

**43 CFR Part 10 Draft NAGPRA Regulations  
Overview of Changes July 2021**

**Subpart A—GENERAL**

As drafted, this subpart provides a logical organization of general information and clarifies confusing statements in the current rule. Definitions have been revised or removed for consistency and less ambiguity. The process for determining cultural affiliation has been simplified to better align with legislative intent. Additional information has been included regarding multiple culturally affiliated Indian Tribes and Native Hawaiian organizations.

<b>Draft 43 CFR Section</b>	<b>Incorporates Current 43 CFR Section</b>
10.1 Introduction.	10.1 Purpose, applicability, and information collection. 10.15 Limitations and remedies. 10.17 Dispute resolution.
10.2 Definitions for this part.	10.2 Definitions.
10.3 Cultural affiliation.	10.14 Lineal descent and cultural affiliation.

**Subpart B—FEDERAL OR TRIBAL LANDS AFTER NOVEMBER 16, 1990**

As drafted, this subpart simplifies existing requirements and consolidates procedures for discoveries or excavations on Federal or Tribal land. On Federal land, Federal land managers have more discretion to allow for ground-disturbing activities to resume after securing and protecting discovered cultural items and evaluating the potential need for an excavation. On Tribal lands, procedural actions are required by Indian Tribes, Native Hawaiian organizations (NHO), and Department of Hawaiian Homelands (DHHL).

For excavations, this subpart limits when a permit under section 4 of the Archeological Resources Protection Act (ARPA) is required. Requirements for authorizing an excavation are simplified into three steps and result in a written authorization with five elements. A five-step process with deadlines and timelines ensures expeditious disposition of cultural items. On Federal land, Federal agencies must submit one notice for publication in the Federal Register rather than publishing legal notices twice in print newspapers.

<b>Draft 43 CFR Section</b>	<b>Incorporates Current 43 CFR Section</b>
10.4 General.	paragraphs from 10.3, 10.4, and 10.5.
10.5 Discovery.	10.4 Inadvertent discoveries.
10.6 Excavation.	10.3 Intentional archaeological excavations. 10.5 Consultation.
10.7 Disposition	10.6 Custody. 10.7 Disposition of unclaimed [cultural items].

**43 CFR Part 10 Draft NAGPRA Regulations  
Overview of Changes July 2021**

**Subpart C—MUSEUM OR FEDERAL AGENCY HOLDINGS OR COLLECTIONS**

As drafted, this subpart clarifies when and what actions are required in a step by step process and provides a timeline for responding to requests for repatriation. Deadlines for completing summaries and inventories are updated to the effective date of the rule. Notices of inventory completion for human remains are required within 6 months, as originally envisioned by Congress. This subpart clarifies the often-misunderstood 90-day requirement for repatriation and requires repatriation statements be sent to requestors and the Department of the Interior, as recommended by the Government Accountability Office (GAO) in a 2010 report. For human remains with no cultural affiliation, this subpart replaces “culturally unidentifiable” with “geographically affiliated,” but keeps the current method for repatriation of those human remains based on aboriginal land. This subpart requires repatriation of associated funerary objects with human remains that are culturally or geographically affiliated. For human remains and associated funerary objects with no cultural or geographical affiliation, museums and Federal agencies may, at their discretion, agree to transfer or reinter human remains and associated funerary objects. For civil penalties, this subpart revised the penalty calculation using \$7,037 per violation, with flexibility reserved to increase or decrease the penalty on a case-by-case basis. As in the Act, any failure to comply is subject to penalty and this section streamlines the appeal process into a single hearing to contest the failure to comply and/or the penalty assessment.

<b>Draft 43 CFR Section</b>	<b>Incorporates Current 43 CFR Section</b>
10.8 General.	paragraphs from 10.8, 10.9, 10.11, and 10.17.
10.9 Summary of unassociated funerary objects, sacred objects, objects of cultural patrimony.	10.8 Summaries. 10.10 Repatriation. 10.13 Future applicability.
10.10 Inventory of human remains and associated funerary objects.	10.9 Inventories. 10.10 Repatriation. 10.11 Disposition of culturally unidentifiable human remains. 10.13 Future applicability.
10.11 Civil penalties.	10.12 Civil penalties.

**Subpart D—REVIEW COMMITTEE**

As drafted, this subpart clarifies the responsibilities of and procedures for the Review Committee that advises the Secretary and Congress.

<b>Draft 43 CFR Section</b>	<b>Incorporates Current 43 CFR Section</b>
10.12 Review Committee.	10.16 Review Committee. 10.17 Dispute resolution.

**43 CFR Part 10 Draft NAGPRA Regulations  
Overview of Changes  
July 2021**

<b>Current 43 CFR Section</b>		<b>Draft 43 CFR Section</b>	
10.1	<p><i>Purpose, applicability, and information collection.</i></p> <ul style="list-style-type: none"> <li>• Includes a confusing statement regarding the indigenous nature of cultural items</li> <li>• Provides no instruction on care of cultural items before repatriation</li> <li>• Provides no instructions for delivery of documents and timelines</li> </ul>	10.1	<p><i>Introduction.</i></p> <p>More logical organization of requirements</p> <ul style="list-style-type: none"> <li>• Removes confusing statement on cultural items</li> <li>• Includes requirement for museums and Federal agencies to exercise a duty of care prior to repatriation</li> <li>• Includes standard instructions for delivery of documents and timelines</li> </ul>
10.2	<p><i>Definitions.</i></p> <ul style="list-style-type: none"> <li>• Defines Federal agency official, museum official, Indian tribe official, burial site, culturally unidentifiable, and possession, all of which are obsolete in the revised draft</li> <li>• Includes imprecise definitions such as Federal lands and Native American</li> <li>• Reserves a definition for Indian Tribe</li> <li>• Does not define common or practical terms like consultation</li> </ul>	10.2	<p><i>Definitions for this part.</i></p> <p>Revised for consistency and precision</p> <ul style="list-style-type: none"> <li>• Culturally unidentifiable is replaced with the more accurate and appropriate geographically affiliated</li> <li>• The often-misunderstood phrase possession or control is simplified in the definition of control</li> <li>• Sentence subjects are clarified to be the Federal agency, museum, or Indian Tribe, not the official</li> <li>• Federal lands is clarified as the lands on which Federal programs or activities may be subject to the Act</li> <li>• Native American is clarified in light of legal precedent and by defining the Act’s undefined terms tribe, people, or culture</li> <li>• Defines Indian Tribe</li> <li>• Consultation is defined using language from the House Report on NAGPRA</li> </ul>
10.3	<p><i>Intentional archaeological excavations.</i></p> <ul style="list-style-type: none"> <li>• Applies ARPA permits broadly to private lands that are also Tribal lands under NAGPRA</li> </ul>	10.6	<p><i>Excavation.</i></p> <p>Simplifies the excavation requirements</p> <ul style="list-style-type: none"> <li>• Clarifies when a permit under section 4 of ARPA is required</li> </ul>

**43 CFR Part 10 Draft NAGPRA Regulations  
Overview of Changes  
July 2021**

<b>Current 43 CFR Section</b>		<b>Draft 43 CFR Section</b>	
10.4	<p><i>Inadvertent discoveries.</i></p> <ul style="list-style-type: none"> <li>• Requires immediate reporting without a timeframe for written confirmation after a discovery</li> <li>• Provides 3 working days for Federal agency or Indian tribe to secure and protect cultural items, notify and consult with appropriate Indian tribes to determine if an excavation is necessary, excavate cultural items, and ensure disposition</li> <li>• On tribal lands, does not address Indian Tribes responsibility to respond to discovery or to certify when activity may resume</li> </ul>	10.5	<p><i>Discovery.</i></p> <ul style="list-style-type: none"> <li>• Provides 3 business days for written confirmation of a discovery</li> <li>• No time limit for Federal agency or Indian tribe to secure and protect discovered cultural items or evaluate the potential need for an excavation</li> <li>• On tribal lands, clarifies that procedural actions must be taken by Indian Tribes, NHOs, and DHHL, including responding to a discovery and certifying an activity may resume</li> </ul>
10.5	<p><i>Consultation.</i></p> <ul style="list-style-type: none"> <li>• Provides requirements in multiple repetitive paragraphs</li> <li>• Requires a written plan of action that documents nine detailed elements</li> </ul>	10.6	<p><i>Excavation.</i></p> <ul style="list-style-type: none"> <li>• Clarifies in three steps what is required for consultation before an excavation</li> <li>• Requires a written authorization with five simplified elements</li> </ul>
10.6	<p><i>Custody.</i></p> <ul style="list-style-type: none"> <li>• Requires Federal agencies publish notices twice in print newspapers of general circulation</li> <li>• One long paragraph describes the process for disposition with respect to Federal lands with no timelines or specific directions and no information on disposition to a lineal descendant</li> <li>• Contains no requirements for completing the disposition after publication of notice</li> </ul>	10.7	<p><i>Disposition.</i></p> <ul style="list-style-type: none"> <li>• Requires Federal agencies to submit one notice to National NAGPRA for publication in the Federal Register</li> <li>• Provides a five-step process for disposition with deadlines and timelines, includes requirements for disposition to a lineal descendant, and clarifies disposition on Tribal lands</li> <li>• Require a disposition statement be sent to claimants and to National NAGPRA</li> </ul>
10.7	<p><i>Disposition of unclaimed cultural items.</i></p> <ul style="list-style-type: none"> <li>• Requires Federal agencies publish notices twice in print newspapers of general circulation</li> </ul>	10.7	<p><i>Unclaimed cultural items.</i></p> <ul style="list-style-type: none"> <li>• Requires Federal agencies to submit one notice to National NAGPRA for publication in the Federal Register</li> </ul>
	<p><i>Subpart C</i></p> <ul style="list-style-type: none"> <li>• Does not require museums to inform Federal agencies of a Federal holding or collection in the museum's custody</li> </ul>	10.8	<p><i>General to Subpart C</i></p> <ul style="list-style-type: none"> <li>• Requires museums to submit information to Federal agencies about a Federal holding or collection in the museum's custody within one year</li> </ul>

**43 CFR Part 10 Draft NAGPRA Regulations  
Overview of Changes  
July 2021**

Current 43 CFR Section		Draft 43 CFR Section	
10.8 10.9	<p><i>Summaries.</i></p> <p><i>Inventories.</i></p> <ul style="list-style-type: none"> <li>Does not address certain gaps in the process and includes no requirement to respond to a request for repatriation</li> <li>Requires Indian Tribes and NHOs provide information about cultural items that is often very sensitive</li> <li>Requires that Summaries must be completed no later than November 16, 1993</li> <li>Requires that Inventories must be completed not later than November 16, 1995</li> <li>Requires notice of inventory completion within 6 months of determining cultural affiliation</li> </ul>	10.9 10.10	<p><i>Summary ...</i></p> <p><i>Inventory...</i></p> <ul style="list-style-type: none"> <li>Clarifies when and what actions are required in a step by step process and provides a timeline for responding to requests for repatriation</li> <li>Allows for protection of sensitive information during information exchanges</li> <li>Updates deadlines for completing summaries and inventories to the effective date of rule</li> <li>Requires notice of inventory completion within 6 months of determining a known lineal descendant, cultural affiliation, or geographic affiliation</li> </ul>
10.10	<p><i>Repatriation.</i></p> <ul style="list-style-type: none"> <li>Provides no timelines, deadlines, or instructions for repatriations except within 90 days of request, but not until 30 days after notice publication</li> <li>Contains no requirement to report on any actions that occur after notice publication</li> </ul>	10.9 10.10	<p><i>Summary... and Inventory...</i></p> <ul style="list-style-type: none"> <li>Establishes timelines, deadlines and instructions for repatriations and clarifies 90-day period</li> <li>Requires repatriation statements be sent to requestors and National NAGPRA, as recommended by GAO</li> </ul>
10.11	<p><i>Disposition of culturally unidentifiable...</i></p> <ul style="list-style-type: none"> <li>Lacking cultural affiliation, remains are designated culturally unidentifiable, a term considered inaccurate and offensive by many</li> <li>The Secretary only recommends repatriation of associated funerary objects with culturally unidentifiable</li> <li>Contains no requirement to consult unless first receiving a request</li> <li>Provides no timeline to complete consultation, publish a notice of inventory completion, or complete the repatriation</li> </ul>	10.10	<p><i>Inventory...</i></p> <ul style="list-style-type: none"> <li>Maintains the current method of repatriation, but replaces culturally unidentifiable with geographically affiliated</li> <li>Requires repatriation of associated funerary objects with human remains that are geographically affiliated</li> <li>Requires updated inventories, following consultation, within 2 years of the effective date of the rule</li> <li>Requires a notice within 6 months of updating an inventory and establishes timelines, deadlines, and instructions for completing repatriations upon request</li> </ul>

**43 CFR Part 10 Draft NAGPRA Regulations  
Overview of Changes  
July 2021**

<b>Current 43 CFR Section</b>		<b>Draft 43 CFR Section</b>	
10.12	<p><i>Civil Penalties.</i></p> <ul style="list-style-type: none"> <li>Calculates the penalty amount as the lesser of 0.25 percent of a museum’s annual budget or \$7,037 per violation</li> <li>Defines only 9 ways a museum can fail to comply</li> <li>Includes a dual hearing process to contest the failure to comply and the penalty assessment</li> </ul>	10.11	<p><i>Civil Penalties.</i></p> <ul style="list-style-type: none"> <li>Calculates the penalty amount as \$7,037 per violation</li> <li>Retains flexibility to increase or decrease the penalty amount on a case-by-case basis</li> <li>Clarifies that, consistent with the Act, any failure to comply is subject to penalty</li> <li>Streamlines into a single hearing process to contest the failure to comply and/or the penalty assessment</li> </ul>
10.13	<p><i>Future applicability.</i></p> <ul style="list-style-type: none"> <li>Requires deadlines for reporting on new holdings or collections, newly recognized Indian Tribes, new museums, or amendments</li> </ul>	10.9 10.10	<p><i>Summary... and Inventory...</i></p> <ul style="list-style-type: none"> <li>Integrates the timelines for any new holdings or collections, newly recognized Indian Tribes, new museums, or amendments into the step by step process</li> </ul>
10.14	<p><i>Lineal descent and cultural affiliation.</i></p> <ul style="list-style-type: none"> <li>Criteria for determining cultural affiliation includes requirements containing examples that have been interpreted as limiting factors inconsistent with the Act</li> </ul>	10.3	<p><i>Cultural affiliation.</i></p> <p>More logical organization of requirements</p> <ul style="list-style-type: none"> <li>Clarifies process based on the legislative intent</li> <li>Includes clarifying language regarding multiple culturally affiliated Indian Tribes or NHOs</li> </ul>
10.15	<p><i>Limitations and remedies.</i></p> <ul style="list-style-type: none"> <li>Includes a reserved section</li> <li>Includes imprecise language on final agency action</li> <li>Repeats verbatim language from the Act</li> </ul>	10.1	<p><i>Introduction.</i></p> <ul style="list-style-type: none"> <li>Clarifies a failure to make a claim or a request with consistent language</li> <li>Clarifies what constitutes final agency action</li> <li>Removes repetitious language already found in the Act</li> </ul>
10.16	<p><i>Review committee.</i></p> <ul style="list-style-type: none"> <li>Includes imprecise information related to nominations</li> </ul>	10.12	<p><i>Review Committee.</i></p> <ul style="list-style-type: none"> <li>Clarifies the responsibilities of and procedures for Review Committee, including nominations</li> </ul>
10.17	<p><i>Dispute resolution.</i></p> <ul style="list-style-type: none"> <li>Combines different options for resolution in one paragraph</li> <li>Includes imprecise language on the limitations of the Review Committee role in resolutions</li> </ul>	10.1 10.12	<p><i>Introduction.</i></p> <ul style="list-style-type: none"> <li>Clarifies judicial jurisdiction and applies this to entire regulations</li> </ul> <p><i>Review Committee.</i></p> <ul style="list-style-type: none"> <li>Explains informal conflict resolution options and process and clarifies as no broader than in the Act</li> </ul>