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records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

(ii) Documentation supplied under this paragraph by a Federal agency or to a Federal agency is considered a public record except as exempted under relevant laws, such as the Freedom of Information Act (5 U.S.C. 552), Privacy Act (5 U.S.C. 552a), Archaeological Resources Protection Act (16 U.S.C. 470hh), National Historic Preservation Act (16 U.S.C. 470w-3), and any other legal authority exempting the information from public disclosure.

(iii) Neither a request for documentation nor any other provisions of this part may be construed as authorizing either:

(A) The initiation of new scientific studies of the human remains and associated funerary objects; or

(B) Other means of acquiring or preserving additional scientific information from the remains and objects.

(6) This paragraph applies when a the museum or Federal agency official determines that it has possession of or control over human remains or associated funerary objects that cannot be identified as affiliated with a lineal descendant, Indian tribe, or Native Hawaiian organization. The museum or Federal agency must provide the Manager, National NAGPRA Program notice of its determination and a list of the culturally unidentifiable human remains and any associated funerary objects. The Manager, National NAGPRA Program must make this information available to members of the Review Committee. Culturally unidentifiable human remains, with or without associated funerary objects, are subject to disposition under §10.11.

(7) The Manager, National NAGPRA Program must publish notices of inventory completion received from museums and Federal agencies in the FEDERAL REGISTER.

(f) *Completion.* Inventories must be completed not later than November 16, 1995. Any museum that has made a good faith effort to complete its inven-

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

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006; 75 FR 12403, Mar. 15, 2010]

§ 10.10 Repatriation.

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

(i) The object meets the definitions established in §10.2 (d)(2)(ii), (d)(3), or (d)(4); and

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

(A) Through the summary, consultation, and notification procedures in §10.14 of these regulations; or

(B) By presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

(iii) The known lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum or Federal agency does not have a right of possession to the objects as defined in §10.10 (a)(2); and

(iv) The agency or museum is unable to present evidence to the contrary proving that it does have a right of possession as defined below; and

(v) None of the specific exceptions listed in § 10.10 (c) apply.

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

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

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

(i) The human remains or associated funerary object meets the definitions established in § 10.2 (d)(1) or (d)(2)(i); and

(ii) The affiliation of the deceased individual to known lineal descendant, present day Indian tribe, or Native Hawaiian organization:

(A) Has been reasonably traced through the procedures outlined in § 10.9 and § 10.14 of these regulations; or

(B) Has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

(iii) None of the specific exceptions listed in § 10.10 (c) apply.

(2) *Notification.* Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of § 10.10 (b)(1) from the culturally affi-

ated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of inventory completion in the FEDERAL REGISTER as described in § 10.9.

(c) *Exceptions.* These requirements for repatriation do not apply to:

(1) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or

(2) Circumstances where there are multiple requests for repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with this part, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. In these circumstances, the museum or Federal agency may retain the cultural items in question until the competing requesting parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction; or

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

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

(g) *Culturally unidentifiable human remains.* If the cultural affiliation of human remains cannot be established under this part, the human remains must be considered culturally unidentifiable.

(1) Museum and Federal agency officials must report the inventory information regarding these human remains in their holdings to the Manager, National NAGPRA Program, who will send this information to the Review Committee.

(2) The Review Committee will:

(i) Compile an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency; and

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(ii) Recommend to the Secretary specific actions for disposition of any human remains not already addressed in §10.11.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41294, Aug. 1, 1997; 71 FR 16501, Apr. 3, 2006; 78 FR 27083, May 9, 2013]

§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:

(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 for purposes of this section may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by 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