

INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 59 IAM 8	SUBJECT Protection of Historical and Archeological Resources	RELEASE NUMBER # 12-22
FOR FURTHER INFORMATION Division of Environmental and Cultural Resources Management		DATE OCT 16 2012

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter establishes the specific requirements and responsibilities of Indian Affairs (IA) headquarters and field staff for compliance with those laws implementing regulations and Departmental policies requiring IA to account for the effect of its undertakings on historic resources; to protect and preserve historic resources which it owns or controls; and to enforce prohibitions against excavating, removing, or damaging archeological resources on Indian trust lands.



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FILING INSTRUCTIONS:

Remove: None

Insert: 59 IAM 8 (New)

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- 1.1 Purpose.** This chapter provides information on the specific requirements and responsibilities of Indian Affairs (IA) headquarters and field staff for compliance with statutes and regulations related to the protection of historic and archeological resources.
- 1.2 Scope.** These policies and responsibilities apply to all IA Headquarters, Program, and field staff, and the operations and activities under the authority of the Assistant Secretary - Indian Affairs. They address compliance with those laws implementing regulations and Departmental policies requiring IA to account for the effect of its undertakings on historic resources; to protect and preserve historic resources which it owns or controls; and to enforce prohibitions against excavating, removing, or damaging archeological resources on Indian trust lands.
- 1.3 Policy.** It is the policy of IA to ensure that, prior to approving or expending funds on a proposed Federal undertaking, IA: takes into account the effect the undertaking may have on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places; manages the historic resources it owns; protects the archaeological resources on Trust lands; and enforces the prohibition against excavating, removing, or damaging archeological resources on Indian trust lands without a permit issued by IA.
- 1.4 Authority.** The following statutes, regulations, and Executive Orders impose requirements on IA for the protection of historic and archeological resources.
- A. Statutes.**
1. 16 U.S.C. 470 et Seq., National Historic Preservation Act of 1966 (NHPA), as amended
 2. 16 U.S.C. 470 aa-mm, Archeological Resources Protection Act of 1979 (ARPA)
 3. 16 U.S.C. 469-469c, Archeological and Historic Preservation Act of 1974 (AHPA), as amended
 4. 16 U.S.C. 431-433, Antiquities Act of 1906
 5. 25 USC 3001-13 Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)
 6. 42 U.S.C. 1996, American Indian Religious Freedom Act of 1978
- B. Regulations.**
1. 25 CFR Part 262, Protection of Archeological Resources
 2. 36 CFR Part 60, National Register of Historic Places
 3. 43CFR Part 10, Native American Graves Protection and Repatriation
 4. 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places
 5. 36 CFR Part 68, Secretary of the Interior's Standards for Historic Preservation Projects
 6. 36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections

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7. 36 CFR Part 800, Protection of Historic Properties
8. 43 CFR Part 3, Preservation of American Antiquities
9. 43 CFR Part 7, Protection of Archeological Resources

C. Executive Orders.

1. Executive Order 13007, Indian Sacred Sites, May 24, 1996
2. Executive Order 13175, Consultation and Coordination with Indian Tribal governments, November 6, 2000
3. Executive Order 13287, Preserve America, March 3, 2003

D. Guidance

1. 205 DM 3, Archaeological and Paleontological Permits
2. 426 DM 1, Policies and Procedures for Protection of Properties in the National Register of Historic Places
3. 512 DM 3, Departmental Responsibilities for Protecting / Accommodating Access to Indian Sacred Sites
4. 519 DM 1, Preservation of Historic Properties
5. 519 DM 2, Preservation of American Antiquities and Treatment and Disposition of Native American Cultural Items
6. Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, 48 FR 44718 - 44742, September 29, 1983
7. Guidelines for Federal Agency Responsibilities, Under Section 110 of the National Historic Preservation Act, 53 FR 4727 - 4746, February 17, 1988
8. The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act, 63 FR 20496 - 20508, April 24, 1998

1.5 Responsibilities.

A. **Assistant Secretary - Indian Affairs** discharges the duties of the Secretary with the authority and direct responsibility to protect and preserve Indian trust assets; and provides program and budget support to carry out Departmental requirements of 519 DM 1, 519 DM 2 and this Part.

B. **Deputy Assistant Secretary – Management** is responsible for ensuring appropriate organizational arrangements and procedures, with adequate staffing and resources, to implement compliance with Federal and Departmental regulations, requirements, policies, and procedures.

C. **Director, Office of Facilities, Environmental and Cultural Resources** serves as the Senior Policy Official for the IA historic preservation program; manages all activities related to IA-owned buildings; ensures undertakings by the Office of Facilities

Management and Construction comply with Section 106 of NHPA; and ensures IA-owned historic buildings are maintained in compliance Sec 110 of NHPA and Departmental guidance.

D. Chief, Division of Environmental and Cultural Resources Management is responsible for the oversight of the Cultural Resources Program; ensures the competency of the Division of Environmental and Cultural Resources Management staff with respect to the management of historic and archeological resources and appoints a Principal Archeologist and Federal Preservation Officer.

E. Principal Archeologist / Federal Preservation Officer coordinates IA analysis and review of activities for the protection of historic and archeological resources; develops IA historical and archeological resources policy, guidance and procedures; oversees IA performance of historical and archeological resources activities; submits IA annual report for inclusion in the Secretary's Report to Congress on the Federal Archeology Program; conducts internal control reviews of IA historic preservation program; and coordinates historic preservation meetings and training for IA staff.

F. Director, Bureau of Indian Affairs (BIA) oversees BIA programs and offices to ensure BIA undertakings are in compliance with historic preservation and archeological protection statutes.

G. Regional Directors ensure BIA complies with Section 106 of NHPA by establishing BIA undertakings and assessing their potential to cause effects; rendering decisions on the eligibility of properties to the National Register of Historic Places (National Register); consulting with potentially affected tribes; rendering opinions on the effects undertakings will have on historic properties; and signing agreements to mitigate adverse effects of BIA undertakings on historic properties. Regional Directors ensure BIA complies with Section 110 of NHPA by identifying historic buildings listed in the IA property inventory; nominating them to the National Register; and ensuring their preservation and appropriate use.

Regional Directors issue and administer permits under ARPA and under the Antiquities Act of 1906 for the excavation or removal of archeological resources from Indian trust lands and consult with potentially affected tribes on ARPA permits that might affect sites having religious or cultural importance. Regional Directors assess civil penalties for violations under ARPA; certify payment of rewards to persons providing information leading to a criminal conviction or a civil violation under ARPA; and administer the transfer of penalties collected and items forfeited where violations of ARPA occur on Indian trust lands.

H. Regional Archeologists review projects and oversee BIA compliance with Section 106 of NHPA by conducting field reviews and preparing documents; reviewing and assessing inventory and evaluation reports conducted by others; documenting the eligibility of properties for the National Register; assessing the effect of BIA undertakings on historic

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properties; reviewing and drafting appropriate mitigation measures; and responding to unexpected discoveries made while a BIA undertaking is underway.

Regional Archeologists evaluate permit applications and manage permits issued under ARPA and under the Antiquities Act of 1906 for the excavation or removal of archeological resources from Indian trust lands; assess damages and prepare damage assessments; and serve as expert government witness in criminal or civil cases involving ARPA/Antiquities Act permit violations on Indian trust lands.

I. Agency Superintendents and Program Representatives carry out at the Agency/Program level, those historic and archeological resources responsibilities delegated by the Regional Director. Such delegation will only be made where the Agency or Program has appropriate expertise on staff or otherwise readily available.

J. Agency/Program Archeologists perform those responsibilities of a Regional Archeologist that have been delegated to them for the protection of historic and archeological resources in order to enable the Agency Superintendent or Program Director to meet the responsibilities delegated to them under this Part.