cultural patrimony to the Indian tribe that is recognized as aboriginally occupying the area in which the human remains or objects were recovered, if upon notice, such tribe states a claim for such human remains or items. No such criteria are included in the statutory sections regarding repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections.

One commenter recommended inclusion of language from House Report 101–877 (page 5) clarifying that determinations of cultural affiliation should be based on an overall evaluation of the totality of the circumstances and evidence and should not be precluded solely because of some gaps in the record. Language from the House Report has been included as § 10.14 (d), and the subsequent sections relettered.

One commenter noted that the types of evidence listed in § 10.14 (e) were originally derived from section 7 (a)(4) of the Act—which deals exclusively with the determination of cultural affiliation — and recommends that lineal descent should be established through normally accepted methods of evidence. Section 7 (a) of the Act, of which section 7 (a)(4) is a subpart, deals with both determinations of lineal descent and cultural affiliation. It is the opinion of the drafters that each of the types of evidence listed could potentially be used to support a claim of lineal descent and should be available for use by potential claimants.

One commenter objected to oral tradition and folklore being allowed as evidence in § 10.14 (d), particularly for those areas, such as central, southwestern, southern, and coastal Texas, "where the aboriginal inhabitants have no biological descendants." One commenter recommended including a statement that physical anthropological/ biological, archeological, and other "hard" scientific evidence will have the greatest bearing in determining the cultural affiliation of prehistoric materials, scaled with weight increasing as distance in time increases. One commenter recommended inclusion of a statement regarding "standards of evidence." The applicability and strength of particular types of evidence must be determined on a case-by-case basis. It would be inappropriate to place stipulations on the applicability of various types of evidence in regulation.

Two commenters recommended changing the last sentence of § 10.14 (e) to require that cultural affiliation be established with scientific certainty to avoid any misuse of the Act. A standard

of scientific certainty is not consistent with Congressional intent. The statement of evidence in this subsection is drawn from section 7 (a)(4) of the Act. Two other commenters questioned whether this subsection might give the impression that scientific research is of no value in determining cultural affiliation. Section 7 (a)(4) identifies scientific information related to numerous fields as having relevance to the determination of cultural affiliation. One commenter recommended stipulating that no repatriation will occur until the analysis is completed. Section 5 (a) specifies that the geographic and cultural affiliation of human remains and associated funerary objects be determined "to the extent possible based on information possessed by the museum of Federal agency." No new scientific research is required. Delaying repatriation until new scientific research is completed contradicts the intent of Congress unless that scientific research is considered to be of major benefit to the United States.

Section 10.15

Eleven commenters recommended changes to the section on repatriation limitations and remedies. One commenter stated the section was not consistent with the statute and recommended deleting it in its entirety. Two commenters identified § 10.15 (a)(1) as being unduly harsh to Indian tribes and Native Hawaiian organizations, and recommended deleting it. Section 10.15 (a)(1) ensures that any claim received prior to the disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be considered by the museum or Federal agency. Claims made after disposition or repatriation have occurred are properly the responsibility of the receiving lineal descendant, Indian tribe, or Native Hawaiian organization. The subsection has been retained as it is important for the protection of museums and Federal agencies that comply with the Act and regulations. One commenter recommended adding another subsection under the title "Multiple Claimants" to address such situations. Three commenters recommended specifying that a time period for competing parties to reach agreement on the appropriate disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. No time period has been established because it appears to be contrary to Congressional intent. One commenter recommended inclusion of a statement specifying who decides the

disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that cannot be shown to be culturally affiliated to a present-day Indian tribe or Native Hawaiian organization. Section 10.11 of the regulations has been reserved for procedures related to the disposition of culturally unidentifiable human remains.

One commenter recommended completing § 10.15 (b), reserved for "Failure to claim where no repatriation or disposition has occurred," as quickly as possible. Another commenter questioned whether the statutory language supports the inclusion of unclaimed cultural items as well as human remains. Section 3 (b) of the Act addresses the disposition of "unclaimed human remains and objects" and requires the Secretary to publish regulations to carry out their disposition in consultation with the Review Committee, Native American groups, and representatives of museums and the scientific community.

One commenter asked for clarification regarding whether the denial of a request for repatriation implied in § 10.15 (c) would have the effect of stopping the "90-day clock" for expedient repatriation. Museum and Federal agency officials are required to make a decision regarding claims for the disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony within ninety (90) days of receipt of that claim. Once that decision is made, the museum or Federal agency official has carried out their responsibility. Another commenter recommended that this subsection state specifically that museums and Federal agencies must repatriate within ninety (90)-days of receipt of a written request. Section 10.10 (a)(3) and (b)(2) specify that museums and Federal agencies must repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony in their collections within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of § 10.10 (a)(1) and (b)(1), respectively, provided that the repatriation may not occur until at least thirty (30) days after publication of the appropriate notice in the Federal Register.

Section 10.16

Two commenters recommended changes to the section on the Review Committee. One commenter recommended deletion of the term "culturally unidentifiable human remains" on the grounds that there is no such category recognized under the Act.