

**U.S. Department of the Interior  
National NAGPRA Program  
Summary of Tribal Input on 2011 Draft NAGPRA Updates and Responses**

On March 25, 2011, the Department of the Interior conducted a telephonic, government-to-government tribal consultation meeting to provide tribal officials an opportunity to comment on the Native American Graves Protection and Repatriation Act (NAGPRA) regulations at 43 C.F.R. 10. Seventy-three representatives from 52 Indian Tribes attended the meeting, and eight tribal representatives addressed the participants. The following is a high-level summary of suggested changes to the regulations voiced by tribal officials at the meeting and Interior's responses.

*Comment 1:* Require that the transfer of culturally unidentifiable human remains of a Native American individual also include the transfer of the decedent's associated funerary objects.

*Response 1:* The new draft incorporates this suggestion by keeping geographically affiliated associated funerary objects (currently called culturally unidentifiable associated funerary objects) together with the geographically affiliated human remains (currently called culturally unidentifiable human remains) with which they are associated whenever repatriation of these human remains occurs (see §10.10(h) of the draft titled *Step 8: Repatriate the human remains and associated funerary objects*).

*Comment 2:* Include a timetable for a museum or Federal agency to carry out the process leading to an offer of transfer of control of culturally unidentifiable human remains.

*Response 2:* The new draft incorporates this suggestion by requiring, no later than two years after the effective date of the rule, museums and Federal agencies to update their inventories for any human remains and associated funerary objects previously included in an inventory but not published in a notice of inventory completion. To update an inventory, a museum or Federal agency would be required to initiate consultation, consult with any requesting party, and determine if there is a connection between the human remains and associated funerary objects and a culturally affiliated or geographically affiliated Indian Tribe or Native Hawaiian organization (see §10.10(d) of the draft titled *Step 4: Complete an inventory of human remains and associated funerary objects*, paragraph (4)).

*Comment 3:* Include a timetable for a museum or Federal agency to complete a Notice of Inventory Completion for publication in the *Federal Register*.

*Response 3:* The new draft incorporates this suggestion by requiring, within six months, the publication of a *Federal Register* notice of inventory completion for human remains determined to have a known lineal descendant or a connection to a culturally affiliated or geographically affiliated (currently called culturally unidentifiable) Indian Tribe or Native Hawaiian organization. To facilitate request for repatriation, the identity of each lineal descendant, culturally affiliated Indian Tribe or Native Hawaiian organization, or geographically affiliated Indian Tribe or Native Hawaiian organization would also be required in the notice (see §10.10(e) of the draft titled *Step 5: Submit a notice of inventory completion*).

*Comment 4:* Require a museum or Federal agency, during consultation with Indian tribes and Native Hawaiian organizations regarding culturally unidentifiable human remains, to develop a mutually agreeable proposal for the disposition of the human remains, and to do so in a timely manner.

*Response 4:* The new draft incorporates this suggestion, in part, by requiring museums and Federal agencies to consult with Indian tribes when completing or updating an inventory. Rather than requiring a mutually agreeable proposal for disposition, the new draft requires museums and Federal agencies publish notices of inventory completion, for any human remains and associated funerary objects that are culturally or geographically affiliated. After publication of a notice, any culturally or geographically affiliated Indian Tribe or Native Hawaiian organization could request repatriation of the human remains and associated funerary objects. Requests from two or more Indian Tribes or Native Hawaiian organizations who agree to joint repatriation are considered a single request and not competing requests. Following a request that satisfies the criteria, repatriation must be completed 120 days later, provided there are no competing requests. The new draft provides the following steps and timeline:

<b>Proposed</b>	<b>Process</b>	<b>Title</b>	<b>Timeline</b>
§10.10(d)	Step 4	[Update] an inventory of human remains and associated funerary objects	No later than two years after the effective date of the rule (paragraph (4))
§10.10(e)	Step 5	Submit a notice of inventory completion	No later than six months after completing or updating an inventory
§10.10(f)	Step 6	Receive and consider a request for repatriation	At any time after publication of a notice of inventory completion
§10.10(g)	Step 7	Respond to a request for repatriation	No later than 30 days after receiving a request for repatriation
§10.10(h)	Step 8	Repatriate the human remains and associated funerary objects	No later than 90 days after responding to a request for repatriation that meets the criteria

*Comment 5:* Require the inclusion of more detail in a summary.

*Response 5:* The new draft incorporates this suggestion by requiring a museum or Federal agency to include in a summary any available information relevant for identifying any object or item as an unassociated funerary object, sacred object, or object of cultural patrimony and the presence of any potentially hazardous substances used to treat any of the cultural items, if known. The new draft proposes to remove one piece of information required under the current regulations during summary consultation in § 10.8(d)(4)(iii). The current regulations require Indian Tribes and Native Hawaiian organizations to provide information about the kinds of objects they consider to be funerary objects, sacred objects or objects of cultural patrimony. This kind of information is often very sensitive and providing it in writing or in the absence of qualified individuals with the Indian Tribe or Native Hawaiian organization might be inappropriate (see §10.9(a) of the draft titled *Step 1: Complete a summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony*).

*Comment 6:* Require that a Notice of Intent to Repatriate Cultural Items published in the Federal Register identify the NAGPRA category or categories of cultural item to which each

object in the notice belongs.

*Response 6:* The new draft would require greater detail than the current regulations for a Notice of Intent to Repatriate. The draft requires museums and Federal agency identify an unassociated funerary object, sacred object, or object of cultural patrimony specifically as an unassociated funerary object, a sacred object, an object of cultural patrimony, or both a sacred object and an object of cultural patrimony (see §10.9(f) of the draft titled *Step 6: Submit a notice of intent to repatriate*).

*Comment 7:* Give more than advisory authority to a finding of fact made by the Native American Graves Protection and Repatriation Review Committee.

*Response 7:* The new draft cannot legally make the requested revision for the following reason: The Native American Graves Protection and Repatriation Review Committee is subject to the Federal Advisory Committee Act (FACA, 5 U.S.C. app.) as well as NAGPRA. The responsibilities assigned to the Review Committee under NAGPRA, including making findings of fact and facilitating the resolution of disputes, must be in done in accordance with the purposes established under FACA, including “the function of advisory committees should be advisory only.”

*Comment 8:* Bar any museum that has failed to comply with the requirements of NAGPRA from receiving Federal funds in the future.

*Response 8:* The new draft cannot legally make the requested revision for the following reason: Earlier drafts of the legislation that became NAGPRA included a provision that any museum that fails to comply with the provisions of the inventory section shall not be eligible to receive any Federal funds for the period of non-compliance. In its review of the proposed legislation, the Department of Justice concluded that “the conditioning of federal funding upon consent to an uncompensated taking as we have explained may well be an unconstitutional exercise of the spending power” (see [House Report 101-877, October 15, 1990](#), page 26-28, quote on page 28).