

National Park Service | U.S. Department of the Interior

Cultural Resources, Partnerships and Science

National NAGPRA Program



Facilitating Respectful Return



NAGPRA Regulations

- Systematic process **to determine rights** to Native American human remains and other cultural items
- Regulations published as final in 1995, 2003, 2007, 2010, and 2015
- From 2010 to 2012, consultation, listening sessions, and written comments on full revision of the rule

Goals of Proposed Changes

- Simplify and improve the regulatory process
- Advance the goals of racial justice, equity, and inclusion
- Streamline existing regulatory requirements by simplifying burdensome and complicated requirements and clarifying timelines.

Proposed Organization

A — GENERAL

§ 10.1 Introduction.

§ 10.2 Definitions for this part.

§ 10.3 Cultural Affiliation.

B — FEDERAL OR TRIBAL LANDS AFTER NOVEMBER 16, 1990

§ 10.4 General.

§ 10.5 Discovery.

§ 10.6 Excavation.

§ 10.7 Disposition.

C — MUSEUM OR FEDERAL AGENCY HOLDINGS OR COLLECTIONS

§ 10.8 General.

§ 10.9 Summary of unassociated
funerary objects, sacred objects, &
objects of cultural patrimony.

§ 10.10 Inventory of human remains &
associated funerary objects.

§ 10.11 Civil penalties.

D — REVIEW COMMITTEE

§ 10.12 Review Committee.

A. General

Existing Regulations

- No duty of care, standard deadlines, or instructions on delivery of documents
- Complicated and confusing definitions
- Perceived higher standard for cultural affiliation

Proposed Changes

- Add requirements, provide instructions, and consolidate general information
- Remove or clarify confusing terms
- Simplify and prioritize cultural affiliation

A. General

Definitions for this part

Removed

Culturally unidentifiable

Possession

Federal agency official

Museum official

Indian tribe official

Native Hawaiian*

*Incorporated into NHO definition

New

Ahupua'a

ARPA Indian lands

ARPA Public lands

Consultation

Cultural items

Geographical affiliation

Holding or collection

Tribal lands controlled by a NHO

Tribal lands controlled by DHHL

United States

A. General

Possession, Control, and Custody

Existing

“Possession” means a **sufficient legal interest to lawfully treat the objects as part of its collection**, as well as having physical custody of the objects.

“Control” means a **legal interest sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection...** whether or not the objects are in the physical custody of the museum or Federal agency.

Proposed Changes

Control means **sufficient legal interest in an object** or item to independently direct, manage, oversee, or restrict the use of the object or item and to convey that legal interest.

Custody means **an obligation to care for the object** or item but **not sufficient legal interest in the object** or item to constitute control. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not sufficient legal interest to constitute control.

B. On Federal or Tribal Lands

Existing Regulations

- Confusing procedures, burdensome timelines, and little protection for sensitive information
- On Tribal land, no requirement for Indian Tribes, NHOs, or DHHL to act and jurisdiction issues for privately owned Tribal land

Proposed Changes

- Reduce and streamline requirements to prioritize protection of cultural items and meaningful consultation
- Require Indian Tribes, NHOs, or DHHL to respond to a discovery, certify resuming an activity, authorize an excavation, and document disposition. Clarify jurisdiction for ARPA permits.

B. On Federal or Tribal Lands

Proposed Steps for Discovery and Excavation

Discovery

- 1 Report any discovery
- 2 Cease ground-disturbing activity
- 3 Respond to a discovery
- 4 Evaluate the potential need for an excavation
- 5 Certify an activity may resume

Excavation on Federal lands and on Tribal lands in Hawaii

- 1 Initiate consultation
- 2 Consult with requesting parties
- 3 Authorize the excavation

B. On Federal or Tribal Lands

Proposed Steps for Disposition and Unclaimed

Federal lands or Tribal lands controlled by DHHL

1	Inform Indian Tribes or NHOs	As soon as possible, no later than 1 year
2	Publish a notice of intended disposition	No later than 30 days after Step 1
3	Receive and consider a claim for disposition	After notice publication
4	Respond to a claim for disposition	No earlier than 30 days after notice but no later than 30 days after claim
5	Disposition of the cultural items	No later than 90 days after Step 4

C. In Holdings or Collections

Existing Regulations

- Burden on Indian Tribes and NHOs to initiate consultation and not always referenced in decision-making process
- “Culturally unidentifiable” human remains inhibit and effectively prevent respectful repatriation
- Associated funerary objects can be retained by museums and incentivize museums to determine remains are culturally unidentifiable

Proposed Changes

- Define “consultation” and require museums and Federal agencies initiate and use consultation to inform decision-making
- Replace with “geographical affiliated” to acknowledge connection to present-day Indian Tribes
- Require associated funerary objects to always be repatriated and remove incentive

C. In Holdings or Collections

Proposed Requirements

- New requirements and new timelines imposed on museums and Federal agencies not Indian Tribes or NHOs
- Indian Tribes and NHOs may make requests to consult or for repatriation at anytime before repatriation
- Joint requests are considered a single request and not competing
- Procedures established for dealing with multiple, competing requests AFTER publication of a notice

C. In Holdings or Collections

Proposed Steps for Repatriation with Deadlines

Summaries of unassociated funerary objects, sacred objects, & objects of cultural patrimony

1	Complete a summary	Within 6 months for new collection
2	Initiate consultation	No later than 30 days after Step 1
3	Consult with requesting parties	Respond no later than 14 days after <u>a request to consult</u>
4	Receive/consider a request for repatriation	After consultation
5	Respond to a request for repatriation	No later than 60 days after <u>a request for repatriation</u>
6	Submit a notice of intent to repatriate	No later than 30 days after Step 5
7	Repatriate the cultural items	No earlier than 30 days and no later than 90 days after notice

C. In Holdings or Collections

Proposed Steps for Repatriation with Deadlines

Inventories of human remains and associated funerary objects

1	Compile an itemized list	Before completing Step 2
2	Initiate consultation	Before deadline in Step 4
3	Consult with requesting parties	Respond no later than 14 days after a request to consult
4	Complete (or update) inventory of human remains & associated funerary objects	Within 2 years for new collections or old collections not in notices
5	Submit a notice of inventory completion	No later than 6 months after Step 4
6	Receive/consider a request for repatriation	Anytime after notice publication
7	Respond to a request for repatriation	No earlier than 30 days after notice and no later than 30 days after a request for repatriation
8	Repatriate the cultural items	No later than 90 days after Step 7

C. In Holdings or Collections

Civil Penalties for Museums

Existing Regulations

- Calculates the penalty amount as the lesser of two options
- Defines only 9 ways a museum can fail to comply
- Includes a dual hearing process to contest a failure to comply and the penalty assessment

Proposed Changes

- Uses only a base amount (adjusted annually for inflation) with flexibility to increase or decrease on a case-by-case basis
- Any failure to comply is subject to a penalty
- Streamlines a single hearing process to contest a failure to comply and/or the penalty assessment

D. Review Committee

Existing Regulations

- No clarification beyond statutory authority
- Advisory role only and recommendations are not binding on any person

Proposed Changes

- Clarifies informal conflict resolution process for disputes:
 - **Between** lineal descendants, Indian Tribes, Native Hawaiian organizations **and** museums or Federal agencies
 - Not **among** lineal descendants, Indian Tribes, and Native Hawaiian organizations
 - Not **among** museums and Federal agencies
- Reaffirms advisory role only and recommendations are not binding on any person

Delegation of NAGPRA Authority

- Since 1991, the National Park Service (NPS) has had administrative responsibilities for NAGPRA.
- In 1999, criticism of NPS's approach and conflict of interest resulted in separation of duties and elevation of program administration to an Assistant Director in NPS.
- In 2005, the Secretary elevated civil penalties, regulations, grant awards, and extensions of time to the Assistant Secretary level.

NAGPRA Program

- Is the current organization (within NPS) working?
- Would a different organization (e.g., Assistant Secretary of Indian Affairs) be preferable?
- Some other organization?
- Why or why not?

Secretary's Responsibilities

Delegated	Purpose	Statutory (25 USC 3001 et seq)
Secretary (appointee)	Oversight Advice	<ul style="list-style-type: none"> • Review Committee
Assistant Secretary (appointee)	Support Enforcement	<ul style="list-style-type: none"> • Civil penalties • Award grants • Promulgate regulations • Extend deadlines
NPS Program	Staffing	<ul style="list-style-type: none"> • Designated Federal Official to Review Committee • Draft regulations with Solicitor's office • Administrator for grant awards • Receives requests for extensions • Receives allegations of failure to comply • Publish notices in Federal Register

To Make a Comment

- Raise your virtual hand
- Submit a comment
- Provide your name and Indian Tribe
- Indicate if you are a Tribal leader or other official representative

- Hosts will call on you to make a comment and allow access to video and audio

- Hosts will request comment from those on the phone only (to unmute, press *6)

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