

## § 10.6

human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;

(3) Recommendations on how the consultation process should be conducted; and

(4) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

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

(1) The kinds of objects to be considered as cultural items as defined in § 10.2 (b);

(2) The specific information used to determine custody pursuant to § 10.6;

(3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;

(4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;

(5) The kinds of analysis planned for each kind of object;

(6) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;

(8) The nature of reports to be prepared; and

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(9) The planned disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following § 10.6.

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

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

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997]

### § 10.6 Custody.

(a) *Priority of custody.* This section carries out section 3 (a) of the Act, subject to the limitations of § 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after

November 16, 1990. For the purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. Custody of these human remains, funerary objects, sacred objects, or objects of cultural patrimony is, with priority given in the order listed:

(1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to §10.14 (b);

(2) In cases where a lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

(i) In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently;

(ii) In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as determined pursuant to §10.14 (c); or

(iii) In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were excavated intentionally or discovered inadvertently on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe:

(A) In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently, or

(B) If it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest dem-

onstrated relationship with the objects.

(b) Custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony and other provisions of the Act apply to all intentional excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.

(c) *Final notice, claims and disposition with respect to Federal lands.* Upon determination of the lineal descendant, Indian tribe, or Native Hawaiian organization that under these regulations appears to be entitled to custody of particular human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, the responsible Federal agency official must, subject to the notice required herein and the limitations of §10.15, transfer custody of the objects to the lineal descendant, Indian tribe, or Native Hawaiian organization following appropriate procedures, which must respect traditional customs and practices of the affiliated Indian tribes or Native Hawaiian organizations in each instance. Prior to any such disposition by a Federal agency official, the Federal agency official must publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes or Native Hawaiian organizations members now reside. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The notice must be published at least two (2) times at least a week apart, and the transfer must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is

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entitled to custody, the Federal agency must not transfer custody of the objects until such time as the proper recipient is determined pursuant to these regulations. The Federal agency official must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Departmental Consulting Archeologist.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997]

### § 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved]

### Subpart C—Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

#### § 10.8 Summaries.

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

(b) *Contents of summaries.* For each collection or portion of a collection, the summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s),

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and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.

(c) *Completion.* Summaries must be completed not later than November 16, 1993.

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

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

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

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

(2) Initiation of consultation. Museum and Federal agency officials must begin summary consultation no later than the completion of the summary process. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.

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