

(d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(e) *Evidence.* Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(f) *Standard of proof.* Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a preponderance of the evidence. Claimants do not have to establish cultural affiliation with scientific certainty.

#### § 10.15 Limitations and remedies.

(a) *Failure to claim prior to repatriation.* (1) Any person who fails to make a timely claim prior to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is deemed to have irrevocably waived any right to claim such items pursuant to these regulations or the Act. For these purposes, a "timely claim" means the filing of a written claim with a responsible museum or Federal agency official prior to the time the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony at issue are duly repatriated or disposed of to a claimant by a museum or Federal agency pursuant to these regulations.

(2) If there is more than one (1) claimant, the human remains, funerary object, sacred object, or objects of cultural patrimony may be held by the responsible museum or Federal agency or person in possession thereof pending resolution of the claim. Any person

who is in custody of such human remains, funerary objects, sacred objects, or objects of cultural patrimony and does not claim entitlement to them must place the objects in the possession of the responsible museum or Federal agency for retention until the question of custody is resolved.

(b) *Failure to claim where no repatriation or disposition has occurred.* [Reserved]

(c) *Exhaustion of remedies.* No person is considered to have exhausted his or her administrative remedies with respect to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony subject to subpart B of these regulations, or, with respect to Federal lands, subpart C of these regulations, until such time as the person has filed a written claim for repatriation or disposition of the objects with the responsible museum or Federal agency and the claim has been duly denied following these regulations.

(d) *Savings provisions.* Nothing in these regulations can be construed to:

(1) Limit the authority of any museum or Federal agency to:

(i) Return or repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to Indian tribes, Native Hawaiian organizations, or individuals; and

(ii) Enter into any other agreement with the consent of the culturally affiliated Indian tribe or Native Hawaiian organization as to the disposition of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(2) Delay actions on repatriation requests that were pending on November 16, 1990;

(3) Deny or otherwise affect access to court;

(4) Limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) Limit the application of any State or Federal law pertaining to theft of stolen property.

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