

section to read "culturally and geographically unidentifiable" to ensure that a "simple-minded or hostile reading of the rules" would not result in assignment of many human remains to the catch-all category. One commenter requested clarification for procedures concerning "affected remains of . . . biologically extinct peoples". Section 8 (c)(5) and (c)(7) of the Act gives the Review Committee the responsibilities of recommending specific actions for developing a process for disposition of "culturally unidentifiable human remains" and consulting with the Secretary in the development of regulations to carry out the statute. Section 13 of the Act charges the Secretary with promulgating regulations to carry out the statute. One commenter recommended interring all culturally unidentifiable human remains in a tribal or intertribal cemetery. One commenter recommended sending inventories of all culturally unidentifiable human remains to all Indian tribes and Native Hawaiian organizations. One commenter requested that this section be published promptly. Another commenter recommended seeking Indian tribal input in developing this section to ensure that "the dominant society [not dictate] the proposed language to protect their own interests." A draft of this section is being developed currently and will be submitted to the Review Committee for discussion and recommendations prior to publication as proposed regulation for public comment in the Federal Register.

#### *Section 10.12*

This section has been reserved for procedures related to the assessment of civil penalties by the Secretary against any museum that fails to comply with the requirements of the statute. One commenter requested prompt publication of this section. A draft of this section is currently being developed and will be submitted to the Review Committee for discussion prior to publication for public comment in the Federal Register.

#### *Section 10.13*

This section has been reserved for procedures related to the future applicability of the statute. One commenter recommended that the section should include continuing responsibilities for museums and Federal agencies to update summaries and inventories of human remains, funerary objects, sacred objects, or objects of cultural patrimony to reflect new accessions, first time receipt of Federal funds, and the recognition of new Indian tribes and Native Hawaiian

organizations. One commenter requested clarification on the subject of future accessions. One commenter stressed that tribal input, comment and recommendations are imperative in formulating this section. A draft of this section is currently being developed and will be submitted to the Review Committee for discussion prior to publication for public comment in the Federal Register. One commenter proposed inclusion of a ten year time limit during which Indian tribes must make claims for repatriation. Time limits for claims were discussed by Congress when the bill was being considered but were not included in the Act. Inclusion of such time limits in the regulations would contradict Congressional intent.

#### *Section 10.14*

Eighteen commenters recommended changes to the section on lineal descent and cultural affiliation. Two commenters recommended further identification in § 10.14 (a) of the parties responsible for completing the required activities. On Federal lands, Federal agency officials are responsible for determining which modern Indian tribes and Native Hawaiian organizations may have valid claims upon human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally or discovered inadvertently on lands they manage. For existing collections, the museum or Federal agency official is responsible for assembling, describing, evaluating human remains, funerary objects, sacred objects, or objects of cultural patrimony and making determinations regarding their cultural affiliation and disposition. It is the responsibility of lineal descendants, Indian tribes or Native Hawaiian organizations that disagree with determinations of cultural affiliation made by a Federal agency or museum official to develop and present information to challenge that determination.

Another commenter recommended changing all references to Indian tribe in this section to "Indian tribe or tribes" to reflect the fact that Indian tribes may bring joint claims for certain items. The drafters consider the current language to support the possibility of joint claims.

One commenter identified the criteria for determining lineal descendants in § 10.14 (b) as being overly restrictive and recommended broadening them to allow for both individual and Indian tribe and Native Hawaiian organization claims. One commenter requested including a procedure "for independent verification of claimed descent."

Criteria for determining lineal descent have been narrowly defined to reflect the priority given these claims under section 3 and section 7 of the Act. One commenter requested that the section include procedures for independent verification of any claims of lineal descent based upon traditional kinship systems. Museum or Federal agency officials are responsible for evaluating claims of lineal descent.

Three commenters identified criteria for determining cultural affiliation under § 10.14 (c)(1), (2) and (3) as placing an undue and unrealistic burden of proof on Indian tribes and Native Hawaiian organizations, and recommended fewer requirements. The three criteria — existence of an identifiable present-day Indian tribe or Native Hawaiian organization, evidence of the existence of an identifiable earlier group, and evidence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group—are the components of the statutory definition of cultural affiliation at section 2 (2) of the Act. They have been retained in the regulations.

Three commenters recommended rewording § 10.14 (c)(2) for clarification. The second sentence of § 10.14 (c)(2) has been rewritten to read: "Evidence to support this requirement may include, but is not necessarily limited to: . . ." One commenter recommended rewording § 10.14 (c)(2)(ii) to emphasize the desirability of demonstrating linkages between claimants and archeological remains. One commenter questioned whether it is possible to make biological distinctions between earlier groups as suggested in § 10.14 (c)(2)(iii). Cultural affiliation between particular human remains, funerary objects, sacred objects, or objects of cultural patrimony and particular Indian tribes and Native Hawaiian organizations must be determined on a case-by-case basis.

One commenter recommended regarding human remains or cultural objects found within the traditional (aboriginal) territory of an Indian tribe as being culturally affiliated with that Indian tribe, regardless of the antiquity of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. The statutory provisions related to intentional excavation and inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands (section 3 of the Act) includes provisions for the disposition of human remains, funerary objects, sacred objects, or objects of