



January 31, 2023

National NAGPRA Program
National Park Service
1849 C Street NW, Mail Stop 7360
Washington, DC 20240
Attn: Melanie O'Brien, Manager NAGPRA Rule Comments

Re: Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (RIN: 1024-AE19)

Dear Ms. O'Brien:

The American Cultural Resources Association (ACRA), the trade association for firms that specialize in cultural resource management (CRM), appreciates this opportunity to comment on the Department of the Interior's proposed rule, *Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony*.

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of CRM professionals, including anthropologists, archaeologists, architectural historians, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Indian Tribal laws and regulations, facilitating an open dialog where every stakeholder has a voice.

The Native American Graves Protection and Repatriation Act (NAGPRA) is the federal government's cornerstone statute recognizing that Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony belong to lineal descendants, Indian Tribes and Native Hawaiian organizations, and must be treated with dignity and respect. ACRA appreciates the Department's efforts to develop rules to ensure that NAGPRA is implemented in accordance with Congressional intent and in collaboration with Tribes and Native Hawaiian organizations.

Our comments on the proposed rule will focus specifically on proposed Section 10.5, "Discovery."

2101 L Street NW, Suite 800 • Washington, DC 20037
202.367.9094 • www.acra-crm.org • info@acra-crm.org

ACRA is concerned that the proposed regulations make an automatic presumption that any human remains encountered on Federal or Indian trust lands in a discovery situation are Native American. That is not always the case. The regulations do not provide for any process for making a determination that such remains are or are not Native American, and they do not specify who would make such a determination.

As a result, any situation in which human remains are discovered would automatically trigger an extensive process that could take up to two months to resolve before a resumption of activity. ACRA agrees that, in the event such remains are Native American, there needs to be a clear process to develop a plan of action that involves close coordination and consultation with relevant Indian Tribal communities. However, the rules as proposed would lead to unnecessary delays in cases where human remains are not Native American.

ACRA therefore recommends that the Department develop a process for determination of the heritage of any human remains to commence at the point of discovery, and clarify which parties are responsible for making such a determination.

Potential models for such a process are used by some states, such as that used in Washington State, outlined in their Revised Code of Washington (RCW) at RCW 27.44.055 (<https://app.leg.wa.gov/RCW/default.aspx?cite=27.44.055>). RCW 27.44.055 requires that in the event of the discovery of human remains, the state physical anthropologist “make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian to the extent possible based on the remains.” Other states, such as California, require notification to the local coroner to ensure the remains are not the result of a crime, and are indeed of Native American origin. ACRA would be willing to work with your staff to help craft appropriate language.

We look forward to working with you to ensure that the Department’s rules for NAGPRA reflect the goals and intent of the statute by ensuring the proper and timely treatment of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

Sincerely,



Amanda Stratton
Executive Director