

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/15/2021	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/23/2021

2. COMAR Codification

Title Subtitle Chapter Regulation

34 04 06 01 -.10

3. Name of Promulgating Authority

Department of Planning

4. Name of Regulations Coordinator Telephone Number
Margaret H Drake 410-697-9548

Mailing Address

OAG/MDP 100 Community Place, 3rd Floor

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5. Name of Person to Call About this Document Telephone No.
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6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: .
- Repeal of Existing Regulations
- Recodification

- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Paul Cucuzzella, Assistant Attorney General, (telephone #410-767-1409) on March 12, 2021. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert S. McCord

Title

Secretary, Maryland Department of Planning

Telephone No.

410-767-4510

Date

February 22, 2021

Title 34

DEPARTMENT OF PLANNING

Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS

34.04.06 Transfer of Human Remains and Associated Funerary Objects

Authority: State Finance and Procurement, §§5A-318(b)(1) and 5A-339(d), Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of the Maryland Department of Planning proposes to repeal the existing regulations for the MHAA and reenact revised regulations.

Statement of Purpose

The purpose of this action is to revise and update these regulations, which govern transfer by the Maryland Historical Trust (“MHT”) of human remains and associated funerary objects in MHT’s possession, custody, and control. This action will: (1) correct inconsistencies between the existing regulations and the controlling statutory authority at Md. Code Ann, State Fin. & Proc. (“SFP”) § 5A-339; (2) reconstitute the Burial Sites and Object Review Committee as an ad hoc committee instead of a standing committee; (iii) assure that prior notice is given to the relevant State ethnic commissions when a transfer of ethnic remains or objects is contemplated; (iv) adjust review procedures to make them more practical and workable; (v) provide clarity and uniformity to the language; (vi) structurally reorganize the provisions to flow more logically; and (vii) remove unnecessary and inapplicable text.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Dr. Charles Hall, Maryland State Terrestrial Archeologist, Maryland Historical Trust, 100 Community Place, 3rd Floor, Crownsville, Maryland 21032-2023, or call 410-697-9552, or email to charles.hall@maryland.gov, or fax to 410-697-9616 . Comments will be accepted through _____ . A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 21

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No funds are necessary for implementation of proposed changes

E. If these regulations have no economic impact under Part A, indicate reason briefly:

This repeal and replace action is procedural only in that it revises and enhances the procedures that MHT must adhere to when it receives a request for transfer of human remains or associated funerary objects. There are no costs involved, either for MHT or for a requester.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

This repeal and replace action is procedural only in that it revises and enhances the procedures that MHT must adhere to when it receives a request for transfer of human remains or associated funerary objects. There are no costs involved, either for MHT or for a requester. In addition, this will have no impact on small businesses because business entities are not within the universe of potential requesters.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

Intended beneficiaries of the proposed action include: (1) the Maryland Historical Trust; (2) individuals who are lineal descendants of human remains and associated funerary objects in MHT's possession; and (3) groups with a cultural affiliation to human remains and associated funerary objects in MHT's possession.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total

payroll or total employment of small businesses affected?

Businesses will not be affected by the proposed action.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

None.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

None.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

There is no long-term economic impact.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) there is no anticipated effect on the work force; (3) there is no anticipated effect on the cost of

housing; (4) there is no anticipated effect on efficiency in production and marketing; (5) there is no anticipated effect on capital investment, taxation, competition, or economic development; and (6) there is no anticipated effect on consumer choice.

Attached Document:

Title 34 DEPARTMENT OF PLANNING

Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS

Chapter 06 Transfer of Human Remains and Associated Funerary Objects

Authority: State Finance and Procurement, §§5A-318(b)(1) and 5A-339(d), Annotated Code of Maryland

.01 General.

These regulations govern implementation by the Maryland Historical Trust of Chapter 645 of the 1992 Laws of Maryland, known as the Transfer of Human Remains Held by the Maryland Historical Trust Act and codified as State Finance and Procurement Article, §5A-339, Annotated Code of Maryland. The Act permits the Maryland Historical Trust to permanently transfer human remains and associated funerary objects in its possession, custody, or control to descendants and culturally affiliated groups. The Act also permits the Trust to temporarily transfer human remains and associated funerary objects to certain qualifying organizations or institutions for purposes of study. To the extent reasonably possible based on information known to the Trust, these regulations assure that transfers of human remains and associated funerary objects by the Trust, when permitted by the Act, occur with notice to and advice and input from lineal descendants, culturally affiliated groups, and other interested entities.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Advisory Committee on Archeology” means the Advisory Committee on Archeology established by State Finance and Procurement Article, §5A-336, Annotated Code of Maryland.

(2) “Associated funerary object” or “object” means:

(a) An item of human manufacture or use that is intentionally placed with human remains:

(i) In a burial site at the time of interment; or

(ii) After interment as a part of a death ceremony of a culture, religion, or group; or

(b) A gravestone, monument, tomb, or other structure in or directly associated with a burial site.

(3) “Burial Committee” means a Burial Sites and Objects Review Committee appointed in accordance with Regulation .04 of this chapter.

(4) “Commission on Indian Affairs” means the Commission on Indian Affairs established by State Government Article, §9.5-302, Annotated Code of Maryland.

(5) Cultural affiliation.

(a) “Cultural affiliation” means a relationship of shared group identity or culture that can reasonably be traced historically or prehistorically between a present-day community and an identifiable earlier community.

(b) For a Native American tribe, “cultural affiliation” includes a shared group identity that can be traced between a present-day Native American tribe and an earlier Native American

group, such as by establishing that the tribe has been identified from historic or prehistoric times to the present as descending from members of the earlier Native American group, if the earlier Native American group:

(i) Was a population biologically distinct from other contemporaneous Native American groups; or

(ii) Is identified in the archeological record by distinct patterns of material culture manufacture and distribution methods.

(6) “Director” means the Director of the Maryland Historical Trust.

(7) “Ethnic associated funerary object” means an associated funerary object that is identified in the inventory as being associated with a community that is represented by an ethnic commission.

(8) “Ethnic commission” means:

(a) The Commission on Indian Affairs;

(b) The Governor’s Commission on Asian Pacific American Affairs reestablished by Executive Order 01.01.2007.19;

(c) The Governor’s Commission on Hispanic Affairs reestablished by Executive Order 01.01.2007.21;

(d) The Governor’s Commission on Middle Eastern American Affairs established by Executive Order 01.01.2007.22;

(e) The Governor’s Commission on South Asian American Affairs established by Executive Order 01.01.2012.17; or

(f) The Commission on African American History and Culture established by State Government Article, §9.5-402, Annotated Code of Maryland.

(9) “Ethnic remains” means human remains that are identified in the inventory as being associated with a community that is represented by an ethnic commission.

(10) “Human remains” or “remains” means any part of the body of a deceased human being in any state of decomposition.

(11) “Inventory” means the inventory of human remains and associated funerary objects completed and maintained by the Trust in accordance with Regulation .05 of this chapter.

(12) Lineal Descendant.

(a) “Lineal descendant” means a person who, with respect to another person, is in a direct line of ancestry to that other person such as a child, grandchild, great-grandchild, and on forever.

(b) For a Native American individual, a “lineal descendant” includes a person who can be traced to another by means of the traditional kinship system used by the Native American tribe to which the person is a member.

(13) “Maryland Historical Trust” or the “Trust” means the Maryland Historical Trust established by State Finance and Procurement Article, §5A-310, Annotated Code of Maryland.

(14) “Native American” means of, or relating to, a tribe, band, clan, group, people, or culture indigenous to the United States of America.

(15) “Native American tribe” means a tribe, band, clan, or group of Native Americans which:

(a) Meets the requirements for recognition as an Indian tribe under the provisions of the federal Native American Grave Protection and Repatriation Act, 25 U.S.C. §§3001—3013;

(b) Has obtained recognition of Maryland Indian status in accordance with State Government Article, § 9.5-309, Annotated Code of Maryland; or

(c) Has been granted recognition of Native American or Indian status by another state of the United States.

(16) “Requester” means a person, group, museum, institution or organization that requests the transfer of human remains or an associated funerary object under Regulation .07 or .09 of this chapter.

(17) "Secretary" means the Secretary of Planning.

.03 Repose of Human Remains in the Possession, Custody, or Control of the Trust.

A. Human remains in the possession, custody, or control of the Trust shall be placed in an appropriate place of repose.

B. A location is an appropriate place of repose if it is dedicated solely for disposition of human remains and assures that:

- (1) The remains are not in open view of the general public;
- (2) The remains are kept above or below ground, as appropriate, in conditions conducive to long-term preservation;
- (3) The remains of specific individuals or groups of remains are not intermixed with remains unrelated by ethnicity, descent, or place of recovery;
- (4) The remains of specific individuals or groups of related remains can be removed for purposes of:
 - (a) Transfer under Regulation .07 of this chapter to a lineal descendant or a group with a cultural affiliation; or
 - (b) Study under Regulation .09 or .10 of this chapter; and
- (5) Members of the public do not have access to the remains except as may be permitted by staff of the Trust.

C. For Native American human remains, the Secretary may consult with the Commission on Indian Affairs to determine an appropriate place of repose.

.04 Burial Sites and Objects Review Committee.

A. The Secretary shall appoint a Burial Sites and Objects Review Committee on an ad hoc basis as may be required under this chapter to conduct reviews or provide comment.

B. Membership.

(1) For a matter that requires review by a Burial Committee and concerns ethnic remains or an ethnic associated funerary object, the Burial Committee shall consist of:

- (a) One member from nominations submitted to the Secretary by the Advisory Committee on Archeology;
- (b) One member from staff of the Trust appointed by the Director;
- (c) The Executive Director of the Governor's Office of Community Initiative or the Executive Director's appointee; and
- (d) Two members from nominations submitted to the Secretary by the ethnic commission that represents the community to which the item is associated.

(2) For a matter that requires review by a Burial Committee and concerns other than ethnic remains or an ethnic associated funerary object, the Burial Committee shall consist of:

- (a) One member from nominations submitted to the Secretary by the Advisory Committee on Archeology;
- (b) One member from the staff of the Trust appointed by the Director; and
- (c) The Executive Director of the Governor's Office of Community Initiative or the Executive Director's appointee.

C. The Executive Director of the Governor's Office of Community Initiative or the Executive Director's appointee shall serve as chair of a Burial Committee appointed in accordance with this regulation.

D. A member of a Burial Committee shall serve without compensation but is entitled to reimbursement for expenses as permitted by law.

.05 Inventory of Human Remains and Associated Funerary Objects.

A. The Trust shall prepare and maintain an inventory of all human remains and associated funerary objects in its possession, custody, or control.

B. Contents of the Inventory. The inventory shall include:

- (1) For human remains:

- (a) A description of whether the remains are of a complete or partial skeleton, bone fragments, or a cremation; and
- (b) Information sufficient to identify the remains by individual or by skeletal types or elements when the remains cannot be identified by individual;
- (2) For an associated funerary object:
 - (a) A description of the object; and
 - (b) The identity of the human remains with which the object was interred or found, if known;
- (3) The location, if known, where the remains or object were disinterred or found;
- (4) To the extent determinable to a reasonable degree of certainty:
 - (a) The identities of any lineal descendants;
 - (b) The identities of any groups that have a cultural affiliation with the remains or object;
 - (c) The ethnicity of the remains or of the individual to whom an object is associated; and
 - (d) A summary of the evidence used to make these determinations; and
- (5) If obtained by or known to the Trust:
 - (a) The name of the site from which the Trust obtained possession, custody, or control of the item;
 - (b) The date that the Trust obtained possession, custody, or control of the item;
 - (c) Information concerning the circumstances under which the Trust obtained possession, custody, or control of the item, including any information that identifies from whom the Trust acquired the item; and
 - (d) The identity or identities of any study, report, or other documentation related to the item.

C. Distribution of Inventory.

- (1) Promptly after adding an item of human remains or an associated funerary object to the inventory, the Trust shall as may be practicable send a copy of the inventory for that item to:
 - (a) Any person identified in the inventory as a lineal descendant;
 - (b) Any group identified in the inventory as having a cultural affiliation;
 - (c) If the item is Native American remains or has a cultural affiliation to a Native American tribe, the Commission on Indian Affairs;
 - (d) If the item is remains of or has a cultural affiliation to an ethnic group for which there is an ethnic commission, the relevant ethnic commission; and
 - (e) Any other person or group that the Trust determines may be likely to assist with identifying lineal descendants or groups with a cultural affiliation.
- (2) To each person, group, or commission that the Trust sends a copy of an inventory pursuant to this section, the Trust shall send with the copy information on the Trust's procedures for persons or groups to:
 - (a) Request transfer of human remains or associated funerary objects; and
 - (b) Obtain copies of any documents maintained by the Trust that are identified in the inventory.

D. Requests for Inventory and Documentation. The Trust shall consider any request for copies of the inventory or of documents identified in the inventory in accordance with the provisions of the Maryland Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.

E. The Trust shall post on its website a copy of the inventory for all human remains and associated funerary objects that are in the Trust's possession, custody, or control.

.06 Petition to Identify Lineal Descendant or Cultural Affiliation.

A. Petition to Identify Lineal Descendant.

- (1) A person not identified in the inventory as a lineal descendant of listed human remains or an associated funerary object may submit to the Trust a petition to be identified in the inventory as a lineal descendant.

(2) A petition submitted pursuant to this section shall include documentation or other evidence that establishes, by a preponderance of the evidence, that the petitioner is a lineal descendant of the remains or object.

B. Petition to Identify Cultural Affiliation.

(1) A group not identified in the inventory as having a cultural affiliation with listed human remains or an associated funerary object may submit to the Trust a petition to be identified in the inventory as a culturally affiliated group.

(2) A petition submitted pursuant to this section shall include documentation or other evidence that establishes, by a preponderance of the evidence, that:

(a) The petitioner has a cultural affiliation with the remains or object; and

(b) If the petitioner is a Native American tribe:

(i) The deceased individual was a member of a Native American tribe or group; and

(ii) The petitioner has a cultural affiliation with the Native American tribe or group to which the deceased individual was a member.

(3) The documentation or evidence required by this section may include historical, geographical, kinship, biological, archeological, anthropological, or linguistic information, folklore, oral history, tradition, or other relevant information or expert opinion.

C. Review of Petition.

(1) For a petition submitted under §A of this regulation, the Director shall within 90 days of the Trust's receipt of the petition:

(a) Review the petition;

(b) Determine whether to grant or deny the petition; and

(c) Send written notice to the petitioner of the Director's determination.

(2) For a petition submitted under §B of this regulation, the Director shall:

(a) If the petition is from a group that claims a cultural affiliation based on an ethnicity for which there is an ethnic commission, send to the relevant ethnic commission:

(i) A copy of the petition, and

(ii) A request that within 60 days of the Director sending the copy the commission provide to the Director the commission's comments, if any, on the petition; and

(b) Within 120 days of the Trust's receipt of the petition:

(i) Review the petition and any comments received by the Director from an ethnic commission;

(ii) Determine whether to grant or deny the petition; and

(iii) Send written notice to the petitioner of the Director's determination.

D. After the Director makes a determination on a petition under §C of this regulation, the Trust shall:

(1) Promptly return to the petitioner any original documents and personal memorabilia submitted by the petitioner; and

(2) Retain a copy of all original documents and an inventory of all personal memorabilia submitted with the petition.

E. A determination of the Director made under §C of this regulation shall be final and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.07 Requests for Transfer of Human Remains and Associated Funerary Objects to Lineal Descendants or Culturally Affiliated Groups.

A. In all instances where this regulation requires the Trust to send notice of a request to a person or group, the requirement only applies if through the exercise of due diligence the Trust is able to locate the person or group.

B. Requests for Transfer. A person or group may request that the Trust transfer to the requester human remains or an associated funerary object identified in the inventory by sending a written request to the Trust that includes:

- (1) The identity of the remains or object as stated in the inventory;
- (2) If the request is made by a person as a lineal descendant, information sufficient for the Trust to verify that the requester is a person identified as a lineal descendant in the inventory for the remains or object;
- (3) If the request is made by or on behalf of a group that claims a cultural affiliation, information sufficient for the Trust to verify that the group for which the request is made is a group identified in the inventory as having a cultural affiliation to the remains or object;
- (4) If the requester is a person not listed in the inventory for the remains or object as a lineal descendant, a petition filed in accordance with Regulation .05 of this chapter to identify the person in the inventory as a lineal descendant; and
- (5) If the requester is a group not identified in the inventory as a group with a cultural affiliation to the remains or object, a petition filed in accordance with Regulation .05 of this chapter to identify the group in the inventory as a group with a cultural affiliation.

C. Review of Requests Not Made By a Lineal Descendant or Group With a Cultural Affiliation. If the requester is not a lineal descendant or a group with a cultural affiliation, the Director shall:

- (1) Deny the request; and
- (2) Send written notice of the denial to the requester within 30 days of the Trust's receipt of the request.

D. Review of Requests Made By a Lineal Descendant or Group With a Cultural Affiliation for Other Than Ethnic Remains or Ethnic Associated Funerary Objects. Subject to §G of this regulation, for a request for transfer of an item that is other than ethnic remains or an ethnic associated funerary object, the Director shall:

- (1) If the requester is a lineal descendant:
 - (a) Approve the request; and
 - (b) Send written notice of the approval to the requester within 30 days of the Trust's receipt of the request;
 - (2) If the requester is a group with a cultural affiliation:
 - (a) Within 15 days of receipt of the request send to each lineal descendent and any other group with a cultural affiliation as identified in the inventory:
 - (i) A copy of the request; and
 - (ii) Notice that the request may be approved and the item transferred in accordance with the request if the recipient of the notice does not send to the Trust within 45 days of the date of the notice the recipient's written comments on the request or the recipient's request for transfer of the item to the recipient;
 - (b) Consider any comments or requests made pursuant to this subsection;
 - (c) Approve the request if:
 - (i) No objection is made under this subsection by a lineal descendant; and
 - (ii) The Director determines that the transfer is appropriate;
 - (d) Deny the request if an objection is made under this subsection by a lineal descendant;
- and
- (e) Send written notice of the approval or denial to the requester within 90 days of the Trust's receipt of the request.

E. Review of Requests From a Lineal Descendant or Group With a Cultural Affiliation for Ethnic Remains or Ethnic Associated Funerary Objects. Subject to §G of this regulation, for a request from a lineal descendant or group with a cultural affiliation for transfer of an item that is ethnic remains or an ethnic associated funerary object, the Director shall:

- (1) Within 15 days of receipt of the request send a copy of the request to:
 - (a) Each lineal descendent identified in the inventory for the item requested;
 - (b) Each group with a cultural affiliation identified in the inventory for the item requested;
 and
 - (c) The ethnic commission that represents the community to which the item is associated;
- (2) With each copy of a request sent pursuant to this section, include notice that:
 - (a) The recipient may within 45 days of the date of the notice provide to the Trust written comment on the request; and
 - (b) The request may be approved and the item transferred in accordance with the request if the recipient does not send to the Trust within 45 days of the date of the notice a written:
 - (i) Objection to the request; or
 - (ii) Request for transfer of the item to the recipient;
- (3) Consider any comments or requests made pursuant to this section;
- (4) If the requester is a lineal descendant, approve the request;
- (5) If the requester is a group with a cultural affiliation:
 - (a) Approve the request if:
 - (i) No objection is made under this subsection by a lineal descendant; and
 - (ii) The Director determines that the transfer is appropriate;
 - (b) Deny the request if an objection is made under this subsection by a lineal descendant;
 and
 - (6) Send written notice of the approval or denial to the requester within 90 days of the Trust's receipt of the request.

F. Subject to §G of this regulation and applicable federal law, the Trust shall promptly transfer human remains or associated funerary objects that the Director has approved for transfer.

G. If, before the Trust transfers remains or an object in accordance with this regulation, the Trust receives more than one approvable request under this regulation for transfer of the remains or object, the competing approvable requests shall be resolved in accordance with this section.

(1) If the competing approvable requests include one request from a lineal descendent and one or more requests from a group with a cultural affiliation, the request of the lineal descendant shall be approved and any request from a group shall be denied.

(2) If the competing approvable requests include two or more from a lineal descendent or two or more from a group with a cultural affiliation:

- (a) The Director shall make a request to the requesters that they:
 - (i) Attempt to come to a mutual agreement on the transfer; and
 - (ii) Inform the Director within 60 days of the date of the Director's request of any agreement reached between the requesters; or
- (b) If the requesters are unable to reach an agreement, the Trust shall refer the competing requests to a Burial Committee appointed in accordance with Regulation .04 of this chapter, which shall:

- (i) Review the requests; and
 - (ii) Make a recommendation on the requests to the Secretary.
- (3) For competing approval requests referred to a Burial Committee the under this section, the Secretary shall:
- (a) Review the requests and the Burial Committee's recommendation; and
 - (b) Make a determination on each request.
- (4) A determination of the Secretary made under this section shall be final and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.08 Reconsideration of Denial of Request for Transfer.

A. Within 30 days of the date of notice from the Director under Regulation .07 of this chapter that a request for transfer of human remains or associated funerary objects has been denied, the requester may petition the Secretary in writing to submit the Director's determination to a Burial Committee for its consideration.

B. Promptly after receipt of a petition made under §A of this regulation, the Secretary shall:

- (1) Appoint a Burial Committee in accordance with Regulation .04 of this chapter; and
- (2) Refer the petition to the Burial Committee.

C. For a petition for reconsideration referred to it under §B of this regulation, the Burial Committee:

- (1) Shall review the request for transfer and the Director's determination;
- (2) May consider evidence relevant to the request for transfer that was not considered by the Director during the Director's review;
- (3) Shall within 90 days of the date of referral:
 - (a) Determine whether the claimant is a lineal descendant or a group with a cultural affiliation as established under Regulation .03 or .04 of this chapter;
 - (b) Send a written recommendation to the Secretary concerning approval or denial of the request for transfer; and
 - (c) Provide to the Trust a copy of the recommendation.

D. Following receipt of the Burial Committee's recommendation on a petition for reconsideration, the Secretary shall:

- (1) Consider the:
 - (a) Request for transfer;
 - (b) Director's determination;
 - (c) Burial Committee's recommendation; and
 - (d) Standards for approving a request for transfer as established in Regulation .07 of the chapter;
- (4) Grant or deny the petition; and
- (5) Send written notice to the petitioner of the Secretary's decision.

E. A decision of the Secretary made under this regulation shall be final and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.09 Transfer of Human Remains and Associated Funerary Objects for Study.

A. In all instances where this regulation requires the Trust to send notice of a request to a person or group, the requirement only applies if through the exercise of due diligence the Trust is able to locate the person or group.

B. Requests for Transfer.

(1) The Trust may upon written request transfer for study human remains or an associated funerary object identified in the inventory to a museum, institution of higher education, or scientific or historical institution or organization.

(2) A request under this section shall include:

- (a) The identity of the remains or object as stated in the inventory;
- (b) Information sufficient to assess the reputation of the museum, institution, or organization;
- (c) A detailed description of the proposed study, including methodologies and techniques, research questions, and predicted results;
- (d) An explanation of how the study is an essential part of a scientific research project;
- (e) A plan and timetable not to exceed one year for completion of the study and return of the item to the Trust;
- (f) The professional qualifications of the principal personnel who will conduct the study;
- (g) A plan that identifies the location and method of securely storing, safeguarding, and caring for the item during the study; and

(h) A description of benefits of the study to the citizens of Maryland.

C. Requests for Items Culturally Affiliated With a Native American Tribe. The Trust shall deny a request made under §B of this regulation if the request is for the transfer of remains or an object that has a Native American cultural affiliation.

D. Requests for Items That Do Not Have a Native American Cultural Affiliation. Within 15 days of its receipt of a request made under §B of this regulation for transfer of remains or an object that does not have a Native American cultural affiliation, the Trust shall:

(1) Send a copy of the request to:

- (a) Each lineal descendant identified in the inventory for the item requested;
- (b) Each group with a cultural affiliation identified in the inventory for the item requested;
- (c) The Advisory Committee on Archeology; and
- (d) The ethnic commission that represents the community to which the item is associated,

if any; and

(2) Include with the copy instructions that the recipient of the copy may within 45 days submit in writing to the Trust a response that may include:

- (a) Comments on the request; and
- (b) A statement as to whether the recipient approves or disapproves of the request.

E. The Director may approve a request made under §B of this regulation for the transfer of other than Native American human remains or associated funerary objects if:

(1) Subject to §F of this regulation, no person or group who receives notice under §D(1)—
(2) of this regulation informs the Trust in accordance with §D of this regulation that the person or group disapproves of the request;

(2) The Advisory Committee on Archeology and any ethnic commission has had an opportunity to review and comment on the request as provided under §D of this regulation;

(3) As proposed in the request, the requester will complete the study and return the item to the Trust within 1 year of the date of transfer; and

(4) The Director finds that the:

- (a) Requester is a reputable museum, institution, or organization;
- (b) Proposed study is an essential part of a scientific research project;
- (c) Results of the study will be of benefit to the citizens of Maryland; and
- (d) The requester's plan for storing, safeguarding, and caring for the item during the study

is appropriate.

F. Disputes.

(1) The Trust shall follow the procedures set forth in subsection (2) of this section if the Trust receives responses under §D of this regulation from:

(a) Multiple lineal descendants and there is a disagreement within the responses as to whether the request for transfer should be approved; or

(b) Multiple groups with a cultural affiliation, and no lineal descendant, and there is a disagreement within the responses as to whether the request for transfer should be approved.

(2) In the event of a dispute that falls within subsection (1) of this section:

(a) The Director shall make a request to the persons or groups that disagree on the request that they:

- (i) Attempt to come to a mutual agreement on the request; and
- (ii) Inform the Director within 60 days of the date of the Director's request of any agreement reached between the persons or groups; and

(b) If no agreement is reached under subsection (2)(a) of this section, the Trust shall submit the request for transfer and all response received under §D of this regulation to a Burial Committee appointed in accordance with Regulation .04 of this chapter, which shall:

- (i) Review the request and responses; and
- (ii) Make a recommendation on the request to the Secretary.

- (3) For a dispute referred to a Burial Committee under this section, the Secretary shall:
 - (a) Review the request, the responses, and the Burial Committee's recommendation; and
 - (b) Make a determination on the request.

G. Within 150 days of receipt of a request made under §B of this regulation or as soon as practicable if disputes are resolved or reviewed under §F of this regulation:

- (1) The Director, or the Secretary as may be applicable under §F of this regulation, shall approve or deny the request; and
- (2) The Trust shall send written notice of the approval or denial to:
 - (a) The entity that made the request; and
 - (b) All persons, groups, or entities who were sent a copy of the request under §D of this regulation.

H. The Director may, for reasons determined appropriate by the Director, place conditions on a transfer made under this regulation, including to address comments received from the Advisory Committee on Archeology or an ethnic commission.

I. A transferee of human remains or an associated funerary object under this regulation shall return the remains or object to the Trust within one year of the date of transfer unless:

- (1) The transferee submits to the Trust prior to the one-year deadline an application for extension that includes:
 - (a) A report that summarizes work completed on the project, including information on any preliminary results and tasks accomplished;
 - (b) An explanation of the reasons for why the extension is needed;
 - (c) A revised plan and timetable for completion of the study; and
 - (d) For a study that involves remains or objects for which a lineal descendant has been identified, or for a Native American associated funerary object for which no lineal descendant has been identified, a statement of approval of the extension from the:
 - (i) Lineal descendant; or
 - (ii) Culturally affiliated Native American tribe; and
- (2) The Director grants the extension, which:
 - (a) Must be based on a finding that the applicant for the extension has made a good faith effort to complete the study on time; and
 - (b) May not exceed an additional year.

J. A decision on a request for transfer made by either the Secretary or the Director under this regulation shall be final and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.10 Study of Human Remains and Associated Funerary Objects by the Trust.

A. The Trust may study remains or associated funerary objects in its possession, custody, or control as may be necessary to complete the inventory under Regulation .05 of this chapter or conduct a review under Regulation .06 of this chapter.

B. The Trust may study remains or associated funerary objects in its possession, custody, or control for purposes other than those identified in §A of this regulation, if:

- (1) The Advisory Committee on Archeology and, for ethnic remains or an ethnic associated funerary object, the applicable ethnic commission has had an opportunity under procedures consistent with those in Regulation .09D of this chapter to review and comment on the proposed study;
- (2) The Trust follows procedures consistent with those in Regulation .09D of this chapter for notifying and obtaining consent from lineal descendants or groups with a cultural affiliation; and
- (3) A Burial Committee appointed in accordance with Regulation .04 of this chapter:
 - (a) Reviews the proposed study and any comments or input obtained under this section; and
 - (b) Finds that:
 - (i) The study is an essential part of a scientific research project; and

(ii) Results of the study will be of benefit to the citizens of Maryland.