

§ 10.9

(4) A summary of the evidence used to determine the cultural affiliation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.14 of these regulations.

(f) *Notification.* Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, culturally affiliated Indian tribes, or Native Hawaiian organizations as determined pursuant to § 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Manager, National NAGPRA Program, and publication of the notice of intent to repatriate in the FEDERAL REGISTER. The notice of intent to repatriate must describe the unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail so as to enable other individuals, Indian tribes or Native Hawaiian organizations to determine their interest in the claimed objects. It must include information that identifies each claimed unassociated funerary object, sacred object, or object of cultural patrimony and the circumstances surrounding its acquisition, and describes the objects that are clearly identifiable as to cultural affiliation. It must also describe the objects that are not clearly identifiable as being culturally affiliated with a particular Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the objects, are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization. The Manager, National NAGPRA Program must publish the notice of intent to repatriate in the FEDERAL REGISTER. Repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the FEDERAL REGISTER.

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

§ 10.9 Inventories.

(a) *General.* This section carries out section 5 of the Act. Under section 5 of the Act, each museum or Federal agency that has possession or control over holdings or collections of human re-

43 CFR Subtitle A (10–1–07 Edition)

mains and associated funerary objects must compile an inventory of such objects, and, to the fullest extent possible based on information possessed by the museum or Federal agency, must identify the geographical and cultural affiliation of each item. The purpose of the inventory is to facilitate repatriation by providing clear descriptions of human remains and associated funerary objects and establishing the cultural affiliation between these objects and present-day Indian tribes and Native Hawaiian organizations. Museums and Federal agencies are encouraged to produce inventories first on those portions of their collections for which information is readily available or about which Indian tribes or Native Hawaiian organizations have expressed special interest. Early focus on these parts of collections will result in determinations that may serve as models for other inventories. Federal agencies must ensure 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) *Consultation*—(1) *Consulting parties.* Museum and Federal agency officials must consult with:

(i) Lineal descendants of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and

(ii) Indian tribe officials and traditional religious leaders:

(A) From whose tribal lands the human remains and associated funerary objects originated;

(B) That are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and

(C) From whose aboriginal lands the human remains and associated funerary objects originated.

(2) *Initiation of consultation.* Museum and Federal agency officials must begin inventory consultation as early as possible, no later in the inventory process than the time at which investigation into the cultural affiliation of

human remains and associated funerary objects is being conducted. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue.

(3) *Provision of information.* During inventory consultation, museums and Federal agency officials must provide the following information in writing 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 human remains and associated funerary objects.

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

(ii) A general description of the conduct of the inventory;

(iii) The projected time frame for conducting the inventory; and

(iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.

(4) *Requests for information.* During the inventory consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:

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

(ii) Recommendations on how the consultation process should be conducted, including:

(A) Names and appropriate methods to contact any lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory; and

(B) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the human remains and associated funerary objects.

(iii) Kinds of objects that the Indian tribe or Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to

contain human remains of their ancestors.

(c) *Required information.* The following documentation must be included, if available, for all inventories completed by museum or Federal agency officials:

(1) Accession and catalogue entries, including the accession/catalogue entries of human remains with which funerary objects were associated;

(2) Information related to the acquisition of each object, including:

(i) The name of the person or organization from whom the object was obtained, if known;

(ii) The date of acquisition,

(iii) The place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; and

(iv) The means of acquisition, i.e., gift, purchase, or excavation;

(3) A description of each set of human remains or associated funerary object, including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such human remains or associated funerary objects, if known;

(4) A summary of the evidence, including the results of consultation, used to determine the cultural affiliation of the human remains and associated funerary objects pursuant to § 10.14 of these regulations.

(d) *Documents.* Two separate documents comprise the inventory:

(1) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely based upon the preponderance of the evidence; and

(2) A listing of all culturally unidentifiable human remains and associated funerary objects for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined.

(e) *Notification.* (1) If the inventory results in the identification or likely identification of the cultural affiliation of any particular human remains or associated funerary objects with one

§ 10.9

or more Indian tribes or Native Hawaiian organizations, the museum or Federal agency, not later than six (6) months after completion of the inventory, must send such Indian tribes or Native Hawaiian organizations the inventory of culturally affiliated human remains and associated funerary objects, including all information required under § 10.9 (c), and a notice of inventory completion that summarizes the results of the inventory.

(2) The notice of inventory completion must summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items. It must identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition, describe the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation, and describe the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the human remains or associated objects, are identified as likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization.

(3) If the inventory results in a determination that the human remains are of an identifiable individual, the museum or Federal agency official must convey this information to the lineal descendant of the deceased individual, if known, and to the Indian tribe or Native Hawaiian organization of which the deceased individual was culturally affiliated.

(4) The notice of inventory completion and a copy of the inventory must also be sent to the Manager, National NAGPRA Program. These submissions should be sent in both printed hard copy and electronic formats. Information on the proper format for electronic submission and suggested alternatives for museums and Federal agencies unable to meet these requirements are available from the Manager, National NAGPRA Program.

43 CFR Subtitle A (10–1–07 Edition)

(5) Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice of inventory completion and a copy of the inventory as described above, a museum or Federal agency must supply additional available documentation to supplement the information provided with the notice. For these purposes, the term documentation means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

(6) If the museum or Federal agency official determines that the museum or Federal agency has possession of or control over human remains that cannot be identified as affiliated with a particular individual, Indian tribes or Native Hawaiian organizations, the museum or Federal agency must provide the Manager, National NAGPRA Program notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The Manager, National NAGPRA Program must make this information available to members of the Review Committee. Section 10.11 of these regulations will set forth procedures for disposition of culturally unidentifiable human remains of Native American origin. Museums or Federal agencies must retain possession of such human remains pending promulgation of § 10.11 unless legally required to do otherwise, or recommended to do otherwise by the Secretary. Recommendations regarding the disposition of culturally unidentifiable human remains may be requested prior to final promulgation of § 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 inventory, 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]

§ 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 pursuant to section 7(c) 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 pursuant to section 7(c) 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 affiliated Indian tribe or Native Hawaiian