

U.S. Army Corps of Engineers

NAGPRA Sections 5 and 6 Reporting Procedures

Background

In 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) was signed into law (P.L. 101-601) and became the most sweeping legislation regarding the treatment and disposition of Native American human remains and certain types of artifacts. NAGPRA acknowledges the rights of federally recognized Native Americans to possess and/or control certain types of artifacts if those Native Americans (individuals or groups) can demonstrate direct lineal descent or cultural affiliation with the material in question. The subjects of NAGPRA legislation are Native American human remains, associated and unassociated funerary objects, objects of cultural patrimony, and sacred objects. The law seeks to create a more comprehensive dialogue between Native Americans and those institutions that (1) hold materials outlined above and (2) receive federal funding. These institutions were required to complete a Section 6 Summary (due November 1993) and a Section 5 Inventory (due November 1995) of all materials that can be classified as NAGPRA related. Summaries and Inventories, once compiled, are forwarded to all relevant Native American groups and/or lineal descendants and to the Department of the Interior's National Park Service (NPS) Departmental Consulting Archaeologist (DCA).

The U.S. Army Corps of Engineers (USACE) is currently responsible for thousands of archaeological collections that comprise one of the largest holdings of archaeological collections by any Federal agency. In order to efficiently and economically comply with the mandates of NAGPRA, as well as to effectively manage USACE archaeological collections, on 7 December 1994 HQUSACE established a Mandatory Center of Expertise for the Curation and Management of Archaeological Collections (MCX-CMAC) at the St. Louis District. At that time, some USACE districts chose to maintain direct responsibility for NAGPRA Sections 5 and 6 activities, with assistance from the MCX-CMAC. Other districts turned their NAGPRA Sections 5 and 6 compliance activities over to MCX-CMAC. In addition, a Curation Field Review Group (CFRG), comprised of USACE Major Subordinate Command (MSC) representatives, was established to review progress on NAGPRA compliance and curation issues.

On 2 August 1995, a directive from the Director of Civil Works required that copies of NAGPRA Inventory notices be sent to the Office of Environmental Policy, Policy Review and Analysis Division. The Inventories would be transmitted to the DCA from that office. The intention of this directive was to keep communication with the DCA centralized for both consistency and USACE record keeping.

At a meeting of the CFRG and MCX-CMAC in November 2002, it was apparent that the reporting procedures for NAGPRA compliance needed to be more clearly formulated and provided to Corps Commands. MCX-CMAC was tasked to prepare these reporting procedures. In consultation with CFRG members and HQUSACE, it was determined that USACE districts should directly supply Native American tribes with all

compliance materials, but that MCX-CMAC should serve as the centralized office to file and, and when requested, to transmit these documents to the appropriate MSC, HQUSACE, and NPS personnel.

Districts should choose one of two options for formally reporting compliance with Sections 5 and 6 of NAGPRA: (1) provide NPS with compliance documents, with copies furnished to the appropriate MSC, HQUSACE, and MCX-CMAC; or (2) provide compliance documents to MCX-CMAC, who would then be responsible for transmitting the compliance documents to the appropriate MSC, HQ, and NPS. Responsibility for supplying Native American tribes or Native Hawaiian organizations with the appropriate documents is maintained at the District level. If a District has already submitted these documents to tribes, HQUSACE, or NPS, MCX-CMAC requests that the District forward copies of the documents to MCX-CMAC, with a letter stating to whom they were sent. If possible, these should be copies of the original signed and dated letterhead documents.

Districts should follow the specific reporting requirements for Section 5 and Section 6 as outlined below, referring to NAGPRA and its implementing regulations (43 CFR Part 10) as necessary. The procedures are summarized in the attached flowcharts. Attached are the relevant sections of 43 CFR Part 10, and its complete text can be found at www.cr.nps.gov/nagpra/MANDATES/INDEX.HTM. MCX-CMAC is available to districts at any time to assist in drafting compliance documents or transmittal letters.

Section 5 Reporting

NAGPRA Regulations

The purpose of a Section 5 Inventory is to facilitate the repatriation of human remains and associated funerary objects by providing a clear description of these items, and to establish the cultural affiliation, when possible, between the material and present-day Native American tribes and Native Hawaiian organizations. All compliance documents are to be prepared in consultation with the appropriate Native American tribes or Native Hawaiian organizations.

Section 5 reporting requirements recognize a difference between human remains and associated funerary objects that are culturally affiliated with one or more Native American tribes or Native Hawaiian organizations and those that are culturally unidentifiable. When a federal agency determines that human remains and associated funerary objects are culturally affiliated, the federal agency must provide the culturally affiliated Native American tribes or Native Hawaiian organizations with two documents.

- (1) A Section 5 Inventory of culturally affiliated human remains and associated funerary objects.
- (2) A Notice of Inventory Completion.

The federal agency must also provide these two documents to the DCA, who will publish the Notice of Inventory Completion in the Federal Register.

When a federal agency determines that human remains and associated funerary objects are culturally unidentifiable, the agency is required to provide this information to the DCA, along with a copy of the Section 5 Inventory of the culturally unidentifiable human remains and associated objects. The DCA is to make this information available to the NAGPRA Review Committee.

USACE Section 5 Reporting Procedures

1. For USACE districts that have collections containing human remains and associated funerary objects that are subject to NAGPRA Section 5 compliance, the following reporting procedures should be followed (Figure 1).

- a. In consultation with the relevant Native American tribes or Native Hawaiian organizations, the District should determine if the human remains and associated funerary objects are culturally affiliated with one or more Native American tribes or Native Hawaiian organizations or if the human remains and associated funerary objects are culturally unidentifiable.
- b. For culturally affiliated human remains and associated funerary objects, the District should prepare both a Section 5 Inventory of the affiliated remains and associated funerary objects and a Notice of Inventory Completion. These documents, along with a cover letter, should be mailed (return receipt requested) by the District to the culturally affiliated Native American tribes. The District can then choose one of two options for upward reporting; all copies should be of signed and dated letterhead documents.

- (1) Provide these documents to NPS, with copies furnished to the appropriate MSC, HQUSACE, and MCX-CMAC. If the District chooses to provide the documents directly to NPS, the procedures for submittal, as outlined in 43 CFR 10.9 and Appendix B to 43 CFR 10 should be followed.

OR

- (2) Provide the documents, with a cover letter, to MCX-CMAC. MCX-CMAC will be responsible for transmitting this information the appropriate MSC, HQUSACE, and NPS.

- c. For culturally unidentifiable human remains and associated funerary objects, a Section 5 Inventory of the unidentifiable remains and associated funerary objects should be prepared. This document should be mailed (return receipt requested) with a cover letter to the tribes with whom the District consulted. This is not a requirement of NAGPRA, but serves to continue open dialogue with the tribes. The Districts again should choose one of two options for upward reporting; all copies should be of signed and dated letterhead documents.

- (1) Provide NPS the Section 5 Inventory of unaffiliated remains and associated funerary objects following the procedures for submittal as outlined in 43 CFR 10.9. Copies of the documents provided to NPS should then be sent to the appropriate MSC, HQUSACE, and MCX-CMAC.

OR

- (2) Provide the Section 5 Inventory of the culturally unidentifiable human remains and associated objects to MCX-CMAC, who will be responsible for transmitting this information to the appropriate MSC, HQUSACE, and NPS.

2. For USACE districts whose archaeological collections do not contain human remains or associated funerary objects that are subject to NAGPRA Section 5 compliance, relevant Native American tribes, HQUSACE and MCX-CMAC should be notified to that effect by doing the following (Figure 2).

- a. For districts that maintain direct responsibility for NAGPRA Section 5 and 6 activities, each District should inform, in writing, the Native American tribes or Native Hawaiian organizations who may have interest in District collection that a thorough review of the collection documentation indicates that the District does not have archaeological collections that contain human remains or associated funerary objects that are subject to NAGPRA Section 5 compliance. The District should also inform the MCX-CMAC, who will notify, in writing, the appropriate MSC, HQUSACE, and NPS that NAGPRA Section 5 compliance is not necessary for the District.
- b. For districts that turned over NAGPRA Section 5 and 6 activities to MCX-CMAC, MCX-CMAC will notify the District point of contact in writing that a thorough review of the collection documentation indicates that the District does not have archaeological collections that contain human remains or funerary objects that are subject to Section 5 compliance. MCX-CMAC will also provide this information to the appropriate MSC, HQUSACE, and NPS. The District should then provide this information, in writing, to the Native American tribes that may have interest in District collection.

NAGPRA Section 6 Reporting

NAGPRA Regulations

The purpose of a Section 6 Summary is to provide information about archaeological collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants, culturally affiliated Native American tribes, or Native Hawaiian organizations who may wish to repatriate such objects. Federal agencies are responsible for ensuring that these requirements are met for all of their archaeological collections.

Upon completion of the Summary, the federal agency must provide copies of the Summary to lineal descendants, when known, and to the Native American tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the cultural items. A copy of the Summary must also be provided to the DCA.

USACE Section 6 Reporting Procedures

1. Any USACE District with Native American archaeological collections should summarize the contents of all their known collections. It should be determined if any unassociated funerary objects, sacred objects, or objects of cultural patrimony are part of the collections. Even if District personnel cannot identify any unassociated funerary objects, sacred objects, or objects of cultural patrimony, the District must provide a Section 6 Summary to the Native American tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the collections in order to afford them the opportunity to identify such objects in the collections. Upward reporting requirements can be accomplished in one of two ways; all copies should be of signed and dated letterhead documents (Figure 3).

- (1) Provide NPS a copy of the Summary, with a cover letter indicating to which tribes the Summary was provided. Procedures for submittal found in 43 CFR 10.8 and Appendix A to 43 CFR 10 should be followed. Copies of the material provided to NPS should be provided to the appropriate MSC, HQUSACE, and MCX-CMAC.

OR

- (2) Provide MCX-CMAC a copy of the Summary and information on which tribes were provided the Summary. MCX-CMAC will then transmit the Summary and pertinent information to the appropriate MSC, HQUSACE, and NPS.

2. For USACE districts that do not have Native American archaeological collections, there are no Section 6 reporting responsibilities; however, this should be documented in the following manner (Figure 2).

- a. For districts that maintained direct responsibility for NAGPRA activities, each District should inform the MCX-CMAC, in writing, that the District does not have Native American archaeological collections. MCX-CMAC will notify, in writing, the appropriate MSC, HQUSACE, and NPS, that NAGPRA Section 6 compliance is not necessary for the District.
- b. For districts that turned over NAGPRA activities to MCX-CMAC, MCX-CMAC will notify, in writing, the District point of contact that the District does not have Section 6 compliance responsibilities. The MCX-CMAC will also provide this information to the appropriate MSC, HQUSACE, and NPS.

Figure 1. USACE Reporting Procedures for NAGPRA Section 5

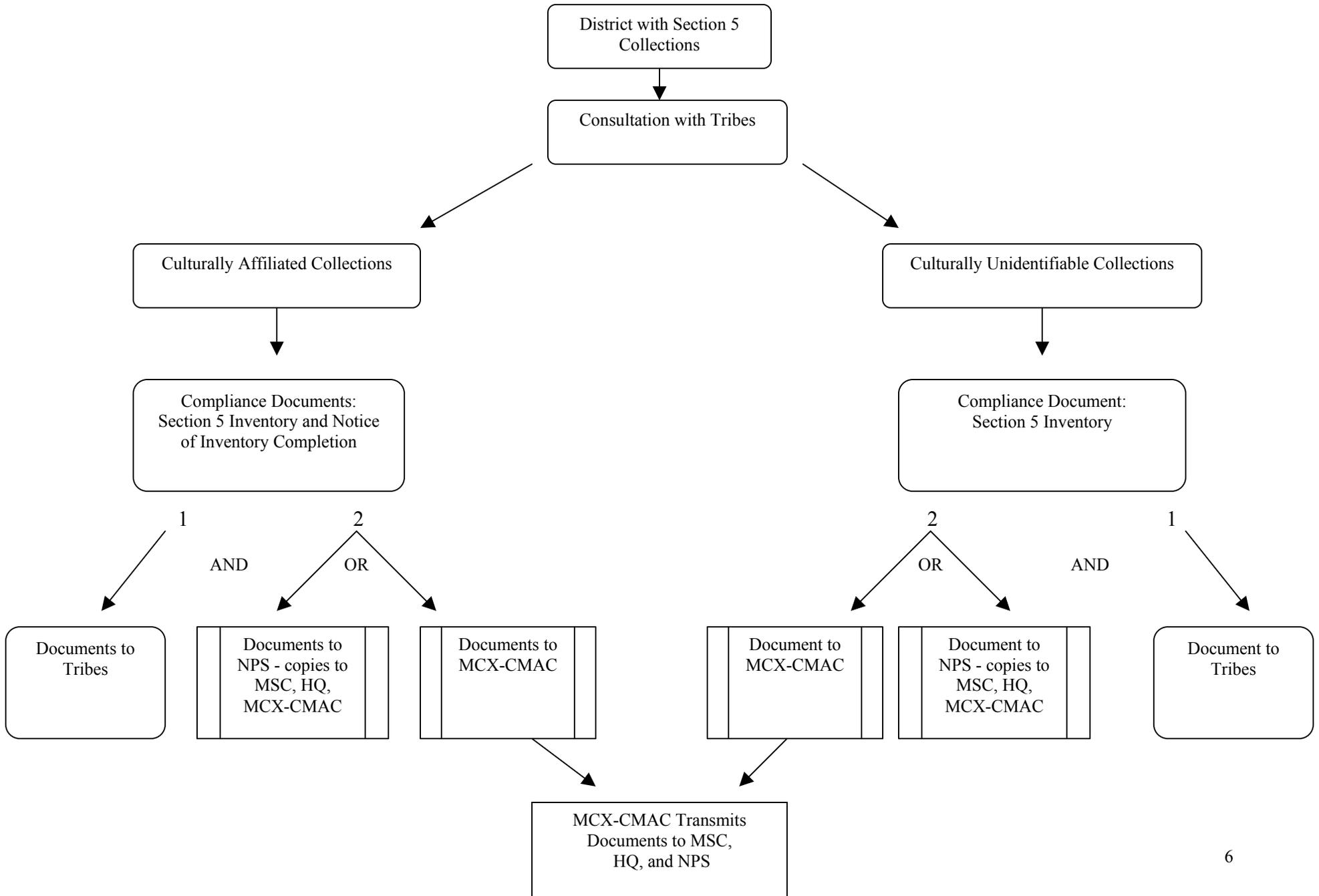


Figure 2. USACE Negative Reporting Procedures for NAGPRA Sections 5 and 6

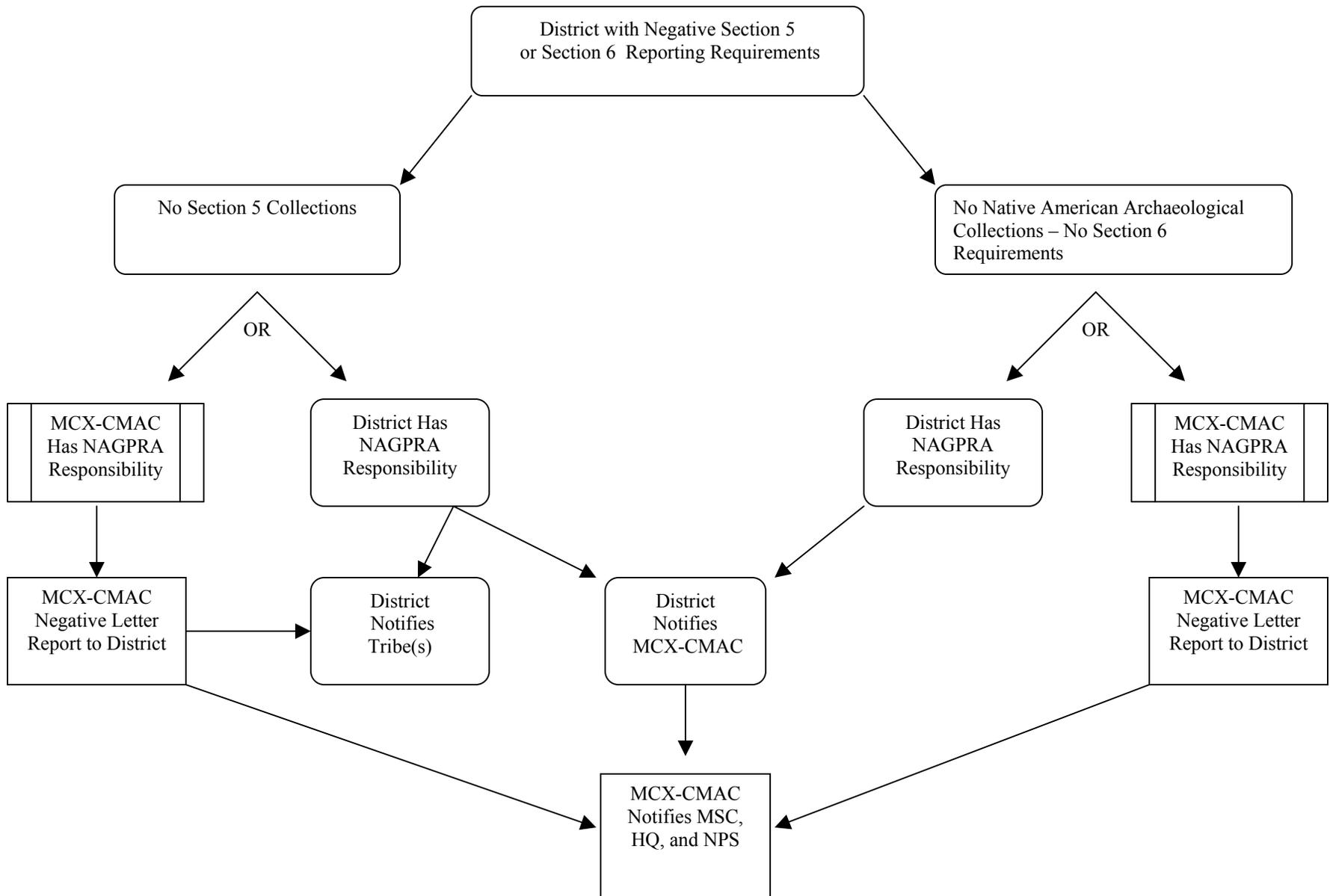
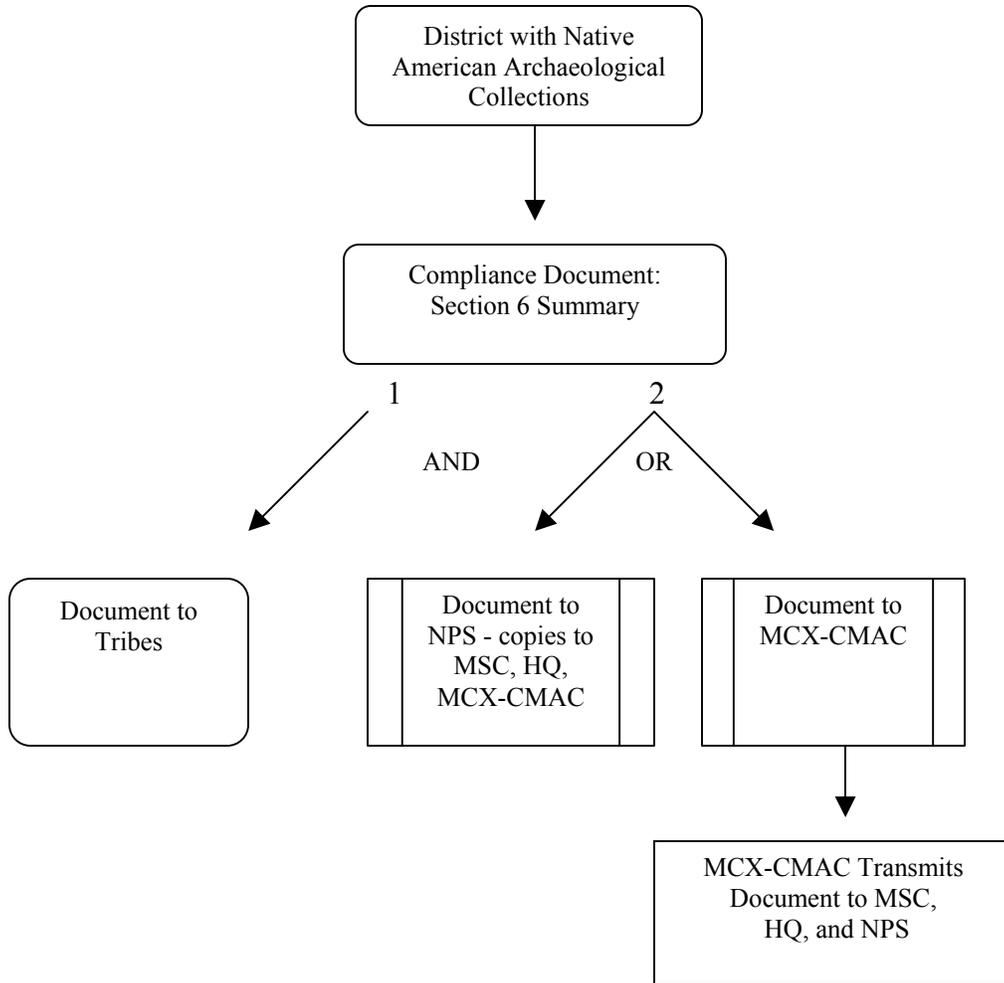


Figure 3. USACE Reporting Procedures for NAGPRA Section 6



Excerpts from 43 CFR Part 10 on Compliance Reporting

Department of the Interior

Office of the Secretary

43 CFR Part 10

Native American Graves Protection and Repatriation Act Regulations; Final Rule

RIN 1024-AC07

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes definitions and procedures for lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to carry out the Native American Graves Protection and Repatriation Act of 1990. These regulations develop a systematic process for determining the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Graves, Hawaiian Natives, Historic Preservation, Indians -- Claims, Indians --lands, Museums, Public lands, Reporting and record keeping requirements.

For the reasons set out in the preamble, 43 CFR Subtitle A is amended by adding Part 10 to read as follows:

PART 10--NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

Subpart A--Introduction

Sec.

10.1 Purpose and applicability.

10.2 Definitions

Subpart B--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony From Federal or Tribal Lands

10.3 Intentional archaeological excavations.

10.4 Inadvertent discoveries.

10.5 Consultation.

10.6 Custody.

10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved]

Subpart C--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

10.8 Summaries.

10.9 Inventories.

10.10 Repatriation.

10.11 Disposition of culturally unidentifiable human remains. [Reserved]

10.12 Civil penalties.

10.13 Future applicability. [Reserved]

Subpart D--General

10.14 Lineal descent and cultural affiliation.

10.15 Limitations and remedies.

10.16 Review committee.

10.17 Dispute resolution.

Appendix A to Part 10--Sample Summary.

Appendix B to Part 10--Sample Notice of Inventory Completion.

Authority: 25 U.S.C. 3001 *et seq.*

Subpart C--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

Sec. 10.8 Summaries.

(a) *General.* This section carries out section 6 of the Act. Under section 6 of the Act, each museum or Federal agency that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum or Federal agency. The purpose of the summary is to provide information about the collections to lineal descendants and culturally affiliated Indian tribes or Native Hawaiian organizations that may wish to request repatriation of such objects. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. Federal agencies are responsible for ensuring 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) Contents of summaries. For each collection or portion of a collection, the summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired,

where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.

(c) *Completion*. Summaries must be completed not later than November 16, 1993.

(d) *Consultation*. (1) Consulting parties. Museum and Federal agency officials must consult with Indian tribe officials and traditional religious leaders:

(i) From whose tribal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated;

(ii) That are, or are likely to be, culturally affiliated with unassociated funerary objects, sacred objects, or objects of cultural patrimony; and

(iii) From whose aboriginal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated.

(2) Initiation of consultation. Museum and Federal agency officials must begin summary consultation no later than the completion of the summary process. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.

(3) Provision of information. During summary consultation, museum and Federal agency officials must provide copies of the summary 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 cultural items. A copy of the summary must also be provided to the Departmental Consulting Archeologist. Upon request by lineal descendants or Indian tribe officials, museum and Federal agency officials must provide lineal descendants, Indian tribe officials and traditional religious leaders with access to records, catalogues, relevant studies, or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of objects covered by the summary. Access to this information may be requested at any time and must be provided in a reasonable manner to be agreed upon by all parties. The Review committee also must be provided access to such materials.

(4) Requests for information. During the summary 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 objects;

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

(A) Names and appropriate methods to contact any lineal descendants, if known, of individuals whose unassociated funerary objects or sacred objects are included in the summary;

(B) Names and appropriate methods to contact any traditional religious leaders that the Indian tribe or Native Hawaiian organization thinks should be consulted regarding the collections; and

(iii) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers to be funerary objects, sacred objects, or objects of cultural patrimony.

(e) Museum and Federal agency officials must document the following information regarding unassociated funerary objects, sacred objects, and objects of cultural patrimony

in their collections and must use this documentation in determining the individuals, Indian tribes, and Native Hawaiian organizations with which they are affiliated:

- (1) Accession and catalogue entries;
- (2) Information related to the acquisition of unassociated funerary object, sacred object, or object of cultural patrimony, 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 unassociated funerary object, sacred object, or object of cultural patrimony, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such objects, if known;
- (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 Sec. 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 Sec. 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Departmental Consulting Archeologist, 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, 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 Departmental Consulting Archeologist 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.

Sec. 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 remains 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 Sec. 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 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 Sec. 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, [[Page 204]] 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 Departmental Consulting Archeologist. 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 Departmental Consulting Archeologist.

(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 Department Consulting Archeologist notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The Departmental Consulting Archeologist 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 Sec. 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 Sec. 10.11.

(7) The Departmental Consulting Archeologist 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.

Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 descendent 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 Sec. 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 Sec. 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 Sec. 10.9 and Sec. 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 Sec. 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 Sec. 10.10 (b)(1) from

the 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 inventory completion in the Federal Register as described in Sec. 10.9.

(c) *Exceptions.* These requirements for repatriation do not apply to:

(1) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or

(2) Circumstances where there are multiple requests for repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with these regulations, cannot determine by a preponderance of the evidence which requesting party is the most appropriate claimant. In such circumstances, the museum or Federal agency may retain the human remains, funerary objects, sacred objects, or objects of cultural patrimony until such time as the requesting parties mutually agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or as ordered by a court of competent jurisdiction; or

(3) Circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution, in which event the custody of the objects must be as provided under otherwise applicable law. Nothing in these regulations must prevent a museum or Federal agency, where otherwise so authorized, or a lineal descendant, Indian tribe, or Native Hawaiian organization, from expressly relinquishing title to, right of possession of, or control over any human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(4) Circumstances where the repatriation is not consistent with other repatriation limitations identified in Sec. 10.15 of these regulations.

(d) *Place and manner of repatriation.* The repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants, or culturally affiliated Indian tribe or Native Hawaiian organization, as appropriate, to determine the place and manner of the repatriation.

(e) The museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(f) Record of repatriation. (1) Museums and Federal agencies must adopt internal procedures adequate to permanently document the content and recipients of all repatriations.

(2) The museum official or Federal agency official, at the request of the Indian tribe official, may take such steps as are considered necessary pursuant to otherwise applicable

law, to ensure that information of a particularly sensitive nature is not made available to the general public.

(g) *Culturally unidentifiable human remains*. If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency, and, for recommending to the Secretary specific actions for disposition of such human remains.

Appendix A to Part 10--Sample Summary

The following is a generic sample and should be used as a guideline for preparation of summaries tailoring the information to the specific circumstances of each case.

Before November 17, 1993

Chairman or Other Authorized Official

Indian tribe or Native Hawaiian organization

Street

State

Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. This notification is required by section 6 of the Native American Graves Protection and Repatriation Act.

Our ethnographic collection includes approximately 200 items specifically identified as being manufactured or used by members of your Indian tribe or Native Hawaiian organization. These items represent various categories of material culture, including sea and land hunting, fishing, tools, household equipment, clothing, travel and transportation, personal adornment, smoking, toys, and figurines. The collection includes thirteen objects identified in our records as ``medicine bags."

Approximately half of these items were collected by John Doe during his expedition to your reservation in 1903 and accessioned by the museum that same year (see Major Museum Publication, no. 65 (1965).

Another 50 of these items were collected by Jane Roe during her expeditions to your reservation between 1950-1960 and accessioned by the museum in 1970 (see Major Museum: no. 75 (1975). Accession information indicates that several of these items were collected from members of the Able and Baker families.

For the remaining approximately 50 items, which were obtained from various collectors between 1930 and 1980, additional collection information is not readily available.

In addition to the above mentioned items, the museum has approximately 50 ethnographic items obtained from the estate of a private collector and identified as being collected from the ``northwest portion of the State."

Our archeological collection includes approximately 1,500 items recovered from ten archeological sites on your reservation and another 5,000 items from fifteen sites within the area recognized by the Indian Claims Commission as being part of your Indian tribe's aboriginal territory.

Please feel free to contact Fred Poe at (012) 345-6789 regarding the identification and potential repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony in this collection that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. You are invited to review our records, catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of these items. We look forward to working together with you.

Sincerely,
Museum Official
Major Museum

Appendix B to Part 10--Sample Notice of Inventory Completion

The following is an example of a Notice of Inventory Completion published in the Federal Register.

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Hancock County, ME, in the Control of the National Park Service.

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given following provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects from a site in Hancock County, ME, that are presently in the control of the National Park Service.

A detailed inventory and assessment of these human remains has been made by National Park Service curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the Penobscot Nation, Aroostook Band of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, identified collectively hereafter as the Wabanaki Tribes of Maine.

The partial remains of at least seven individuals (including five adults, one subadult, and one child) were recovered in 1977 from a single grave at the Fernald Point Site (ME Site 43-24), a prehistoric shell midden on Mount Desert Island, within the boundary of Acadia National Park. A bone harpoon head, a modified beaver tooth, and several animal and fish bone fragments were found associated with the eight individuals. Radiocarbon assays indicate the burial site dates between 1035-1155 AD. The human remains and associated funerary objects have been catalogued as ACAD-5747, 5749, 5750, 5751, 5752, 5783, 5784. The partial remains of an eighth individual (an elderly male) was also recovered in 1977 from a second grave at the Fernald Point Site. No associated funerary objects were recovered with this individual. Radiocarbon assays indicate the second burial site dates between 480-680 AD. The human remains have been catalogued as

ACAD-5748. The human remains and associated funerary objects of all nine individuals are currently in the possession of the University of Maine, Orono, ME.

Inventory of the human remains and associated funerary objects and review of the accompanying documentation indicates that no known individuals were identifiable. A representative of the Wabanaki Tribes of Maine has identified the Acadia National Park area as a historic gathering place for his people and stated his belief that there exists a relationship of shared group identity between these individuals and the Wabanaki Tribes of Maine. The Prehistoric Subcommittee of the Maine State Historic Preservation Office's Archaeological Advisory Committee has found it reasonable to trace a shared group identity from the Late Prehistoric Period (1000-1500 AD) inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary. In a 1979 article, Dr. David Sanger, the archeologist who conducted the 1977 excavations at the Fernald Point Site and uncovered the above mentioned burials, recognizes a relationship between Maine sites dating to the Ceramic Period (2,000 B.P.-1600 A.D.) and present-day Algonkian speakers generally known as Abenakis, including the Micmac, Maliseet, Passamaquoddy, Penobscot, Kennebec, and Pennacook groups.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Len Bobinchock, Acting Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, telephone: (207) 288-0374, before August 31, 1994. Repatriation of these human remains and associated funerary objects to the Wabanaki Tribes of Maine may begin after that date if no additional claimants come forward.

Dated: July 21, 1994