



**NATIONAL ASSOCIATION
OF TRIBAL HISTORIC
PRESERVATION OFFICERS**

The New NAGPRA Regulations: Immediate Concerns for Indian Tribes

February 6, 2024



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Regulatory Deadlines

No later than:	Responsible party:	Must:	To:	Citation:
12-Jul-24	Federal agency	Send written documentation of all Native American human remains or cultural items removed from Federal or Tribal lands whose disposition is not complete prior to January 12, 2024.	Lineal descendant, Indian Tribe, or Native Hawaiian organization with priority for disposition. Followup consultation with Federal agency recommended.	43 CFR 10.7 (c)(i)(2)
13-Jan-25	Federal agency	Submit a list of all unclaimed Native American human remains or cultural items removed from Federal or tribal lands.	National NAGPRA Program. Followup monitoring of the NPS website recommended.	43 CFR 10.7 (d)(1)
13-Jan-25	Museum and Federal agency	Submit a statement describing Federal holdings or collections in its possession or control that may contain Native American human remains or cultural items.	Federal agency most likely to have possession or control and the National NAGPRA Program. The agency has 180 days from receipt to respond to the museum acknowledging: (i) it has possession or control; (ii) it does not have possession or control; or (iii) the agency and museum agree they have joint possession or control. Followup consultation with tribes required.	43 CFR 10.8 (c)
13-Jan-25	Museum	Submit a statement describing holdings or collections that may contain Native American human remains or cultural items and for which it cannot identify any person, institution, State or local government agency, or Federal agency with possession or control.	National NAGPRA Program. Followup monitoring of the NPS website recommended.	43 CFR 10.8 (d)
10-Jan-29	Museum or Federal agency	Submit an updated inventory of any Native American human remains or cultural items not published in a notice of inventory completion prior to January 12, 2024. Prior consultation with tribes required.	All consulting parties and National NAGPRA Program	43 CFR 10.10 (d)(3)



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Provisions with Immediate Effect

Effective as of:	Responsible	Must:	
12-Jan-24	Indian tribe	Designate one or more appropriate tribal officials to carry out the duties under this subpart.	43 CFR 10.4 (a)
12-Jan-24	Indian tribe	Ensure that any permit, license, lease, right-of-way, or other authorization issued for an activity on tribal lands, including all lands within the exterior boundary of a reservation, includes a requirement to report any discovery of Native American human remains or cultural items to the tribe.	43 CFR 10.4
12-Jan-24	Indian tribe	Respond within three days of receiving written documentation of a discovery of Native American human remains or cultural items on tribal lands.	43 CFR 10.5 (c)
12-Jan-24	Indian tribe	Make a reasonable effort to secure and protect discovered human remains and cultural items, verify any activity around the discovery has stopped, and notify the Bureau of Indian Affairs or other Federal agency with primary management authority.	43 CFR 10.5 (c)
12-Jan-24	Indian tribe	Provide a written authorization prior to any excavation of Native American human remains or cultural items on tribal lands, including all lands within the exterior boundary of a reservation.	43 CFR 10.6
12-Jan-24	Indian tribe	Ensure that any permit for excavation issued by another jurisdiction for the excavation or removal of Native American human remains or cultural items on any lands within the exterior boundary of the reservation is equivalent to the provisions of the Archaeological Resources Protection Act.	43 CFR 10.6
12-Jan-24	Indian tribe	As soon as possible, but no later than one year after discovery or excavation, determine the lineal descendant or Indian tribe with priority for disposition of any Native American human remains or cultural items that are discovered or excavated from tribal land.	43 CFR 10.7 (b)
12-Jan-24	Indian tribe	Complete and retain a written disposition statement.	43 CFR 10.7 (b)(1)
12-Jan-24	Museum or Federal agency	Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items.	43 CFR 10.1 (d)(3)



Some suggestions regarding implementation of Subpart B:

- Develop a standard contract clause requiring immediate contact of the tribe in case Native American human remains or cultural items are discovered, including the restriction on excavating or removing them without tribal consent.
- Ensure that all new permits, licenses, leases, rights-of-way, or other authorizations issued for activities on trust lands include this clause.
- Review all previously issued valid permits, licenses, leases, rights-of-way, or other authorizations issued for activities on trust lands include this clause, and if they do not, amend them.
- Contact all relevant federal, state, county, and municipal authorities that issue permits, licenses, leases, rights-of-way, or other authorizations on non-trust lands within the exterior boundary of the reservation to ensure that the clause is included. Send a written request or, if necessary, a demand letter.
- Contact all relevant federal, state, county, and municipal authorities that issue permits for excavation or removal of human remains or cultural items on non-trust lands within the exterior boundary the reservation to ensure that the permit is equivalent to the provisions of the Archaeological Resources Protection Act. Send a written request or, if necessary, a demand letter.
- Contact all federal, state, county, and municipal law enforcement and medical examiners or coroners to ensure that Native American human remains or cultural items on non-trust lands within the exterior boundary of the reservation are not excavated or removed without tribal consent. Send a written request or, if necessary, a demand letter.
- Consider delegating some of these actions to the Bureau of Indian Affairs under 43 CFR 10.5 (c)(2), 10.6 (a)(2), 10.7 (b)(2), or other relevant authority.



43 CFR 10.1 (d) Duty of Care. A museum, Federal agency, or DHHL must:
(3) Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items.

Exhibition: ... a public showing (as of works of art, objects of manufacture, or athletic skill).
www.Merriam-Webster.com

Access: ... permission, liberty, or ability to enter, approach, or pass to and from a place or to approach or communicate with a person or thing. www.Merriam-Webster.com

Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains or cultural items. 43 CFR 10.1 (d)(3).

For purposes of the duty of care paragraph, the lineal descendants, Indian Tribes, or NHOs are those identified as consulting parties under §§ 10.4(b)(1), 10.9(b)(1), and 10.10(b)(1): Consulting parties are any lineal descendant and any Indian Tribe or NHO with potential cultural affiliation. If a museum or Federal agency cannot identify any consulting parties for specific human remains or cultural items, the duty of care requirement still applies. 88 FR 86465 (Jan. 12, 2024)

Any museum or Federal agency that fails to identify a holding or collection that contains human remains or cultural items has failed to comply with the Act and these regulations. It is therefore advantageous for a museum or Federal agency to be broadly inclusive of collections, especially those that might contain funerary objects or other cultural items. 88 FR 86509 (Jan. 12, 2024).



Some suggestions regarding implementation of 10.1 (d)(3) Duty of Care:

- Develop your own definitions of the relevant terms, particularly of “exhibition” and “access”
- Contact all museums and Federal agencies that submitted a summary or inventory to the tribe to inform them of how you interpret the duty of care provisions. Be as specific as possible: exactly which exhibitions are you consenting to, if any; exactly who and for what purpose are you consenting to access, if any; exactly who and for what purpose are you consenting to research, if any. You can limit access to a list of named individuals and for only specific purposes.
- Request to be notified if another tribe consents to exhibition of, access to, or research on human remains or cultural items to which you are potentially culturally affiliated.



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