

regulations already require museum and Federal agency officials to consult with Indian tribe officials and traditional religious leaders by the completion of the summary process [paragraph 10.8 (d)(2) of this part]. The regulations also require museum and Federal agency officials to consult with lineal descendants, Indian tribe officials, and traditional religious leaders at the point in the inventory process when investigation into the cultural affiliation is being conducted [paragraph 10.9 (b)(2) of this part], and prior to repatriation in order to determine the place and manner of repatriation [paragraph 10.10 (d) of this part]. Text has been added as paragraph 10.12 (b)(1)(vii) of this section specifically identifying as a failure to comply a museum official's failure to consult with lineal descendants, Indian tribe officials, and traditional religious leaders as required.

Text also has been added as paragraph 10.12 (b)(1)(viii) of this section specifically identifying as a failure to comply a museum official's failure to 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 as required in paragraph 10.10 (e) of this part.

One commenter asked whether failure to comply with regulations regarding the curation of Federally owned and administered archeological collections would constitute a failure to comply under 36 CFR Part 79. Federal agencies are responsible for the administration of all collections within their control, including Federal collections in the possession of non-Federal repositories. This includes the curation of archeological collections -- artifacts, objects, specimens, and other physical evidence -- that are excavated or removed under the authority of the Antiquities Act [16 U.S.C. 431-433], the Reservoir Salvage Act [16 U.S.C. 469-469c], the National Historic Preservation Act [16 U.S.C. 470-2], or the Archaeological Resources Protection Act [16 U.S.C. 40aa-mm]. Federal agencies also are responsible for completion of summaries and inventories, publication of notices, and other activities under the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 *et seq.*]. A Federal agency's failure to comply with curation regulations is a matter separate and unrelated to compliance with NAGPRA.

Paragraph 10.12 (b)(2) of this section stipulates that each violation constitutes

a separate offense. One commenter requested clarification of what would constitute separate violations. Determination of the number of separate violations of unlawful sale or transfer [paragraph 10.12 (b)(1)(i) of this section], refusal to repatriate [paragraph 10.12 (b)(1)(v) of this section], or repatriate prior to publication of the required notice [paragraph 10.12 (b)(1)(vi) of this section] will be based on the number of human remains, funerary objects, sacred objects, or objects of cultural patrimony involved. Determination of the number of separate violations of failure to provide summaries [paragraph 10.12 (b)(1)(ii) of this section], inventories [paragraph 10.12 (b)(1)(iii) of this section], notifications [paragraph 10.12 (b)(1)(iv) of this section], consultations [paragraph 10.12 (b)(1)(vii) of this section], or information regarding potentially hazardous human remains, funerary objects, sacred objects, or objects of cultural patrimony [paragraph 10.12 (b)(1)(viii) of this section] will be based on the number of lineal descendants, Indian tribes, or Native Hawaiian organizations involved.

Paragraph 10.12 (c)

This paragraph explains how to notify the Secretary of a failure to comply.

Paragraph 10.12 (c) of this section stipulates that any person may bring an allegation of failure to comply to the Secretary's attention. One commenter suggested requiring the person who makes the allegation to provide credible evidence of a failure to comply. Text has been added stipulating that allegations must be in writing, and should include documentation of the alleged failure to comply. This documentation might include evidence that: the museum has possession or control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony; receives Federal funds; and has failed to comply with specific provisions of the Act. "Possession" is defined in paragraph 10.2 (a)(3)(i) of this section. "Control" is defined in paragraph 10.2 (a)(3)(ii) of this section. "Native American," "human remains," "funerary objects," "sacred objects," and "objects of cultural patrimony" are defined in paragraph 10.2 (d) of this section. "Receives Federal funds" is defined in paragraph 10.2 (b) of this section.

Paragraph 10.12 (d)

Paragraph 10.12 (d) of this section, designated paragraph 10.12 (c)(2) in the interim rule, explains what steps the Secretary must take upon receiving an allegation.

One commenter requested that the person making the allegation be notified that the allegation has been received. Text specifying this required action has been added to paragraph 10.12 (d)(1) of this section. Six commenters requested that the Secretary also be required to notify the museum that the allegation has been received. It is anticipated that the Secretary usually will notify the museum upon receipt of an allegation. However, this decision must be made on a case-by-case basis in order to avoid jeopardizing investigation of the alleged failure to comply or any other ongoing law enforcement investigation.

Paragraph 10.12 (d)(2) of this section, designated paragraph 10.12 (c)(2) in the interim rule, outlines the steps that the Secretary may take upon receiving an allegation of failure to comply. These include: (i) reviewing the alleged failure to comply; (ii) identifying the specific provisions of the Act with which the museum allegedly failed to comply; (iii) determining if the institution of a civil penalty action is in the public interest; and (iv) if appropriate, estimating the proposed penalty.

Seven commenters requested clarification of the procedures by which the Secretary will investigate an allegation of failure to comply. One commenter stressed that such an investigation must be conducted fully and fairly before the Secretary commences with the determination of the penalty. Investigation of an allegation of failure to comply must necessarily be done on a case-by-case basis. Paragraph 10.12 (d)(2) of this section outlines the basic steps necessary to complete such an investigation.

One commenter considered the language in paragraph 10.12 (d)(2)(i) of this section, designated paragraph 10.12 (c)(2)(i) in the interim rule, too vague and offered revised wording. One commenter objected that no provision was made to involve the alleging party in the process. Text has been added to this section to indicate that additional information may be requested from the person making the allegation, the museum that has allegedly failed to comply, and other parties. Subpoenas may be issued if the Secretary's request for information is resisted.

Section 9 (a) of the Act stipulates that the penalty may only be determined after the museum is provided with an opportunity for an agency hearing [25 U.S.C. 3007 (a)]. Paragraph 10.12 (c)(2)(iv) of the interim rule has been deleted.

One commenter objected to the investigatory procedure's being at the Secretary's discretion. Section 9 (a) of