



36 CFR 79: Curation of Federally-Owned and Administered Archaeological Collections

Authorities

Antiquities Act (16 U.S.C. 431- 433), the Reservoir Salvage Act (16 U.S.C. 469-469c), section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2), and the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm).

What does 36 CFR 79 cover?

- Responsibility for Federal collections;
- Procedures and guidelines to manage and preserve collections;
- Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;
- Standards to determine when a repository has the capability to provide long-term curatorial services; and
- Guidelines for collections access, loan, and use.

What is a “collection?”

A collection is *material remains* that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study. §79.4 provides detailed definitions of the kinds of material remains that fall under the regulation.

Who is responsible for ensuring that federally-owned and administered collections receive proper care?

The Federal Agency Official is responsible for ensuring proper care of federally owned and administered collections. The Federal Agency Official is “any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.” [36 CFR 79.4 (c)]

What constitutes proper care of federally-owned and administered collections?

Repositories, whether they are Federal, State, local, or tribal, must be able to provide professional, systematic, and accountable curatorial services on a long-term basis. Among their responsibilities, repositories must –

- Provide a catalog list of the collection contents to the responsible party (i.e., Federal Agency Official, Indian landowner, or Tribal official);
- Periodically inspect the physical plant to monitor physical security and environmental conditions;
- Periodically inspect the collection and associated records to monitor their condition;
- Periodically inventory the collection and associated records;
- Provide a written report of the results of inspections and inventories to the responsible party; and
- Make the collection available for inspection by the responsible party.

Are there special requirements for archaeological collections from Indian lands?

Yes. Because Indian tribes are sovereign nations, archaeological collections from Indian lands are treated differently under 36 CFR 79. The Indian landowner or Tribal official retains jurisdiction over the collections, including the right to determine access, use (including religious use), and disposition. Federal Agency and Repository Officials are encouraged to document their agreements with Indian landowners or Tribal official regarding the care and use of archaeological collections from Indian lands.

What kinds of uses are encouraged for federally-owned or administered collections?

36 CFR 79.10 addresses the scientific, educational, and religious use of such collections. Appropriate educational and scientific uses of collections include in-house and traveling exhibits, teaching, public interpretation, scientific analysis, and scholarly research. § 79.10 also describes the requirements that must be met when loaning a collection, and provides guidance for allowing destructive analysis under certain circumstances.

Are there special requirements for the use of religious remains in collections?

Yes. Religious remains are “material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.” [36 CFR 79.4 (i)]

Note that the definition of “religious remains” is broader than the NAGPRA definition of “sacred object.”

Under § 79.10, religious remains in a collection must be made available to persons for use in religious rituals or spiritual activities. If the religious remains are from Indian lands, the Indian land owner or Tribal official must give consent prior to such use. Under § 79.11, religious leaders, Tribal officials, and official representatives of other groups for which the remains have religious or sacred importance have the right to periodically inspect the religious remains.

May a repository repatriate NAGPRA items that are part of a federally-owned or administered collection?

No. The Repository Official must “redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner.” [36 CFR 79.8 (n)]

Further, “the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner.” [36 CFR 79.8 (o)]

Are NAGPRA cultural items excavated or removed from Federal or tribal lands after November 16, 1990 considered to be “collections” under 36 CFR 79?

No. However, Federal agencies should adhere to the standards of 36 CFR 79 in providing care for such cultural items prior to their disposition.

Where can I learn more about 36 CFR 79?

- The complete text of the regulation is available online at <http://www.cr.nps.gov/aad/tools/36cfr79.htm>.
- Information about managing archeological collections, including the requirements of 36 CFR 79, is available online at <http://www.cr.nps.gov/aad/collections/index.htm>.