

**Supporting Statement A for
Paperwork Reduction Act Submissions
Disposition of Culturally Unidentifiable Human Remains, 43 CFR 10.11
OMB Control Number 1024-XXXX**

JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that require the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Native American Graves Protection and Repatriation Act (NAGPRA), enacted in 1990, requires museums to compile certain information (summaries, inventories, and notification) regarding Native American human remains and cultural items in their possession or control and provide that information to lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations. The information supports the repatriation process. The NAGPRA Regulations, 43 CFR Part 10, require that where there is insufficient information to make a decision on cultural affiliation (43 CFR §10.9(d)), an inventory of culturally unidentifiable human remains be compiled, subject to a future rule. Information collection requirements in the current regulations are approved under OMB Control No. 1024-0144.

A new OMB number is now requested for the proposed rule for 43 CFR10.11, which pertains to further action on the inventory of Native American human remains for whom cultural affiliation has not been determined. Once the final rule on 43 CFR 10.11 is published, the two information collections will be merged.

This proposed rule pertains to resolving disposition of the Native American human remains on the list of culturally unidentifiable Native American human remains. At the time of proposal of this rule, there were 118,400 Native American human remains on a public access database, established November 2005. This rule establishes a process to allow dispositions to go forward, in certain circumstances, upon a notice in the Federal Register, without individual approval by the Secretary. Absent a rule or approval of the Secretary or a court, museums and Federal agencies are to retain control of the culturally unidentifiable Native American human remains (43 CFR §10.9(e)(6)). The NAGPRA Review Committee is required by statute to recommend a process for the disposition of such human remains. (25 U.S.C. 3006(c)(5)). The human remains under this rule may lack sufficient information to determine cultural affiliation, or be culturally associated with groups that do not have standing within the NAGPRA process, such as Indian groups that are not federally recognized tribes. The proposed rule accounts for the interests of other groups.

- 2. Show how, by whom, and for what purpose the information is to be used. Except for a new collection, show the actual use the agency has made of the information received from the current collection.**

The proposed rule, 43 CFR 10.11, contains information collection requirements to assist parties in consultation and disposition of the culturally unidentifiable Native American human remains in two ways not required in existing regulations. First 10.11(b)(3)(ii) requires the museum or Federal agency official to provide to Indian tribes and Native Hawaiian organizations a list of non-federally recognized Indian groups that may be culturally affiliated to the human remains and associated funerary items. Next, 10.11(b)(4)(iii) and (iv) requires museum or Federal agency officials to request from Indian tribes and Native Hawaiian organizations the temporal and or geographic criteria used to identify the groups of human remains to be included in consultation and those other Indian tribes, Native Hawaiian organizations, or non-federally recognized Indian groups that should be included in the consultation. This information will identify possible other interested parties prior to the disposition of Native American human remains to a claimant. It is the impact of this information collection that is addressed in this supporting statement to the proposed rule.

The information to be collected under 43 CFR 10.11 will allow the museum or Federal agency to determine if there are other possible claimants, who are not federally recognized tribes or Native Hawaiian organizations, but nonetheless have ties to the human remains, prior to a disposition to a claimant within the NAGPRA process. The information will allow the Federal agency or museum to identify the area of interest, by time depth and place, of Indian tribes and Native Hawaiian organizations to human remains listed on the inventory of culturally unidentified human remains, for use in further consultation.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision of adopting that means of collection. Also, describe any consideration of using information technology to reduce the burden.

NAGPRA does not require the completion of additional science to accomplish the process described in the law. Therefore, the information collection is limited to the knowledge held by the museum or Federal agency regarding other groups that may have an interest in the human remains. The National NAGPRA Program website, www.nps.gov/history/nagpra, contains links to aboriginal occupancy maps and treaty maps to assist the parties in identifying other interested groups, or for tribes to use to identify to museums or Federal agencies the areas of their interest, thus reducing the burden on the parties to locate and map this information. The proposed rule (43 CFR 10.11) requires that information be shared in consultation leading to disposition of human remains. Notices of such disposition decisions of museums and Federal agencies are published in the Federal Register and are posted on the National NAGPRA Program website, allowing tribes, museums, and Federal agencies to benefit from the site specific information that may pertain to their information collection activities. There is no requirement that the parties to consultation utilize electronic transmissions for the information exchange, but it is permissible where tribes and museums have the means to do so. It can be anticipated that 90% or more of information exchanges will be accomplished electronically, as this is reflected in NAGPRA process exchanges generally.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2 above.

Readily available information, described above, can be used to comply with the requirements of 43 CFR10.11.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe the methods used to reduce the burden.

Of the 466 non-Federal museums that have culturally unidentified Native American human remains that have not been subject to disposition at the time of the proposed rule, 10% or 47 are believed to be “small entities.” Information collection requirements are the same for all museums within the scope of the rule. A small business may reduce the burden if they provide their submission electronically. In addition, the burden of the collection of information requirements is likely to be reduced for most small museums whose collections generally include few human remains.

6. Describe the consequence to Federal program or policy activities if the collection is or is not conducted less frequently, and any technical or legal obstacles to reducing the burden.

The information collection burden does not arise periodically, rather it arises when there is consultation regarding individuals on the inventory of culturally unidentifiable Native American human remains. The burden is reduced in subsequent consultations between a tribe or Native Hawaiian organization and a museum or Federal agency as the interests of a tribe or Native Hawaiian organization typically are constantly and the information exchange may rely on prior consultation experiences. Other interested groups usually remain constant and prior information collection can be relied upon. There is no technical or legal obstacle to reducing the burden. If the information is not collected, the museum may fail to consult with all likely affiliated tribes and be subject to a possible civil violation of NAGPRA.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**

Not applicable.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

Not applicable.

- **requiring respondents to submit more than an original and two copies of any document;**

Not applicable.

- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

Not applicable.

- **in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

Not applicable.

- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**

Not applicable.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

At the request of an Indian tribe or Native Hawaiian organization, museum officials may take steps considered necessary pursuant to applicable law to ensure that information of a particularly sensitive nature is not made available to the general public. Such a pledge of confidentiality is not required.

- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can prove that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Not applicable.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection before submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to those comments specifically address comments received on cost and hour burdens.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be

recorded, revealed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained.

The proposed rule soliciting comments on the information collection was published in the Federal Register on October 16, 2007 (72 FR 58582), with a 90-day comment period. There were 37 comments received pertaining to costs, although none specifically indicated costs associated with the incremental information collection in this regulation. The costs of consultation by museums and Federal agencies with tribes was thought to be excessive in two respects: 1. A requirement of consultation with tribes in the area of the collection facility, and 2. A requirement of consultation with tribes having a possible cultural relationship to items in collections, which is a larger number of possibly interested tribes than those culturally affiliated to human remains and cultural items. The term "cultural relationship" could not be defined and all references to a process involving tribes with a cultural relationship were struck from this final regulation. The requirement of consultation with tribes in the geographical area of the museum was also removed from this regulation. Although the changes in the final regulation from the proposed rule will reduce the costs of compliance overall, there is no impact to the incremental costs of information collection added by this section as indicated in this statement.

9. Explain any decision to provide any payments or gift to respondents, other than reenumeration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

No elements of confidentiality are involved.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No such information is required to be reported.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Show the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burdens, and explain the reasons for the variance. General estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burdens estimates for each form and aggregate the hour burden in Item 13 of OMB Form 83-1.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

We estimate 20 annual burden hours for this information collection. The total dollar value of these burden hours is \$742. Our estimate of the burden hours for each information collection requirement is shown below. In calculating this estimate, NPS makes the following assumptions based upon data presented in the regulatory analysis that accompanied the proposed rule:

- The proposed rule applies only to 466 non-Federal museums that have culturally unidentifiable human remains in their inventories.
- During CY2008, there were 16 requests for disposition approval from the Secretary of the Interior following consultation between museums or Federal agencies and tribes or Native Hawaiian organizations. Of those 2 were from Federal agencies, 10 from State and local governments and 4 from private museums. NPS is assuming that these figures provide a reasonable annual estimate for the foreseeable future.
- Public reporting burden for this collection of information is expected to average 30 minutes for the museums to notify an Indian tribe or Native Hawaiian organization and request information. We estimate a burden of 48 minutes per response for an Indian tribe or Native Hawaiian organization to provide the requested information. These estimates include time to search existing data sources, gather and maintain the data needed, and prepare a transmission to the other consulting parties. Other burdens in consultation are approved under OMB Control No. 1024-0144.
- Lists of any non-federally recognized Indian groups are generally prepared by a curator or similar museum professional, with limited clerical and museum chief executive involvement.
- In this rule, it is the obligation of tribes or Native Hawaiian organizations making a request for consultation to provide information regarding their area and time depth of interest in a site to the museum or federal agency. For purposes of this estimate of annualized cost, tribes and Native Hawaiian organizations can be considered as State and local governments with clerical and chief executives performing transmission of information and decision-making functions. The counterparts to curators in museums

are tribal cultural department staff or Tribal Historic Preservation Officers (THPOs). Therefore, the weighted average costs of state and local government museums will be assigned to tribes and Native Hawaiian organizations.

State and Local Governments Museums/ Tribes and Native Hawaiian Organizations

Position- State/Local Governments	Hourly pay rate (\$/hr est.)	Hourly rate including benefits (1.5 x hourly rate)*****	Percent of time spent on each collection	Weighted average (\$/hr)
Clerical	\$11*	\$17	20%	\$ 3
Curator	\$27**	\$41	75%	\$31
Chief Executive	\$47***	\$71	5%	\$ 4
Weighted Average (\$/hr)				\$38
* Library Assistant, Clerical (Department of Labor 1998, http://www.bls.gov/oes/current/oes434121.htm). ** The mean hourly wage for a curator at a local government or college ranges from \$25.08 and \$27.68 per hour (Department of Labor 2008, http://www.bls.gov/oes/current/oes254012.htm#nat). The mean curator rate of \$27.00 per hour has been used for this analysis. *** The mean hourly wage for a chief executive of a local or state government agency is \$46.44 (Department of Labor 2008, http://www.bls.gov/oes/current/oes111011.htm#ind). The rate of \$47.00 has been used for this analysis. ***** Employer Costs for Employee Compensation-September 2007, Bureau of Labor Statistics, USDL 07-1883. http://www.bls.gov/news.release/archives/ecec_12112007.pdf				

Based on these assumptions, the estimate of burden hours and costs for State or local governments is:

- 1) Total burden hours to notify tribes and request information (10 museums x 30 minutes): 5 hours.
- 2) Total annual cost to notify tribes and request information: \$38 x 5 hours: \$190.
- 3) Total estimate of burden hours for tribes or Native Hawaiian organizations to respond to requests for information: 16 responses (14 to non-Federal museums and 2 to Federal museums) x 48 minutes: 13 hours.
- 4) Total annual cost to provide information: \$38 X 13 hours: \$494.

Private Museums

Position-Private Institutions	Hourly pay rate (\$/hr est.)	Hourly rate including benefits (1.4 x hourly rate)****	Percent of time spent on each collection	Weighted average (\$/hr)
Clerical	\$11*	\$15	20%	\$ 3
Curator-Private	\$24**	\$31	75%	\$23
Chief Executive	\$47***	\$66	5%	\$ 3
Weighted Average (\$/hr)				\$29
* Library Assistant, Clerical (Department of Labor 1998, http://www.bls.gov/oes/current/oes434121.htm). ** The mean hourly wage for a non-governmental curator is \$23.17 (Department of Labor 2008, http://www.bls.gov/oes/current/oes254012.htm#nat). The rate of \$24.00 per hour has been used for this analysis. *** There is no separate rate for chief executives of non-profit organizations like museums. The state/local government chief executive rate of \$47.00 has been used for this analysis (Department of Labor 2008, http://www.bls.gov/oes/current/oes111011.htm#ind). **** Employer Costs for Employee Compensation-September 2007, Bureau of Labor Statistics, USDL 07-1883. http://www.bls.gov/news.release/archives/ecec_12112007.pdf				

Based on these assumptions, the estimate of burden hours for private museums is:

- 1) Total burden hours to notify tribes and Hawaiian organizations and request information (4 museums x 30 minutes): 2 hours.
- 2) Total annual, recurring cost: \$29 x 2 hours: \$58.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

There are no non-hour cost burdens.

14. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.

We estimate an annual cost to the Federal Government of \$58. Although the Federal agency does not receive or maintain information collection items between tribes or Native Hawaiian organizations and museums, each Federal agency with a collection of culturally unidentifiable Native American human remains has an obligation in NAGPRA to consult with tribes or Native Hawaiian organizations to resolve control of these collections. The information collection within this proposed rule is not submitted to the National NAGPRA Program.

Federal agencies were involved in two consultations in the year utilized for this calculation. There are no additional costs to the National NAGPRA Program as the information collection and exchange is between consulting parties only. A weighted average cost per hour of \$58 for the 30 minutes involved in each information collection and mailing of information, is calculated based on the following assumptions.

Position	Grade	Hourly pay rate (\$/hr est.)*	Hourly rate including benefits (1.5 x hourly rate)**	Percent of time spent on each collection	Weighted average (\$hr)
Clerical (e.g. data processing)	GS-7, step 8	\$24	\$36	20%	\$ 7
Skilled, craft and technical	GS-13, step 1	\$42	\$63	75%	\$47
Management and professional	GS-15, step 1	\$58	\$87	5%	\$ 4
Weighted Average (\$/hr)					\$58
* Salary Table 2009-DCB. http://www.opm.gov/oca/09tables/pdf/salhr.pdf					
** Employer Costs for Employee Compensation-September 2007, Bureau of Labor Statistics, USDL 07-1883. http://www.bls.gov/news.release/archives/ecec_12112007.pdf					

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

We are reporting as a program change 30 responses and 20 annual burden hours associated with the proposed regulations at 43 CFR 10.11.

16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Department of the Interior is not seeking approval to not display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.

There are no exceptions to the certification statement.