)(ii) of this section;

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

(C) The determination under paragraph (d)(1)(iii)(D) of this section that no lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified. The notice must briefly describe the information considered and explain how the determination was made.

(D) The names of all consulting parties identified under paragraph (b) of this section;

(E) The Indian Tribe or Native Hawaiian organization requesting the human remains or associated funerary objects or a statement that the museum or Federal agency agrees to reinter the human remains or associated funerary objects;

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

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

(iii) No later than 21 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, must:

(A) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (k)(2)(ii) of this section; or

(B) Return to the museum or Federal agency any submission that does not conform to the requirements under paragraph (k)(2)(ii) of this section. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice of proposed transfer or reinterment.

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

remains or associated funerary objects and send a written statement to the Manager, National NAGPRA Program, that the transfer or reinterment is complete.

(i) After transferring or reinterring, the museum or Federal agency must:

(A) Document the transfer or reinterment of the human remains or associated funerary objects, and

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

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

§ 10.11 Civil penalties.

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

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

(1) Must include the name and contact information (either a mailing address, telephone number, or email address) of the person alleging the failure to comply;

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

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

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

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

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

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

(b) *Respond to an allegation.* No later than 90 days after receiving an allegation, the Assistant Secretary must determine if the allegation meets the requirements of paragraph (a) of this section and respond to the person alleging the failure to comply.

(1) The Assistant Secretary may request any additional relevant information from the person making the allegation, the museum, or other parties. The Assistant Secretary may conduct any investigation that is necessary to determine whether an alleged failure

to comply is substantiated. The Assistant Secretary may also investigate appropriate factors for justifying an increase or reduction to any penalty amount that may be calculated.

(2) If the allegation meets the requirements of paragraph (a) of this section, the Assistant Secretary, after reviewing all relevant information, must determine one of the following for each alleged failure to comply:

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

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

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

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

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

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

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

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

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

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

(v) Any other appropriate factor justifying an increase.

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

(i) The museum comes into compliance;

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

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

(iv) The museum is unable to pay the full penalty and the museum has not previously been found to have failed to comply with the Act or this subpart. The museum has the burden of proving it is unable to pay by providing verifiable, complete, and

accurate financial information to the Assistant Secretary. The Assistant Secretary may request that the museum provide such financial information that is adequate and relevant to evaluate the museum's financial condition, including the value of the museum's cash and liquid assets; ability to borrow; net worth; liabilities; income tax returns; past, present, and future income; prior and anticipated profits; expected cash flow; and the museum's ability to pay in installments over time. If the museum does not submit the requested financial information, the museum is presumed to have the ability to pay the civil penalty; or

(v) Any other appropriate factor justifies a reduction.

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

(1) Provide a concise statement of the facts believed to show a failure to comply;

(2) Specifically reference the provisions of the Act and this subpart with which the museum has failed to comply;

(3) Include the proposed penalty amount calculated under paragraph (c) of this section;

(4) Include, where appropriate, any initial proposal to reduce or increase the penalty amount or an explanation of the determination that a penalty is not an appropriate remedy;

(5) Identify the options for responding to the notice of failure to comply under paragraph (e) of this section; and

(6) Inform the museum that the Assistant Secretary may assess a daily penalty amount under paragraph (m)(1) of this section if the failure to comply continues after the date the final administrative decision of the Assistant Secretary takes effect.

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

(1) Seek an informal discussion of the failure to comply;

(2) Request either or both of the following forms of relief, with a full explanation of the legal or factual basis for the requested relief:

(i) That the Assistant Secretary reconsider the determination of a failure to comply, or

(ii) That the Assistant Secretary reduce the proposed penalty amount; or

(3) Accept the determination of a failure to comply and agree in writing, which constitutes an agreement between the Assistant Secretary and the museum, that the museum must:

(i) Pay the proposed penalty amount, if any,

(ii) Complete the mitigation required to reduce the penalty, if offered in the notice, and

(iii) Waive any right to receive notice of assessment under paragraph (g) of this section and to request a hearing under paragraph (i) of this section.

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

(1) The assessment of a civil penalty is made after the latter of:

(i) The 45-day period for a response has expired and the museum has taken no action;

(ii) Conclusion of informal discussion, if any;

(iii) Review and consideration of a petition for relief, if any; or

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

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

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

the notice of assessment is the final administrative decision of the Assistant Secretary.

The notice of assessment must:

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

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

(3) Include, where appropriate, any increase or reduction to the penalty amount or an explanation of the determination that a penalty is not an appropriate remedy;

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

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

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

(h) *Respond to an assessment.* No later than 45 days after receiving a notice of assessment, a museum must do one of the following:

(1) Accept the assessment and pay the penalty amount by means of a certified check made payable to the U.S. Treasurer, Washington, DC, sent to the Assistant

Secretary. By paying the penalty amount, the museum waives the right to request a hearing under paragraph (i) of this section.

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

(i) *Request a hearing.* The museum may file a written request for a hearing with the Departmental Cases Hearings Division (DCHD), Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the OHA Standing Orders on Contact Information, or by electronic means under the terms specified in the OHA Standing Orders on Electronic Transmission. A copy of the request must be served on the Solicitor of the Department of the Interior at the address specified in the OHA Standing Orders on Contact Information. The Standing Orders are available on the Department of the Interior OHA's website at <https://www.doi.gov/oha>. The request for hearing and any document filed thereafter with the DCHD under paragraphs (i) or (j) of this section are subject to the rules that govern the method and effective date of filing and service under the subparts applicable to DCHD in 43 CFR part 4. The request for a hearing must:

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

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

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

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

(3) The Department of the Interior counsel is designated by the Office of the Solicitor of the Department of the Interior. No later than 20 days after receipt of its copy of the written request for hearing, Departmental counsel must file with the DCHD an entry of appearance on behalf of the Assistant Secretary and the following:

(i) Any written communications between the Assistant Secretary and the museum during any informal discussions under paragraph (e)(1) of this section;

(ii) Any petition for relief submitted under paragraph (e)(2); and

(iii) Any other information considered by the Assistant Secretary in reaching the decision being challenged.

(4) After Departmental counsel files an entry of appearance with DCHD, the museum must serve each document filed with the administrative law judge on Departmental counsel.

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

(6) The administrative law judge has all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, and to render a decision, under 5 U.S.C. 554-557 and 25 U.S.C. 3007.

(7) The administrative law judge must render a written decision. The decision must set forth the findings of fact and conclusions of law, and the reasons and basis for them.

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

(k) Appealing the administrative law judge's decision. Any party who is adversely affected by the decision of the administrative law judge may appeal the decision by filing a written notice of appeal no later than 30 days after the date of the decision. The notice of appeal must be filed with the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the OHA Standing Orders on Contact Information, or by electronic means under the terms specified in the OHA Standing Orders on Electronic Transmission. The

Standing Orders are available on the Department of the Interior OHA's website at <https://www.doi.gov/oha>. The notice of appeal must be accompanied by proof of service on the administrative law judge and the opposing party. The notice of appeal and any document filed thereafter with the IBIA are subject to the rules that govern the method and effective date of filing under 43 CFR 4.310.

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

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

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

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

(1) If the failure to comply continues after the date the final administrative decision of the Assistant Secretary takes effect, as described in paragraphs (g), (j)(6), or (k)(1) of this section, or after a date identified in an agreement under paragraph (e)(3) of this section, the Assistant Secretary may assess an additional daily penalty amount for

each continuing violation not to exceed \$1,496 per day, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74). In determining the daily penalty amount, the Assistant Secretary must consider the factors in paragraph (c)(2) of this section. This penalty starts to accrue on the day after the effective date of the final administrative decision of the Assistant Secretary or on the date identified in an agreement under paragraph (e)(3) of this section.

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

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

Subpart D—REVIEW COMMITTEE

§ 10.12 Review Committee.

The Review Committee advises the Secretary of the Interior and Congress on matters relating to sections 3003, 3004, and 3005 of the Act and other matters as specified in section 3006 of the Act. The Review Committee is subject to the Federal Advisory Committee Act (FACA, 5 U.S.C. App.).

(a) *Recommendations.* Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act. Findings and recommendations made by the Review Committee must be published in the *Federal Register* no later than 90 days after making the finding or recommendation.

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

(1) Three members are appointed from nominations submitted by Indian Tribes, Native Hawaiian organizations, and traditional religious leaders. At least two of these members must be traditional Indian religious leaders. A traditional Indian religious leader is a person who an Indian Tribe identifies as serving it in the practice of traditional Native American religion.

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

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

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

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

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

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

(1) An affected party is either a:

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

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

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

(i) The identity of an object as human remains or cultural items,

(ii) The cultural affiliation of human remains or cultural items, or

(iii) The repatriation of human remains or cultural items.

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

(i) Consider disputes between an affected party identified in paragraph (c)(1)(i) of this section and an affected party identified in paragraph (c)(1)(ii) of this section;

(ii) Not consider disputes among lineal descendants, Indian Tribes, and Native Hawaiian organizations;

(iii) Not consider disputes among museums and Federal agencies;

(iv) Request information or presentations from any affected party; and

(v) Make advisory recommendations directly to the affected parties or to the Secretary of the Interior.

Dated:

Matthew J. Strickler
Deputy Assistant Secretary
Exercising the Delegated Authority of the Assistant Secretary
for Fish and Wildlife and Parks