



November 25, 2024

Richard Revesz  
Administrator  
Office of Information and Regulatory Affairs (OIRA)  
725 17th Street, NW  
Washington, DC 20503

Submit electronically at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202403-1076-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202403-1076-001)  
**ICR Reference No: 202403-1076-001**

Dear Administrator Revesz:

The National Association of Tribal Historic Preservation Officers (NATHPO) is the only national organization devoted to supporting Tribal historic preservation programs. Founded in 1998, NATHPO is a 501(c)(3) non-profit membership association of Tribal government officials who implement federal and Tribal preservation laws. NATHPO empowers Tribal preservation leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples. We write to comment as part of the Information Collection Review of proposed regulations published on October 25, 2024, to implement the Safeguard Tribal Objects of Patrimony Act (STOP Act).

**Information Collection Requirements**

Supporting Statement A of the Paperwork Reduction Act Submission for the proposed rule makes a number of assumptions regarding the costs associated with implementing the regulations that NATHPO believes grossly underestimate the implementation costs.

For instance, Supporting Statement A estimates the annual hour burden for the collection of information by the STOP Act Native Working Group as 20 hours, or \$908. The 13 members of the Native Working Group will work collaboratively to assess information in order to provide recommendations for agency action regarding voluntary return and eliminating illegal commerce in cultural items and archaeological resources. The Supporting Statement’s estimate that there will be only one recommendation per year is incredibly low given the broad duties assigned to the Working Group. We further recommend using the rate of pay assigned by statute to advisory committee members doing similar types of work, such as those of the Native American Graves Protection and Repatriation Review Committee.

	STOP Act Native Working Group -- Reporting	
	Statement A	Recommended
Respondents (annually)	12	13
Frequency of response (annually)	1	10
Time per response (hours)	2	2
Hourly rate (dollars)	\$45.42	\$92.00
<b>TOTAL</b>	<b>\$1,090.08</b>	<b>\$23,920.00</b>

In addition, Supporting Statement A does not include any cost estimates for Federal employees and Tribal representatives involved in the seizure or return of cultural items or archaeological resources. We understand that to date there have been approximately 10 seizures and 20 voluntary returns. We have relied on the time per response and hourly rate estimates provided by the Department of the Interior for the final NAGPRA regulations to estimate these costs. Customs and Border Protection should provide estimated times per response for seizure and transfer of illegally trafficked items.

	Responsible party	Number of responses	Time per response	Annual Hours	Hourly rate	Annual costs
Seize and transfer illegally trafficked items	CBD	10	?	?	\$67.01	?
Submit a summary	DOI	30	105	3150	\$67.01	\$211,081.50
Conduct consultation	DOI	30	105	3150	\$67.01	\$211,081.50
Participate in consultation	Tribes/NHOs	30	105	3150	\$67.01	\$211,081.50
Make a record of consultation	DOI	30	17	510	\$67.01	\$34,175.10
Submit an inventory	DOI	30	105	3150	\$67.01	\$211,081.50
Submit notice of inventory completion or no	DOI	30	15	450	\$67.01	\$30,154.50
Submit a request for repatriation	Tribes/NHOs	30	10.5	315	\$67.01	\$21,108.15
Respond to request for repatriation	DOI	30	77	2310	\$67.01	\$154,793.10
Send a repatriation statement	DOI	30	10.5	315	\$67.01	\$21,108.15
Document physical transfer	DOI	30	8	240	\$67.01	\$16,082.40
<b>Total</b>		<b>310</b>	<b>558</b>	<b>16740</b>		<b>\$1,121,747.40</b>

NATHPO is also preparing comments on the policy and procedural aspects of the proposed regulations prior to the Department of the Interior’s December 24, 2024, deadline. These concerns may have additional cost implications.

**1194.1 - What is the purpose of this part?**

NATHPO agrees with the statements in this section, particularly that “in implementing this systematic process, the Secretary must defer and give preference to the expertise, customs, traditions, and Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations, as Indian Tribes and Native Hawaiian organizations understand them.”

**1194.2 - How are key terms defined in the part?**

NATHPO agrees with most of the definitions in this section with the following changes:

**Office** means **the office of the Assistant Secretary, Indian Affairs, as delegated as responsible for exercising the duties of the Secretary under the Act.**

The STOP Act is encoded under Title 25 of the United States Code devoted to Indian law and was explicitly enacted “to carry out the trust responsibility of the United States to Indian Tribes.” Consistent with explicit Congressional intent, administration of this program should explicitly acknowledge that “items prohibited from exportation” by the STOP Act are “Tribal trust assets” as defined at 25 U.S.C. § 115.002. With this in mind, we request that the office administering this program be established under the Assistant Secretary-Indian Affairs, and closely aligned with the Bureau of Trust Fund Administration which can supply necessary infrastructure support to protect these invaluable Tribal trust assets. The head of this office should serve as the central point of contact for all matters related to implementation of the STOP Act, including serving as liaison with the Department of Commerce, Department of Homeland Security, Department of Justice, and Department of State.

Of note, NATHPO has been a long-standing proponent of moving the office responsible for implementing the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq., to likewise report directly to the Assistant Secretary-Indian Affairs. Establishment of these two offices to report to the Assistant Secretary-Indian Affairs would help ensure the moral, legal, and fiduciary obligation to protect Tribal cultural items in perpetuity and avoid the conflict of interest inherent with the various land managing bureaus.

***Tribal land.*** NATHPO requests that preamble of the final rule includes the following language to clarify this definition: **“The plain language of the definition includes private, state, Federal, and other lands within the exterior boundaries of the reservation (McGirt v. Oklahoma, 140 S. Ct. 659 (2019)), as well as Tribal trust land outside the exterior boundaries of a formal reservation (Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 511 (1991)).”**

#### **1194.103 - What is the process for applying for an export certification?**

Subsection 103 (b)(2)(i) stipulates that requests for export certification must include “Description and pictures (if culturally appropriate) of the item requiring export certification.” NATHPO believes that most potential exporters will not know what is or is not culturally appropriate, only the Tribe will know. Further, the term “pictures” is vague. We recommend that this requirement be revised to read: **“Description and photographs of the item requiring export certification.”**

#### **1194.104 - What is the process for the Office to review an Export Certification?**

NATHPO recognizes that the deadlines set for various actions by the Department and for Indian Tribes and Native Hawaiian organizations are extremely short but were established by the Act itself. NATHPO requests that the preamble of the final rule address exactly how the Department plans on complying with these deadlines, and what type of resources will be needed by both the Department and Indian Tribes and Native Hawaiian organizations to comply. As shown below, we believe the Paperwork Reduction Act submission for this proposed rule grossly underestimates the costs to Tribes, Federal agencies, and the Native Working Group.

#### **1194.201 When can CBP detain certain items?**

Native American human remains and cultural items must be treated with an appropriate duty of care while in Federal custody. NATHPO requests that the following subsection be added: **“(k) the CBP and the Office will ensure that all human remains and cultural items in their custody are cared for in a manner consistent with the requirements of 43 CFR 10.1 (d)(3).”**

#### **1194.205 - What are civil penalties for violations of this regulation?**

NATHPO is concerned about several aspects of the proposed procedures for civil penalties. While we support the idea of a set base penalty amount for each violation, we consider the amounts proposed to be too low to ensure effective compliance. NATHPO requests that the base penalty amounts be revised to **\$2,500** if the item is an item prohibited from exportation, and **\$10,000** if the item is an item requiring export certification. These base penalty amounts are more in line with the penalties for violation of other types of export requirements. See 15 CFR § 10.6.

We also support the idea of increasing the base penalty amount if certain criteria are met, similar to what is authorized under the Native American Graves Protection and Repatriation Act. See 25 U.S.C. § 3007 (b). However, we also recognize that in the 34 years since NAGPRA was enacted, the Department has rarely based civil penalties on any of these criteria. In order to ensure that the same does not

happen here, NATHPO requests that the Native Working Group be charged with reviewing civil penalties assessed and making formal requests if it believes additional penalty amounts are warranted.

**1194.206 – How is an item repatriated or returned?**

Subsection (d) requires the Office will issue a letter or other document authorizing the return of the property. This section should make it absolutely clear that the Office, as a Federal agency with possession or control of Native American human remains or cultural items, is required to comply with the summary, inventory, consultation, and notification requirements of the Native American Graves Protection and Repatriation Act.

**1194.603 - What are the duties of the Native Working Group?**

Two important duties of the Native Working Group that are specified in the statute are omitted from the regulations. See 25 U.S.C. § 3076 (c). NATHPO requests that the following section be added to the regulations:

**The Native Working Group may make formal requests to initiate certain agency actions, including that:**

**(1) the Department of Justice initiate judicial proceedings domestically or abroad to aid in the repatriation cultural items and archaeological resources; and**

**(2) the Department of State initiate dialogue through diplomatic channels to aid in that repatriation.**

Thank you for the opportunity to comment, and please reach out to us for additional information.

Sincerely,

A handwritten signature in cursive script that reads "Valerie J. Grussing".

Valerie J. Grussing, PhD  
Executive Director