

summary and inventory processes by presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization.

Additional text has been inserted under § 10.10 (a)(1)(ii)(B) and § 10.10 (b)(1)(ii)(B) to clarify this issue. Another commenter requested inserting the phrase "culturally affiliated" before "Indian tribe" in § 10.10 (a)(1)(iii). The recommended text has been included.

One commenter recommended deleting the phrase "which, if standing alone before the introduction of evidence to the contrary" from § 10.10 (a)(1)(iii). This phrase is taken directly from section 7 (c) of the Act regarding the standard of repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony; and has been retained in the regulations.

One commenter recommended rewriting § 10.10 (a)(1)(iv) to make clear that a Federal agency or museum must present evidence to overcome the inference of tribal custody and prove its right of possession to unassociated funerary objects, sacred objects, or objects of cultural patrimony. The existing text is drawn from section 7 (c) of the Act and is interpreted to provide Federal agencies with some discretion as to whether information regarding right of possession must be used to challenge a request for repatriation.

One commenter recommended deleting § 10.10 (a)(1)(v) and § 10.10 (b)(1)(iii), referring to specific repatriation exemptions, to avoid confusion and havoc with Indian tribes. The specific exemptions to repatriation referred to in these subsections come from section 7 (b) and (e) of the Act.

Two commenters recommended changes to § 10.10 (a)(2) regarding right of possession. One commenter requested clarification of how right of possession might be demonstrated for prehistoric human remains, funerary objects, sacred objects, or objects of cultural patrimony. The right of possession basis for retaining cultural items in an existing collection does not apply to human remains or associated funerary objects, only to unassociated funerary objects, sacred objects, and objects of cultural patrimony. A right of possession for prehistoric cultural items fitting these categories might be written authorization from a competent authority to excavate, remove, and curate such items from a particular area or site. Another commenter recommended locating the definition of right of possession would more appropriately with the other definitions in § 10.2. The concept of right of possession has limited applicability in

these regulations to unassociated funerary objects, sacred objects, and objects of cultural patrimony. The explanation of right of possession is retained at this place in the regulations because it is only used for this specific aspect of the Act.

Three commenters recommended changes to § 10.10 (a)(3) and § 10.10 (b)(2) regarding notification. Two commenters requested clarification of whether the ninety (90) days during which repatriation must take place begins from the day a request for repatriation is received or from the day the responsible museum of Federal agency official makes a positive determination that the criteria for repatriation apply. The first sentence of this section has been redrafted to clarify that the ninety (90) day period begins with the receipt of a written request for repatriation from a culturally affiliated Indian tribe or Native Hawaiian organization. Another commenter stated that ninety (90) days may not be sufficient to determine to validity of each request. Section 7 of the Act requires that repatriation must be done "expeditiously" and implies in section 7 (b) a ninety (90) day time frame for such actions. Text has been added to provide for a longer period if mutually agreed upon. It is noted that determination of the validity of a claim should not be difficult since this period only applies to requests from Indian tribes and Native Hawaiian organizations that have been determined to be culturally affiliated with specific human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Five commenters recommended changes to § 10.10 (b) regarding the repatriation of human remains and associated funerary objects. One commenter identified the criteria for repatriating human remains and associated funerary objects as being very confusing and recommended rewriting them for comprehension by lay people. One commenter recommended reiterating the applicability of "right of possession" to human remains and associated funerary objects recognized in the last sentence of section 2 (13) of the Act in this section of the regulations. American law generally recognizes that human remains can not be "owned." This interpretation is consistent with the second sentence of section 2 (13) of the Act that specifically refers to unassociated funerary objects, sacred objects, and objects of cultural patrimony, and with section 7 (a)(1) and (a)(2) of the Act in which no right of possession to human remains or associated funerary objects is inferred. One commenter strongly objected to the

requirement in § 10.10 (b)(2) that repatriation not occur until at least thirty days after publication of a notice of inventory completion in the Federal Register, referring to section 11 (1)(A) of the Act that states that nothing in the Act shall be construed to limit the authority of any museum or Federal agency to return or repatriate. Publication of the notice in the Federal Register was recognized in section 5 (d)(3) of the Act as necessary to ensure Constitutional due process requirements. Delaying a repatriation for thirty (30) days following publication of the notice provides any other legitimate claimant with an opportunity to come forward with a claim. This requirement in no way limits any organization's authority to repatriate. Section 11 (2) of the Act states that nothing in the Act shall be construed to delay action on repatriation requests "that are pending on the date of enactment of this Act," and makes it clear that Congress anticipated there might be some subsequent delays of repatriation initiated after November 16, 1990, due to the statutory provisions. One commenter asked whether a second Federal Register notice is required to document a claim following publication of a Notice of Inventory Completion. Requests for repatriation made after completion of the inventory and publication of the Notice of Inventory Completion in the Federal Register do not require publication of a second notice, unless it is determined as a result of a competing claim or otherwise that a different Indian tribe or Native Hawaiian organization than the one identified in the original notice is the proper recipient. In such instances, a second Federal Register notice is required prior to repatriation. In situations where more than one Indian tribe or Native Hawaiian organization was listed in the original notice, the museum or Federal agency official should consult with each of the listed Indian tribes or Native Hawaiian organizations prior to repatriating to any one of them.

Three commenters recommended deleting § 10.10 (c)(1) regarding the exception to the repatriation requirements for studies of human remains, funerary objects, sacred objects, or objects of cultural patrimony of major benefit to the United States. This exemption is drawn from section 7 of the Act. One commenter identified the phrase "commenced prior to receipt of a request" in this subsection as not being included in the statutory language and recommended deleting it. The phrase has been deleted. Six