

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

Cultural Resources, Partnerships and Science

National NAGPRA Program



Facilitating Respectful Return



43 CFR part 10

- Full revision of implementing regulations to clarify and simplify but similar to prior rule
- Applies to all museums (broadly defined) and all Federal agencies
- Two different regulatory processes for:
 - Protection on Federal or Tribal lands
 - Repatriation by museums or Federal agencies

DOI Priorities

Clear a path for expeditious DISPOSITION and REPATRIATION

- Clarify and improve the systematic processes
- Step-by-step roadmap with specific timelines
- Align processes with the Act and Congressional intent

- Require deference to Native American traditional knowledge
- Ensure recognition of the rights afforded to lineal descendants, Indian Tribes, and NHOs by the Act
- Incorporate input from Indian Tribes/NHOs to the maximum extent possible

Comments on Proposed Rule

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Major Change from Proposed

In response to comments discussed in detail, we made the following major changes in the final rule:

2. Removed all reference to Indian groups without Federal recognition and prioritized the rights of federally recognized Indian Tribes in disposition and repatriation (§ 10.2 Definitions for this part “Indian Tribe” and §§ 10.7(d) Disposition and 10.10(k) Repatriation).

Major Change from Proposed

This change emphasizes and recognizes that the Act reflects the unique relationship between the Federal government and Indian Tribes and NHOs ([25 U.S.C. 3010](#)).

This change is also based on experience over the last 13 years with repatriation involving Indian groups without Federal recognition.

Final Rule paragraph 525

<https://www.federalregister.gov/d/2023-27040/p-525>

Final Rule

A. General Comments

Indian groups - Comment 3

B. Section 10.1 Introduction.

C. Section 10.2 Definitions for this part.

Indian Tribe - Comment 39

D. Section 10.3 Determining cultural affiliation.

E. Subparts B and C

F. Section 10.4 General.

G. Section 10.5 Discovery.

H. Section 10.6 Excavation.

Unclaimed on Federal or Tribal
lands - Comment 91

I. Section 10.7 Disposition.

J. Subpart C

K. Section 10.8 General.

L. Section 10.9 Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony.

M. Section 10.10 Repatriation of human remains or associated funerary objects.

N. Section 10.11 Civil Penalties.

Transfer or Reinter- Comment 114

O. Section 10.12 Review Committee.

Cultural Affiliation

We reiterate that cultural affiliation as defined in the Act only applies to an NHO or an Indian Tribe, which means a federally recognized Indian Tribe. An Indian group without Federal recognition may have a shared group identity to an earlier group, but such an Indian group cannot have a cultural affiliation as defined under the Act or these regulations. As noted elsewhere, Indian groups without Federal recognition, including State recognized tribes, are not completely excluded from the repatriation processes. As is the current practice, Indian groups without Federal recognition can work with federally recognized Indian Tribes as part of a joint request for repatriation.

Final Rule paragraph 524

<https://www.federalregister.gov/d/2023-27040/p-524>

See also 43 CFR 10.3

Protection on Federal or Tribal lands

We have removed the option to transfer unclaimed human remains or cultural items to Indian groups without Federal recognition, but we have retained the option to transfer to an Indian Tribe or NHO or to reinter. At the discretion of the Federal agency or DHHH and after following the requirements of this paragraph, unclaimed human remains or cultural items removed from Federal or Tribal land may be transferred or reinterred. As this is a discretionary action, these regulations cannot dictate where reinterment occurs.

Final Rule paragraph 422

<https://www.federalregister.gov/d/2023-27040/p-422>

See also 43 CFR 10.7(d)

Repatriation by museums/Federal

We have removed the option to transfer unclaimed human remains or cultural items to Indian groups without Federal recognition. This change is in response to the strong objections we received from federally recognized Indian Tribes and discussed in Comment 3. We have retained the option to transfer to an Indian Tribe or NHO or to reinter. At the discretion of the museum or Federal agency and after following the requirements of this paragraph, human remains and associated funerary objects may be transferred or reinterred.

Final Rule paragraph 525-526

<https://www.federalregister.gov/d/2023-27040/p-525>

See also 43 CFR 10.10(k)

Repatriation by museums/Federal agencies

In Texas, for example, conflicts between federally recognized Indian Tribes and Indian groups without Federal recognition have resulted in a preference for reinterment rather than for transfer. In California, State law provides for more involvement of State recognized groups in repatriation and in many cases Indian Tribes have worked jointly with Indian groups without Federal recognition to complete repatriations and reburials. This paragraph provides for any Indian Tribe or NHO to request and receive physical transfer of human remains and associated funerary objects that have no cultural affiliation. We hope that this will allow for even more collaboration between federally recognized Indian Tribes and Indian groups without Federal recognition to achieve repose for these human remains and associated funerary objects.

Final Rule paragraph 526

<https://www.federalregister.gov/d/2023-27040/p-526>

See also 43 CFR 10.10(k)

Repatriation by museums/Federal agencies

As reinterment is a discretionary action, these regulations cannot dictate where reinterment occurs. The regulations do not require identification of the reinterment location and do require sensitive information be protected from disclosure. After a thorough legal and policy review of this paragraph, we have determined neither the Review Committee nor the Secretary must review agreements between the parties prior to publication of a notice of intended transfer or reinterment.

Final Rule paragraph 527

<https://www.federalregister.gov/d/2023-27040/p-527>

See also 43 CFR 10.10(k)

Repatriation by museums/Federal agencies

43 CFR 10.10(k) Transfer or reinter human remains or associated funerary objects

- For human remains or associated funerary objects with NO lineal descendant and NO Indian Tribe or NHO with cultural affiliation
 - Discretionary for museums and Federal agencies
1. Agree to transfer or reinter
 2. Submit a notice of transfer or reinterment
 3. Transfer or reinter

Repatriation by museums/Federal agencies

- Must first publish a notice of inventory completion with a determination of NO lineal descendant and NO Indian Tribe or NHO with cultural affiliation (Step 5 10.10(e))
- Wait at least 30 days for requests for repatriation from Indian Tribes or NHOs with cultural affiliation and resolve any requests for repatriation before proceeding (Step 6 10.10(f) and Step 7 10.10(g))
- Submit a notice of transfer or reinterment for publication in the Federal Register
- Wait at least 30 days after second notice to transfer or reinter

Repatriation of Human Remains

Consultation

Invitations to consult were sent to the Tule River Indian Tribe of the Tule River Reservation, California and to the following Indian groups without Federal recognition: Amah Mutsun Tribal Band in Galt, CA; Amah Mutsun Tribal Band of Mission San Juan Bautista in Lakeport, CA; Costanoan Ohlone Rumsen-Mutsen Tribe in Watsonville, CA; Costanoan Rumsen Carmel Tribe in Pomona, CA; Esselen Tribe of Monterey County in Carmel Valley, CA; Indian Canyon Mutsun Band of Costanoan in Hollister, CA; Muwekma Ohlone Indian Tribe of the SF Bay Area in Castro Valley, CA; North Valley Yokuts Tribe in Linden, CA; Ohlone/Costanoan-Esselen Nation in Monterey, CA; The Ohlone Indian Tribe in Fremont, CA; KaKoon Ta Ruk Band of Ohlone-Costanoan Indians of the Big Sur Rancheria in Woodland, CA; Rumsen Am:a Tur:ataj Ohlone in Hesperia, CA; and Tamien Nation in San Jose, CA. The Ohlone/Costanoan Esselen Nation responded to the invitation and participated in consultation.

Cultural Affiliation

The following types of information about the cultural affiliation of the human remains in this notice are available: geographical and other relevant information. The information, including the results of consultation, reasonably identified:

1. The Ohlone/Costanoan as an earlier group connected to the human remains;
2. The Tule River Indian Tribe of the Tule River Reservation, California as an Indian Tribe connected to the human remains; and
3. No relationship of shared group identity between the earlier group and the Indian Tribe that can be reasonably traced through time.

Determinations

The Monterey Peninsula College has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No known lineal descendant who can trace ancestry to the human remains in this notice has been identified.
- No Indian Tribe or Native Hawaiian organization with cultural affiliation to the human remains in this notice has been clearly or reasonably identified.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Upon request, repatriation of the human remains described in this notice may occur on or after June 12, 2024. If competing requests for repatriation are received, Monterey Peninsula College must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Monterey Peninsula College is responsible for sending a copy of this notice to any consulting lineal descendant, Indian Tribe, or Native Hawaiian organization.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: May 3, 2024.

Melanie O'Brien,

<https://www.federalregister.gov/documents/2024/05/13/2024-10325/notice-of-inventory-completion-monterey-peninsula-college-monterey-ca>

Repatriation of Cultural Items

Repatriation of other cultural items

Step 1: Compile a summary.	Deadlines for compiling a summary.	30 days after Step 1 Step 2: Initiate consultation.	Step 3: Consult.
<ul style="list-style-type: none"> Estimated number and general description The geographical location (provenience) The acquisition history (provenance) Other information such as hazardous substance treatment 	<ul style="list-style-type: none"> 6 months after acquiring or locating cultural items 6 months after transfer of a holding or collection previously included in a summary 3 years after receiving Federal funds 	<ul style="list-style-type: none"> Any lineal descendant Any Indian Tribe or NHO with potential cultural affiliation Include summary, names of all consulting parties, and proposed timeline and method for consultation 	<ul style="list-style-type: none"> Respond to any consulting party Address identification of lineal descendants, Indian Tribes or NHOs with cultural affiliation, types of objects that might be cultural items, and duty of care Make a record of consultation
43 CFR 10.9(a)(1)	43 CFR 10.9(a)(2)-(3)	43 CFR 10.9(b)	43 CFR 10.9(c)

Step 4: Receive and consider requests.	90 days after Step 4 Step 5: Respond to requests.	30 days after Step 5 Step 6: Submit a Notice.	90 days after Step 6 Step 7: Repatriation
<ul style="list-style-type: none"> Joint request is a single request Criteria for a request: <ul style="list-style-type: none"> Meets definition of a cultural item Requestor is culturally affiliated Information shows no right of possession 	<ul style="list-style-type: none"> Written response to requestor and any consulting party ONE of following: <ul style="list-style-type: none"> Meets the criteria Does not meet criteria - more information Meets criteria -assert right of possession Competing request 	<ul style="list-style-type: none"> Abstract of information in summary Total number and brief description Requestor Contact information Calculated date when repatriation may occur 	<ul style="list-style-type: none"> Send a written repatriation statement to requestor and copy to National NAGPRA (nagpra_info@nps.gov) After statement, consult on and document physical transfer and protect sensitive information
43 CFR 10.9(d)	43 CFR 10.9(e)	43 CFR 10.9(f)	43 CFR 10.9(g)

Accessible Text - Steps 1 through 7

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