

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

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

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

(e) The museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

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

(2) The museum official or Federal agency official, at the request of the Indian tribe official, may take such steps as are considered necessary pursuant to otherwise applicable law, to ensure that information of a particu-

larly sensitive nature is not made available to the general public.

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

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41294, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006]

§10.11 Disposition of culturally unidentifiable human remains.

(a) *General.* This section implements section 8(c)(5) of the Act and applies to human remains previously determined to be Native American under §10.9, but for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization has been identified.

(b) *Consultation.* (1) The museum or Federal agency official must initiate consultation regarding the disposition of culturally unidentifiable human remains and associated funerary objects:

(i) Within 90 days of receiving a request from an Indian tribe or Native Hawaiian organization to transfer control of culturally unidentifiable human remains and associated funerary objects; or

(ii) If no request is received, before any offer to transfer control of culturally unidentifiable human remains and associated funerary objects.

(2) The museum or Federal agency official must initiate consultation with officials and traditional religious leaders of all Indian tribes and Native Hawaiian organizations:

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(i) From whose tribal lands, at the time of the removal, the human remains and associated funerary objects were removed; and

(ii) From whose aboriginal lands the human remains and associated funerary objects were removed. Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order.

(3) The museum or Federal agency official must provide the following information in writing to all Indian tribes and Native Hawaiian organizations with which the museum or Federal agency consults:

(i) A list of all Indian tribes and Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains and associated funerary objects;

(ii) A list of any Indian groups that are not federally-recognized and are known to have a relationship of shared group identity with the particular human remains and associated funerary objects; and

(iii) An offer to provide a copy of the original inventory and additional documentation regarding the particular human remains and associated funerary objects.

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

(i) The name and address of the Indian tribal official to act as representative in consultations related to particular human remains and associated funerary objects;

(ii) The names and appropriate methods to contact any traditional religious leaders who should be consulted regarding the human remains and associated funerary objects;

(iii) Temporal and geographic criteria that the museum or Federal agency should use to identify groups of human remains and associated funerary objects for consultation;

(iv) The names and addresses of other Indian tribes, Native Hawaiian organizations, or Indian groups that are not federally-recognized who should be included in the consultations; and

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(v) A schedule and process for consultation.

(5) During consultation, the museum or Federal agency official should seek to develop a proposed disposition for culturally unidentifiable human remains and associated funerary objects that is mutually agreeable to the parties specified in paragraph (b)(2) of this section. The agreement must be consistent with this part.

(6) If consultation results in a determination that human remains and associated funerary objects previously determined to be culturally unidentifiable are actually related to a lineal descendant or culturally affiliated with an Indian tribe or Native Hawaiian organization, the notification and repatriation of the human remains and associated funerary objects must be completed as required by §10.9(e) and §10.10(b).

(c) *Disposition of culturally unidentifiable human remains and associated funerary objects.* (1) A museum or Federal agency that is unable to prove that it has right of possession, as defined at §10.10(a)(2), to culturally unidentifiable human remains must offer to transfer control of the human remains to Indian tribes and Native Hawaiian organizations in the following priority order:

(i) The Indian tribe or Native Hawaiian organization from whose tribal land, at the time of the excavation or removal, the human remains were removed; or

(ii) The Indian tribe or tribes that are recognized as aboriginal to the area from which the human remains were removed. Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order.

(2) If none of the Indian tribes or Native Hawaiian organizations identified in paragraph (c)(1) of this section agrees to accept control, a museum or Federal agency may:

(i) Transfer control of culturally unidentifiable human remains to other Indian tribes or Native Hawaiian organizations; or

(ii) Upon receiving a recommendation from the Secretary or authorized representative:

(A) Transfer control of culturally unidentifiable human remains to an Indian group that is not federally-recognized; or

(B) Reinter culturally unidentifiable human remains according to State or other law.

(3) The Secretary may make a recommendation under paragraph (c)(2)(ii) of this section only with proof from the museum or Federal agency that it has consulted with all Indian tribes and Native Hawaiian organizations listed in paragraph (c)(1) of this section and that none of them has objected to the proposed transfer of control.

(4) A museum or Federal agency may also transfer control of funerary objects that are associated with culturally unidentifiable human remains. The Secretary recommends that museums and Federal agencies transfer control if Federal or State law does not preclude it.

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

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

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

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

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

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

(e) *Disputes.* Any person who wishes to contest actions taken by museums

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

[75 FR 12403, Mar.15, 2010]

§ 10.12 Civil penalties.

(a) *The Secretary's authority to assess civil penalties.* The Secretary is authorized by section 9 of the Act to assess civil penalties on any museum that fails to comply with the requirements of the Act. The Assistant Secretary for Fish and Wildlife and Parks may act on behalf of the Secretary.

(b) *Definition of "failure to comply."*
(1) Your museum has failed to comply with the requirements of the Act if it:

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

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

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

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

(v) Refuses, absent any of the exemptions specified in §10.10(c) of this part, to repatriate human remains, funerary