INDIAN AFFAIRS
DIRECTIVES TRANSMITTAL SHEET

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 59 IAM 9	SUBJECT	RELEASE NUMBER # 12-02
FOR FURTHER INFORMATION Division of Environmental and Cultural Resources Management	**Native American Graves Protection and Repatriation**	DATE

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter establishes the specific requirements and responsibilities of Indian Affairs (IA) headquarters and field staff in the protection and repatriation of Native American cultural items – human remains, funerary objects, sacred objects, and objects of cultural patrimony – within the meaning of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).

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FILING INSTRUCTIONS:

Remove: None

Insert: 59 IAM 9 (New)

1.1 **Purpose.** This chapter establishes the specific requirements and responsibilities of Indian Affairs (IA) headquarters and field staff in the protection and repatriation of Native American cultural items – human remains, funerary objects, sacred objects, and objects of cultural patrimony – within the meaning of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).

1.2 **Scope.** This policy applies to all IA programs with possession or control of Native American human remains, funerary objects, objects of cultural patrimony, and sacred items. This policy also applies to IA offices responsible for museum property and archeological materials that may include NAGPRA cultural items, and program offices approving or funding projects which may result in the inadvertent discovery of human remains and funerary objects.

1.3 **Policy.** It is the policy of Indian Affairs to:

A. Follow legal requirements and appropriate protocols when Native American human remains and funerary objects are intentionally excavated or inadvertently discovered on Indian lands, as defined in Section 3 of NAGPRA, 25 U.S.C. § 3002.
B. Ensure Federal and non-Federal repositories complete summaries, inventories, consultations, notices, and repatriations for cultural items in IA's possession or control, consistent with Sections 5-7 of NAGPRA, 25 U.S.C. §§ 3003-3005.
C. Take action for the successful repatriation of all NAGPRA cultural items within IA's possession or control.

1.4 **Authority.** The authority and responsibility for preserving, inventorying, and repatriating NAGPRA cultural items is in accordance with the following:

A. Statutes

(1) 25 U.S.C. §3001-3013, Native American Graves Protection and Repatriation Act of 1990 (NAGPRA);
(2) 16 U.S.C. §470aa–mm, Archaeological Resources Protection Act of 1979, as amended (ARPA);
(3) 16 U.S.C. §470-470t, National Historic Preservation Act of 1966, as amended (NHPA);
(4) 16 U.S.C. §§431-433, Act for the Preservation of American Antiquities of 1906 (Antiquities Act);
(5) Convention on Cultural Property Implementation Act of 1983, as amended (19 U.S.C. 2601) through which the United States implemented the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

B. Executive Orders

(1) Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments."
(2) Executive Order 13007 of May 24, 1996, "Indian Sacred Sites."

C. Regulations

(1) 43 CFR Part 10, "Native American Graves Protection and Repatriation Act Regulations";
(2) 25 CFR Part 262, "Protection of Archaeological Resources";
(3) 43 CFR Part 3, "Preservation of American Antiquities";
(4) 43 CFR Part 7, "Protection of Archaeological Resources";
(5) 36 CFR Part 800, "Protection of Historic Properties"; and
(6) 36 CFR Part 79, "Curation of Federally-Owned and Administered Archeological Collections."

D. Guidance

(1) Departmental Manual 205 DM 3 – Issuance of Archeological and Paleontological Permits;
(2) 411 DM 1 – Managing Museum Property; and
(3) 519 DM 2 – Preservation of American Antiquities and Treatment and Disposition of Native American Cultural Items;

1.5 Responsibilities

A. **The Deputy Assistant Secretary – Management** is responsible for ensuring appropriate organizational arrangements and procedures, with adequate staffing and resources, to implement compliance with Federal and Departmental regulations, requirements, policies, and procedures.

B. **Director, Office of Facilities, Environmental and Cultural Resources** is the IA senior policy official responsible for all matters relating to NAGPRA compliance.

C. **Chief, Division of Environmental and Cultural Resources Management, Office of Facilities, Environmental and Cultural Resources** is responsible for the oversight of the Cultural Resources Program, which includes the IA Museum Property Program and NAGPRA. The Division Chief designates the NAGPRA Coordinator(s) and responsibilities for coordinating and overseeing IA NAGPRA activities and compliance. Ensures competency of staff designated as NAGPRA Coordinators.

D. **Museum Program Manager / Curator** is the NAGPRA Coordinator ensuring appropriate compliance with Sections 5-7 of NAGPRA. Evaluates and identifies IA museum collections for potential NAGPRA items; works with tribes and repositories to coordinate consultations; assesses and approves as needed proposed determinations of cultural affiliation; drafts, reviews, and approves notices for NAGPRA cultural items under IA control; prepares the appropriate transfer documents for the repatriation of items under IA control; and maintains documentation for all NAGPRA-related work.

E. **IA Chief Archeologist** is the NAGPRA Coordinator serving as the IA technical advisor to ensure appropriate compliance with Sections 3 and 7 of NAGPRA. The IA Chief Archeologist works in coordination with the IA Museum Program in an advisory role, assisting in clarifying the legal status and the circumstances under

which excavations and discoveries occurred. Analyzes reports of and advises on implications of inadvertent discoveries; reviews and approves notices for NAGPRA cultural items under IA control; assesses and approves, as needed proposed determinations of cultural affiliation; and prepares the appropriate transfer documents for the repatriation of items under IA control.

F. **Director, Bureau of Indian Affairs** ensures that the Bureau of Indian Affairs (BIA) complies with NAGPRA.

G. **BIA Regional Directors** are responsible for issuing permits and otherwise implementing the provisions of this policy at the Regional level. Regional Directors assure Regional competency to address Section 3 of NAGPRA.

H. **BIA Regional Archeologists** serve as the professional technical advisors to the Regional Directors for archeology and historic preservation. As such, they also offer technical assistance and advice to IA programs and to tribes when inadvertent discoveries occur on tribal lands, recognizing that under Section 3(d) of NAGPRA, Indian tribes have primary management authority for cultural items inadvertently discovered on tribal lands after 1990. In accordance with Section 3(c) of NAGPRA, Regional Archeologists will also review applications for ARPA permits, when removal of cultural items is required, providing consent has been obtained by the appropriate person with ownership and control as defined in Section 3(a) of NAGPRA. Regional Archeologists provide expert opinions in reviewing cultural affiliation determinations.

1.6 **Definitions.** The following definitions are taken from the Act and from its implementing regulations, 43 CFR Part 10.

A. **Act** refers to the Native American Graves Protection and Repatriation Act (1990).

B. **Associated funerary objects** are objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects [25 U.S.C. §3001 (3)(A)].

C. **Claimant** is a lineal descendant or Indian tribe that asserts a claim for cultural items pursuant to NAGPRA.

D. **Control** means having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the cultural items are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned such cultural items to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects

of cultural patrimony for purposes of these regulations [43 CFR 10.2 (a)(3)(ii)]. *See also* Possession, Physical custody, and Federal lands.

E. **Cultural affiliation** means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group. [25 U.S.C. §3001 (2)]. Cultural affiliation is established when the preponderance of the evidence – based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion – reasonably leads to such a conclusion [43 CFR 10.2 (e)].

F. **Cultural items** are human remains, associated funerary objects, unassociated funerary objects, sacred objects, objects of cultural patrimony [25 U.S.C. §3001 (3)].

G. **Cultural patrimony** refers to an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group [25 U.S.C. §3001 (3)(D)].

H. **Culturally unidentifiable** refers to cultural items for which no culturally affiliated present-day Indian tribe can be determined [43 CFR 10.9 (d)(2)]. *See also* Inventory of Culturally Unidentifiable Human Remains/Review Committee Inventory.

I. **Custody** means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands after November 16, 1990 [43 CFR 10.6 (a)].

J. **Disposition,** as used at 25 U.S.C. §3002 and 43 CFR Subpart B, refers to the return of cultural items excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, to lineal descendants or Indian Tribes. *See also* Repatriation.

K. **Federal agency** means any department, agency, or instrumentality of the United States. This does not include the Smithsonian Institution [25 U.S.C. §3001 (4)].

L. **Federal agency official** is any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations [43 CFR 10.2 (a)(2)].

M. **Federal lands** is any land other than tribal lands which are controlled or owned by the United States [25 U.S.C. §3001 (5)]. United States "control" refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations (43 CFR 10) without abrogating the otherwise existing legal rights of a person [43 CFR 10.2 (f)(1)].

N. **Human remains** refer to the physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered as part of that item [43 CFR 10.2 (d)(1)].

O. **Inadvertent discoveries** are unanticipated encounters or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to Section 3 (d) of NAGPRA [43 CFR 10.2 (g)(4)].

P. **Indian tribe** means any tribe, band, nation, or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians [25 U.S.C. §3001 (7)]. IA maintains and publishes a list of Federally-recognized tribes.

Q. **Indian tribe official** is the principal leader of an Indian Tribe or the individual officially designated by the governing body of an Indian tribe or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations [43 CFR 10.2 (b)(4)].

R. **Intentional excavation** is the planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to Section 3 (c) of NAGPRA [43 CFR 10.2 (g)(3)].

S. **Inventory** is the item-by-item description of human remains and associated funerary objects [43 CFR 10.2 (g)(2)] as required at 25 U.S.C. 3003. The term inventory sometimes appears in the statute in the phrase "inventory and identification," which refers to the identification of the cultural affiliation of Native American human remains and associated funerary objects as a required part of the inventory. The inventory has two parts: 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, and 2) a listing of all culturally unidentifiable human remains for which no culturally affiliated present-day Indian tribe can be determined [43 CFR 10.9 (d)]. Museums and Federal agencies were required to complete their inventories by November 16, 1995. *See also* Control, Possession, and Summary.

T. **Lineal descendant** is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descendance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations [43 CFR 10.2 (b)(1)].

U. **Museum** refers to any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency [25 U.S.C. §3001 (8)].

V. **Museum official** is the individual within a museum designated as being responsible for matters relating to these regulations [43 CFR 10.2 (a)(4)].

W. **National NAGPRA** is a Cultural Resources program of the National Park Service that assists the Secretary of the Interior with some of the Secretary's responsibilities under NAGPRA, and focuses on NAGPRA implementation outside of the National Park System.

X. **Native American** means of, or relating to, a tribe, people, or culture that is indigenous to the United States. [25 USC 3001 (9)].

Y. **Notice of Intended Disposition** is published in newspapers by the Federal agency official responsible for cultural items excavated or removed from Federal lands. Such notification is required pursuant to 43 CFR 10.7 (c). The Federal agency official sends copies of published Notices of Intended Disposition to the National NAGPRA Program.

Z. **Notice of Intent to Repatriate** is published in the Federal Register when a museum or Federal agency receives, reviews, and accepts a claim by a tribe for sacred objects, unassociated funerary objects, or objects of cultural patrimony. Such notification is required pursuant to 43 CFR 10.8 (f). The National NAGPRA program is responsible for publishing notices of intent to repatriate on behalf of museums and Federal agencies.

AA. **Notice of Inventory Completion** is published in the Federal Register when a museum or Federal agency has made a determination of cultural affiliation for Native American human remains and associated funerary objects in its possession or control. Such notification is required pursuant to 25 U.S.C. §3003 (d) and 43 CFR 10.9 (e).

BB. **Physical custody** means having immediate charge of Native American cultural items regardless of whether or not one has sufficient legal interest to lawfully treat the objects as part of one's collections. *See also* Control and Possession.

CC. **Possession** means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of the NAGPRA regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency [43 CFR 10.2 (a)(3)(i)]. *See also* Control and Physical Custody.

DD. **Repatriation** In NAGPRA, the term repatriation means the transfer of physical custody of and legal interest in Native American cultural items to lineal

descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations [25 U.S.C. §3005]. *See also* Disposition.

EE. **Requesting lineal descendant or tribe** refers to the lineal descendant or culturally affiliated Indian tribe that has stated a request for the repatriation of Native American cultural items to the museum or Federal agency that has control of the cultural items [25 U.S.C. §3005 (a)(3)].

FF. **Review Committee** is the NAGPRA Review Committee, an advisory committee established pursuant to 25 U.S.C. §3006. The Review Committee is subject to the Federal Advisory Committee Act, and has authority to monitor and review the implementation of the inventory and identification process and repatriation activities under 25 U.S.C. §§3003-3005.

GG. **Sacred objects** are specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents [25 U.S.C. §3001 (3)(C)].

HH. **Summary** is the written description of collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony [43 CFR 10.2 (g)(1)]. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. 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 [43 CFR 10.8 (b)]. Museums and Federal agencies were required to complete their summaries by November 16, 1993. *See also* Control, Inventory, and Possession.

II. **Tribal lands** means all lands which are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or comprise dependent Indian communities as recognized pursuant to 18 U.S.C. §1151. Actions authorized or required under these regulations [43 CFR 10] will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution [43 CFR 10.2 (f)(2)].

JJ. **Unassociated funerary objects** are objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe. [25 U.S.C. §3001 (3)(B)] Those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency [43 CFR 10.2 (d)(2)(ii)].

1.7 Standards, Requirements, and Procedures.

A. Treatment of NAGPRA cultural items. All Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony, together with all culturally specific information, must be treated with the utmost respect by IA staff and any others with access to such items.

(1) **Security and access**. All NAGPRA cultural items must be secured at all times. Access beyond repository staff responsible for the management of collections and tribal representatives requires IA's express written permission.

(2) **Photography**. Photographs and measurements may be taken, and drawings made of NAGPRA cultural items, but such photographs may not be published or made available outside of IA or the repository without IA's express written permission.

B. Control of NAGPRA cultural items. For compliance with Sections 5-7 of NAGPRA, control of NAGPRA cultural items removed from tribal lands is asserted as follows:

(1) Those removed prior to the passage of the Antiquities Act (1906) are under the control of the individual or institution that has physical possession.

(2) Those removed after the passage of the Antiquities Act (1906) but prior to the passage of the Archaeological Resources Protection Act of 1979 (ARPA) are under the control of IA.

(3) Those removed after the enactment of ARPA and prior to the enactment of NAGPRA are under the control of the respective land owner as defined in 25 CFR Part 262.

(4) Those removed after the enactment of NAGPRA are under the control of individuals or tribes as defined in Section 3(a) of NAGPRA.

C. Inadvertent discoveries. If an inadvertent discovery occurs on tribal lands as a result of any IA activities, the program in control of the activity will ensure that action ceases and protocol is followed as defined in Section 3(d) of NAGPRA. IA recognizes that tribes have the authority over inadvertent discoveries of NAGPRA cultural items on tribal lands.

D. Intentional Excavations. Intentional excavations of human remains and cultural items may only occur in compliance with 25 CFR part 262.

E. Inventories. IA will conduct an annual survey of the known non-IA repositories holding NAGPRA cultural items over which IA asserts control to determine the status of inventory updates as required under Section 5 of NAGPRA. IA will ensure that the non-IA repositories promptly report all newly identified holdings or collections of NAGPRA cultural items to any Indian tribe that is, or is likely to be, affiliated with the collection and to the National NAGPRA Office, as required by 43 CFR Part 10.13.

F. Consultation with tribes. As required by 43 CFR Part 10.5, IA officials must consult with known lineal descendants and Indian tribe officials.

(1) **Items in repositories**. IA will work with repositories housing NAGPRA cultural items and consult with tribes, disclosing all relevant information that pertains to

the NAGPRA cultural items at issue. IA will ensure that repositories coordinate with affected tribes to provide tribes with physical access to the materials.

(2) **Intentional excavations and inadvertent discoveries**. IA will conduct and coordinate, as necessary, consultations for intentional archeological excavations that IA permits and for any inadvertent discoveries that may result from IA program activities.

G. Review of determination of cultural affiliation. Following consultations with affected tribes and a thorough review of documentation, IA will make the final determination of cultural affiliation using criteria listed in 43 CFR Part 10.14 and notify the repository of its determination.

H. Review of notices. Following IA's determination of cultural affiliation, IA will request that the repository with custody of the NAGPRA cultural items provide to IA for review, a draft:

(1) Notice of Inventory Completion (NIC) for human remains and associated funerary objects as required pursuant to 25 U.S.C. §3003 (d) and 43 CFR 10.9 (e); *or*
(2) Notice of Intent to Repatriate (NIR) for unassociated funerary objects, sacred objects, or objects of cultural patrimony as required pursuant to 43 CFR 10.8 (f).

IA NAGPRA coordinators will advise the repository of any changes and request that the repository submit the draft notice to the National NAGPRA Program.

I. Approval of notices/corrections. IA will review all draft notices, make necessary edits, and submit a copy with the required signatures, date, and appropriate approval language to the National NAGPRA Program.

J. Publication of notices. National NAGPRA Program staff processes the approved notice for publication in the *Federal Register*. IA is responsible for drafting a Notice of Intended Disposition (NID) for Native American human remains and cultural items removed from Federal or tribal land *after* November 16, 1990, as outlined in 43 CFR 10.6 (c). Either IA or the repository with custody of the NAGPRA cultural items will prepare the NID and submit it for publication in a newspaper of general circulation and send a copy of the NID to the National NAGPRA program.

IA will ensure that the repository with custody of the NAGPRA cultural items informs in writing the tribe or tribes of the notice publication in the *Federal Register*.

K. Repatriation. As required in 43 CFR 10.10 (b)(2), IA will expedite repatriation to the appropriate party. Prior to repatriation, IA will draft a document transferring control to the tribe for the NAGPRA cultural items. IA will provide signed copies to both the tribe and to the repository with custody of the items. If more than one tribe makes a claim for NAGPRA cultural items, IA will follow the process set out in 43 CFR 10.10 (c)(2).

L. Other archeological objects. Non-NAGPRA items in repositories are considered "museum property" and as such, may not be returned to the tribe with the NAGPRA

items that are repatriated. These objects may be loaned to the tribe so long as the facility that will house these objects meets the standards in 411 DM.

M. Follow-up on repatriation. After releasing control for NAGPRA cultural items, IA will contact the repository with custody as well as the tribe to whom the items were transferred, to determine the final status of repatriation. IA will maintain documentation and data regarding repatriation.

N. Culturally unidentifiable remains. IA will proceed with the disposition of culturally unidentifiable human remains and funerary objects as required by 43 CFR 10.11.

O. Destructive analysis. If a repository requests to conduct research on any NAGPRA cultural items that would involve methods of destructive analysis, IA will consult with the affected tribe or tribes prior then provide a written response to the repository.