

tribal land is sufficient to apply the provisions of the statute to such intentional excavations or inadvertent discoveries.

Two commenters recommended deletion of the clause "or near" from § 10.2 (b)(3) (renumbered § 10.2 (d)(2)), indicating that it would require museums to enter into debates about the proximity of objects to human remains. The clause was included to accommodate variations in Native American death rites or ceremonies. Some Indian tribes, particularly those from the northern plains, have ceremonies in which objects are placed near, but not with, the human remains at the time of death or later. The drafters consider these funerary objects.

One commenter recommended clarifying § 10.2 (b)(3)(i) (renumbered § 10.2 (d)(2)(i)) by specifying that funerary objects are "associated" even when another institution has possession or control of the human remains. The drafters consider the statutory definition, which is repeated in the rule, to support this interpretation without any additional modification. One commenter recommended clarifying § 10.2 (a)(3)(ii) [renumbered § 10.2 (d)(2)(i)] by specifying that items made exclusively for burial purposes are considered as associated funerary objects even if there are no associated human remains. Items made exclusively for burial purposes are considered associated funerary objects even if there are no associated human remains. Four commenters recommended deleting the final sentence of the definition of unassociated funerary object in § 10.2 (b)(4) [renumbered § 10.2 (d)(2)], objecting to the requirement that such human remains were removed from a "specific" burial site. Another commenter recommended deleting reference to the "preponderance of the evidence" in the same sentence, because it implies an adversarial context which is inappropriate for the process of identifying unassociated funerary objects. In both of these instances, the text of the regulations reflects exactly the statutory text and has not been modified. The final sentence of this section was drawn from an explanation of the definition in House Report 101-877 (1990: page 2) and is taken to represent Congressional intent. Another commenter recommended deleting "reasonably believed to have been" from § 10.2 (b)(2)(ii). The phrase has been deleted.

One commentor recommended clarifying the definition of unassociated funerary objects in § 10.2 (b)(4) to exempt items exhibited intentionally with individual human remains but

subsequently returned or distributed to living descendants or other individuals. The recommended language has been added to § 10.2 (d)(2)(ii).

Ten commenters recommended changes to the definition of sacred objects in § 10.2 (b)(5) (renumbered § 10.2 (d)(3)). One commenter recommended broadening the definition to include any and all objects deemed to have sacred significance by Indian tribes and not just those objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Another commenter recommended broadening the definition to include specific objects or geological features identified by traditional Native American practitioners as endowed with sacredness due to the object's past role in traditional Native American religious ceremony or on the basis of similar objects having contemporaneous religious significance or function in the continued observance or renewal or a ceremony. The statutory language and legislative history indicate that this definition was written carefully and precisely. Expanding the definition to include the types of items identified above in the comments runs counter to Congressional intent.

Four commenters recommended changes in the definition of traditional religious leader in § 10.2 (a)(13) (renumbered § 10.2 (d)(3)). Two commenters recommended replacing the phrase allowing such leaders to be recognized "by members of that Indian tribe" with "that Indian tribe." The drafters realize that allowing members of an Indian tribe or Native Hawaiian organization to recognize traditional religious leaders may result in conflicting claims. However, such issues are best resolved by the members of the Indian tribe or Native Hawaiian organization themselves. One commenter recommended replacing the word "or" at the end of § 10.2(a)(13)(i) with "and." The two criteria listed are intended as alternative methods for identifying traditional religious leaders and not as cumulative criteria. Another commenter recommended specifying that an individual's leadership role must be based on "traditional" religious practices. The drafters consider whether or not an individual's leadership in a religion is based upon traditional practice an inappropriate concern for Federal regulations.

Two commenters recommended deleting the word "current" from the first line of the definition of sacred object since the term was not included in the statutory text. The term was

deleted. One commenter objected to "use" being the measure to decide whether an object should be repatriated, suggesting instead right of possession as the relevant standard. The necessity of an object for use by present day adherents of a traditional Native American religion is critical in identifying a sacred object, while determination of right of possession is necessary to determine whether the sacred object must be repatriated to the Indian tribe or Native Hawaiian organization or may be retained by the museum or Federal agency.

One commenter recommended deleting the second sentence of the definition of sacred object which he considers to depart in major ways from the statutory definition. The second sentence of the definition was drawn from the Senate Select Committee Report (S.R. 101-473: p. 7) and helps clarify the precise, limited use of this category intended by Congress.

One commenter recommended including clarification in the definition that: 1) sacred objects can not be associated with human remains, as they would then be funerary objects, and 2) only in rare circumstances can prehistoric items be sacred objects. While this usually may be so, blanket exclusion of any funerary object from also being a sacred object is not considered appropriate in that the categories are not mutually exclusive. Similarly, identification of sacred objects from prehistoric contexts must be made on a case-by-case basis.

One commenter agreed with the inclusion of sacred objects that have religious significance or function in the continued observance or renewal of a traditional Native American religious ceremony or ritual. Another commenter recommended deleting reference to "renewal" in the second sentence, stating that the issue was debated during the legislative process and final statutory language does not include reference to renewal of a traditional Native American religious ceremony. Language specifying the inclusion of objects that function in the continued observance or renewal of a traditional Native American religious ceremony as sacred objects was drawn from the Senate Select Committee Report (S.R. 101-473: p. 7) and is thought to reflect Congressional intent.

Three commenters requested clarification as to who is responsible for making the determination that a particular item fits the definition of sacred object. In all cases, the museum or Federal agency official has the initial responsibility for deciding whether an object in its possession or control fits