

information is necessary to ensure accountability and that the human remains and associated funerary objects conform to the statutory definitions. Detailed information from Federal agency or museum records and other sources are essential in reaching determinations of lineal descent or cultural affiliation as part of the inventory procedures.

One commenter recommended consolidating the two listings described in § 10.9 (d)(1) and (d)(2) into one list. Separation of the two lists reflects the different purposes intended in the § 10.9 (e) inventory process. The listing of culturally affiliated human remains and associated funerary objects is sent directly to Indian tribes and Native Hawaiian organizations, with a copy to the Departmental Consulting Archeologist. The listing of culturally unidentifiable human remains and associated funerary objects is sent only to the Departmental Consulting Archeologist. One commenter objected to use of the term "clearly" regarding the determination of cultural affiliation in § 10.9 (d)(1) as being contrary to Congressional intent and recommended deleting it from the regulatory text. The term was drawn from section 5 (d)(1)(B) of the Act and reflects Congressional intent. Another commenter recommended keeping the list of those human remains and associated funerary objects that are clearly identifiable as to tribal origin separate from those human remains and associated funerary objects are determined by reasonable belief to be cultural affiliated with the same Indian tribe or Native Hawaiian organization. Since both categories of human remains and associated funerary objects are considered to be culturally affiliated with the Indian tribe or Native Hawaiian organization, and are thus available for repatriation by that Indian tribe or Native Hawaiian organization, there is no practical reason to separate the lists.

One commenter recommended clarifying throughout this subsection that museum or Federal agency officials may need to send the same inventory to multiple Indian tribes or Native Hawaiian organizations. The text has been modified to reflect this concern.

Four commenters recommended replacing the word "shall" in the second sentence of § 10.9 (e)(4) with "should." The Secretary has delegated authority to carry out some provisions of the Act to the Departmental Consulting Archeologist. These responsibilities include providing staff support to the Review Committee. The Review Committee is required under section 8 (c)(2) of the Act to monitor the

inventory and identification process. Submission of inventories in electronic format is intended to facilitate the monitoring process. However, in recognition that some museums may have difficulty meeting the electronic format requirement, the drafters have changed the word "shall" in the second sentence to "should." One commenter recommended also allowing Federal agencies to use alternative methods for submission of notices to the Departmental Consulting Archeologist. The phrase "and Federal agencies" has been inserted after "museums" in the text. The Review Committee recommended inclusion of language in this subsection requiring museums and Federal agencies to retain possession of culturally unidentifiable human remains pending promulgation of § 10.11 of these regulations. The recommended language has been included.

One commenter recommended requiring listings of culturally unidentifiable human remains described in § 10.9 (e)(6) be sent to all Indian tribes and Native Hawaiian organizations as well as to the Departmental Consulting Archeologist. Section 8 (c)(5) of the Act gives the Review Committee responsibility for recommending specific action for developing a process for disposition of culturally unidentifiable human remains. Section 10.11 of these regulations has been reserved for that purpose. The drafters consider it premature at this time to establish such procedures.

Two commenters requested extending the November 16, 1995 deadline for completion of inventories in § 10.9 (f). The deadline for completion of inventories is specified in section 5 (b)(1)(B) of the Act and would require Congressional action to change. One commenter recommended including language in this subsection to indicate that the requirement to repatriate may be suspended during the preparation of the inventories. The drafters consider such a suspension of the requirement to repatriate counter to statutory language and legislative history. Two commenters recommended including language in this subsection to allow Federal agencies to apply for extensions of time to complete their inventories. Section 5 (c) of the Act specified that any museum which has made a good faith effort but which has been unable to complete an inventory may appeal to the Secretary for an extension of the time requirements. No provisions are provided in the Act for Federal agencies to apply for extension. One commenter recommended including language in

this subsection limiting the number and length of extensions granted to a museum to complete its inventories. The Secretary will determine the number and length of extensions on a case-by-case basis. One commenter recommended requiring museums to apply for an extension in the second sentence of § 10.9 (f). While a museum may choose not to apply for an extension, it is likely that failure to do so would be taken into account by the Secretary in determining if the museum had failed to comply with the requirements of the Act. One commenter requested clarification regarding a situation in which a museum fails to complete an inventory of human remains and associated funerary objects from Federal lands. Federal agencies are responsible for completion of summaries and inventories of all human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands regardless of the type of institution in which they are currently curated. One commenter recommended incorporation of personnel qualifications in this subsection for individuals involved in the completion of the inventory plan. Museums are expected to make sure that all of their personnel are qualified to undertake the tasks expected of them.

#### *Section 10.10*

Thirty-three commenters recommended changes to the section on repatriation. One commenter recommended rewriting § 10.10 (a)(1) and § 10.10 (b)(1) to emphasize that all of the criteria for repatriation must be met. The initial sentence of each section has been rewritten to state "If all the following criteria are met..." In addition, the word "and" has been added at the end of all but the final roman numeral subsections in these two sections. Another commenter requested clarification of the term "expeditiously" which is used in both sections. The rule of statutory construction generally holds that undefined terms are interpreted in their common meaning.

One commenter recommended inclusion of language in § 10.10 (a)(1)(ii) and (b)(1)(ii) allowing several Indian tribes or Native Hawaiian organizations to make joint claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony. The drafters feel the current language allows for joint claims. Another commenter recommended amending § 10.10 (a)(1)(ii) and § 10.10 (b)(1)(ii) to clarify that the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony can be established independently of the