

TABLE 9—CLINICAL QUALITY MEASURES PROPOSED FOR ELIGIBLE HOSPITALS AND CRITICAL ACCESS HOSPITALS BEGINNING WITH FY 2014—Continued

NQF No.	Measure steward and contact information
0136	CMS/OFMQ Qualitynet.org and click on “Questions & Answers”.
0284	CMS/OFMQ Qualitynet.org and click on “Questions & Answers”.
0218	CMS/OFMQ Qualitynet.org and click on “Questions & Answers”.
0496	CMS/OFMQ Qualitynet.org and click on “Questions & Answers”.
1653	CMS/OFMQ Qualitynet.org and click on “Questions & Answers”.
1659	CMS/OFMQ Qualitynet.org and click on “Questions & Answers”.

17. On page 13766, second column, last paragraph, last line, the reference “§ 495.10” is corrected to read “§ 495.8”.

18. On page 13769, second column—
a. First full paragraph, line 1, the phrase “Except as provided” is corrected to read “• Except as provided”.

b. Second full paragraph, line 1, the phrase “We would create” is corrected to read “• We would create”.

19. On page 13803, third column, after the first partial paragraph, the section heading, “4. Medicare Incentive Program Costs” is corrected to read “3. Medicare Incentive Program Costs”.

20. On page 13808, top half of the page following Table 28, second column, after the first partial paragraph, the section heading, “5. Medicaid Incentive Program Costs” is corrected to read “4. Medicaid Incentive Program Costs”.

21. On page 13810, bottom half of the page, after Table 34, first column, before the first paragraph, the section heading “6. Benefits for All EPs and All Eligible Hospitals” is corrected to read “5. Benefits for All EPs and All Eligible Hospitals”.

22. On page 13811—
a. First column, after the first partial paragraph, the section heading, “7. Benefits to Society” is corrected to read “6. Benefits to Society”.

b. Second column, after first partial paragraph, the section heading, “8. General Considerations” is corrected to read “7. General Considerations”.

c. Third column, before the last full paragraph, the section heading, “9. Summary” is corrected to read “8. Summary”.

23. On page 13812, bottom half of the page, after Table 36, first column, before the first full paragraph, the section heading, “10. Explanation of Benefits and Savings Calculations” is corrected to read “9. Explanation of Benefits and Savings Calculations”.

B. Correction of Errors in the Regulations Text

1. On page 13816, second column, seventh full paragraph

(§ 495.6(d)(8)(ii)(C)), line 2, the reference “paragraph (d)(8)(ii)(B)” is corrected to read “paragraph (d)(8)(ii)(B)(1)”.

2. On page 13817,
a. First column,
(1) Fourth full paragraph (§ 495.6(f)(1)(ii)(B)), line 1, the phrase “Beginning 2013, subject to” is corrected to read “For 2013, subject to”.

(2) Sixth full paragraph (§ 495.6(f)(7)(i)(E)(2)), line 1, “Beginning 2013, plot and display” is corrected to read “For 2013, plot and display”.

(3) Seventh full paragraph (§ 495.6(f)(7)(ii)(B)), the paragraph beginning with the phrase “For 2013, subject to paragraph (c)” and ending with the phrase “recorded as structured data.” is corrected to read as follows:

“(B) For 2013—(1) Subject to paragraph (c) of this section, more than 50 percent of all unique patients admitted to the eligible hospital’s or CAH’s inpatient or emergency department (POS 21 or 23) during the EHR reporting period have blood pressure (for patients age 3 and over only) and height/length and weight (for all ages) recorded as structured data; or

(2) The measure specified in paragraph (f)(7)(ii)(A) of this section.”

(4) Eighth full paragraph (§ 495.6(f)(7)(ii)(C)), line 2, the phrase “in paragraph (f)(7)(ii)(B)” is corrected to read “in paragraph (f)(7)(ii)(B)(1)”.

b. Third column, sixth full paragraph (§ 495.6(h)(2)(ii)(B)), line 14, the phrase “must meet the remaining the” is corrected to read “must meet the remaining”.

3. On page 13818, second column, last paragraph (§ 495.6(j)(6)(ii)(B)), the phrase “has enabled the” is corrected to read “has enabled and implemented the”.

4. On page 13820, second column, ninth paragraph (§ 495.6(l)(5)(ii)(B)), the phrase “has enabled the” is corrected to read “has enabled and implemented the”.

5. On page 13821, third column—
a. First full paragraph (§ 495.6(l)(16)(ii)), lines 3 through 6, the sentence “(ii) Measure. eMAR is implemented and in use for the entire

EHR reporting period in at least one ward/unit of the hospital.” is corrected to read “(ii) Measure. More than 10 percent of medication orders created by authorized providers of the eligible hospital’s or CAH’s inpatient or emergency department (POS 21 or 23) during the EHR reporting period are tracked using eMAR.”.

b. Fifth full paragraph (§ 495.6(m)(1)(iii)), last line, the phrase “the EHR” is corrected to read “the EHR reporting period.”

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 12, 2012.

Jennifer M. Cannistra,
Executive Secretary to the Department.
[FR Doc. 2012–9331 Filed 4–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

[NPS–WASO–NAGPRA–8611; 2200–1100–665]

RIN 1024–AD99

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection and Repatriation Act, including the issuance of appropriate regulations implementing and interpreting its provisions. Minor inaccuracies or inconsistencies in the regulations have been identified by or brought to the attention of the Department. These proposed amendments revise the rules implementing the Native American

Graves Protection and Repatriation Act for purposes of factual accuracy and consistency.

DATES: Comments must be received by June 18, 2012.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024-AD99, by any of the following methods:

- *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand deliver to:* Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., (2253), Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., 8th floor, Washington, DC 20005, telephone (202) 354-1479, facsimile (202) 371-5197.

SUPPLEMENTARY INFORMATION:

Authority

The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection and Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001 *et seq.*), including the issuance of appropriate regulations implementing and interpreting its provisions.

Background

NAGPRA addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Under Section 13 of NAGPRA (25 U.S.C. 3011), the Department of the Interior (Department) published the initial rules to implement NAGPRA (60 FR 62158, December 4, 1995). This regulation is codified at 43 CFR Part 10. Subsequently, the Department published amendments to the regulation concerning:

- Civil penalties (68 FR 16354, April 3, 2003);
- Future applicability (72 FR 13189, March 21, 2007); and
- Disposition of culturally unidentifiable human remains (75 FR 12378, March 15, 2010).

Since the promulgation of the December 4, 1995, rule, minor inaccuracies or inconsistencies in 43 CFR Part 10 have been identified by or brought to the attention of the Department. These proposed amendments revise the rules for purposes of factual accuracy and consistency throughout 43 CFR part 10.

Section-by-Section Analysis

§ 10.2 Definitions

Paragraph (c)(1). The proposed rule would amend the definition of *Secretary* to reflect Departmental delegations of the Secretary's authority under NAGPRA. NAGPRA assigns implementation responsibilities to the Secretary of the Interior. Secretarial Order 3261 (May 23, 2005) delegated some of these implementation responsibilities to other officials in the Department and the National Park Service, and the Department amended part 10 to reflect provisions of this Order (70 FR 57177, September 30, 2005).

Under the Secretarial Order and amended rules, the Assistant Secretary for Fish and Wildlife and Parks (Assistant Secretary) is responsible for:

- Issuing regulations to carry out NAGPRA after consultation with the Assistant Secretary for Indian Affairs;
- Granting extensions of inventory deadlines and awarding implementation grants to Indian tribes, Native Hawaiian organizations, and museums; and
- In consultation with the Solicitor's Office, investigating and assessing civil penalties against museums that fail to comply with NAGPRA.

The Manager of the National NAGPRA Program (Manager), reporting to the National Park Service Director through the Associate Director for Cultural Resources, is responsible for managing the operations of the National NAGPRA Program, and provides staff support to the Assistant Secretary. The Manager's duties include:

- Preparing rules for issuance by the Assistant Secretary, reviewing and recommending disposition of requests for extensions of inventory deadlines, and publishing notices in the **Federal Register**;
- Serving as the Designated Federal Official for the Native American Graves Protection and Repatriation Review Committee;
- Providing technical assistance to the Department of Justice in implementing the trafficking provisions of NAGPRA, in consultation with the Office of the Solicitor;
- Developing and issuing guidelines, technical information, and training, and administering grants to assist Indian tribes, Native Hawaiian organizations, and museums in meeting their NAGPRA obligations; and
- Supporting the civil penalty responsibilities of the Assistant Secretary.

Paragraph (c)(3). The proposed rule would amend the definition of *Manager*, *National NAGPRA Program* to include

the Web site listing the Manager's correct mailing address.

§ 10.4 Inadvertent Discoveries

Paragraph (d)(1)(iii). This paragraph applies to inadvertent discoveries of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal land after November 16, 1990. It would add known lineal descendants to the list of parties to be notified of an inadvertent discovery.

The current rule requires the responsible Federal agency official to notify various parties to whom disposition of the human remains or cultural items might be determined but does not include known lineal descendants. While the current rule omits known lineal descendants from this requirement, it requires the responsible Federal agency official to initiate consultation with the known lineal descendants (43 CFR 10.5(a)).

In order to initiate consultation with known lineal descendants, the Federal agency official, in fact, must notify them of the inadvertent discovery. The proposed rule would correct this oversight by adding known lineal descendants to the list of parties to be notified of an inadvertent discovery.

§ 10.5 Consultation

Paragraph (b)(1)(i). For a sacred object removed from Federal or tribal land after November 16, 1990, NAGPRA excludes lineal descendants from the list of possible owners. This same exclusion applies to an object of cultural patrimony (25 U.S.C. 3002(a)). The current regulations, by contrast, include lineal descendants on the list of possible owners of these objects. (See 43 CFR 10.5(b)(1)(i)). The proposed rule would correct that list to be consistent with NAGPRA.

§ 10.6 Custody

Paragraph (a)(2). Section 3 of NAGPRA addresses ownership or control of Native American cultural items removed from Federal or tribal land after November 16, 1990 (25 U.S.C. 3002(a)). With respect to human remains and associated funerary objects, NAGPRA provides that ownership or control in these cases, in the first instance, is with the lineal descendants (25 U.S.C. 3002(a)). Because ownership or control in these situations does not depend on assertion of a claim, the proposed rule would remove the reference to claims by lineal descendants.

Paragraph (a)(2)(iii)(B). Section 3(a)(2)(C) of NAGPRA addresses ownership or control of human remains

or cultural items whose cultural affiliation cannot be ascertained (25 U.S.C. 3002(a)(2)(C)). It pertains to remains or cultural items removed after November 16, 1990, from Federal land recognized as the aboriginal land of an Indian tribe. NAGPRA states that an Indian tribe whose cultural relationship with the human remains or other cultural items is stronger than that of the Indian tribe recognized as being the aboriginal occupant of the land must be included in the list of potential parties to the disposition of ownership or control of those human remains or cultural items (25 U.S.C. 3002(a)(2)(C)).

The current regulations inadvertently state that the cultural relationship would only be to the objects. The proposed rule would correct this omission by adding a reference to the cultural relationship with the human remains.

§ 10.8 Summaries

Paragraph (e). The current regulations refer to “individuals”, rather than “lineal descendants”, in regard to sacred objects in the collection or holdings of a museum or Federal agency. NAGPRA gives the direct lineal descendant of an individual who owned the sacred object standing to request its repatriation, as well as a superior claim against one from an Indian tribe or Native Hawaiian organization (25 U.S.C. 3005(a)(5)). The reference to “individuals” is ambiguous, and the proposed rule replaces the term “individuals” with the statutory term “lineal descendants.”

§ 10.10 Repatriation

Paragraph (a)(1)(ii)(B). The proposed rule would remove the incorrect reference to Section 7(c) of NAGPRA and replace it with a correct reference to Section 7(a)(4) (25 U.S.C. 3005(a)(4)). The reference pertains to establishment of cultural affiliation of unassociated funerary objects other than through the summary, consultation, and notification procedures in 43 CFR 10.14.

Paragraph (b)(1)(ii)(B). The proposed rule would remove the incorrect statutory reference to Section 7(c) of NAGPRA and replace it with a correct reference to Section 7(a)(4) (25 U.S.C. 3005(a)(4)). The reference pertains to establishment of cultural affiliation of Native American human remains and associated funerary objects other than through the procedures in 43 CFR 10.9 and 10.14.

Paragraph (c)(2). The proposed rule would clarify that the exception to the requirements for repatriation applies where:

- There are multiple competing requests for repatriation; and
- The museum or Federal agency, after complying with the regulations, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant.

Paragraph (g). Section 10.11 governs disposition of culturally unidentifiable human remains to tribes and Native Hawaiian organizations from whose tribal or aboriginal land the remains were excavated. The proposed rule would clarify that the Review Committee still is responsible for recommending a process for disposition of culturally unidentifiable human remains not now covered by 43 CFR 10.11.

§ 10.11 Disposition of Culturally Unidentifiable Human Remains

Paragraph (b)(2)(ii). The proposed rule would clarify that, for purposes of Section 10.11, aboriginal occupation may be recognized by a treaty, Act of Congress, or Executive Order, in addition to a final judgment of the Indian Claims Commission or the United States Court of Claims. Section 10.11 implements Section 8(c)(5) of NAGPRA (25 U.S.C. 3006(c)(5)) with respect to disposition of culturally unidentifiable human remains to tribes and Native Hawaiian organizations from whose tribal or aboriginal land the remains were excavated.

Section 10.11 contrasts with the regulations (43 CFR 10.6) implementing Section 3(a) of NAGPRA, where recognition of aboriginal land is only by a final judgment of the Indian Claims Commission or the United States Court of Claims (25 U.S.C. 3002(a)(2)(C)).

§ 10.12 Civil Penalties

Paragraph (c). The proposed rule would clarify that written allegations of a museum’s failure to comply with the requirements of NAGPRA are to be sent to the NAGPRA Civil Penalties Coordinator, in the National NAGPRA Program. NAGPRA assigns implementation responsibilities to the Secretary, who has delegated some of these implementation responsibilities to other officials, as reflected in this part. (See Secretarial Order 3261 of May 23, 2005.)

Under the Secretarial Order and this part, the Assistant Secretary, in consultation with the Office of the Solicitor, executes the provisions for civil penalties against museums that fail to comply with NAGPRA, investigates allegations of failure to comply with NAGPRA requirements, and develops and assesses civil penalties (Secretarial

Order 3261, Section 4a). The Secretarial Order also directs the Manager, National NAGPRA Program to provide staff, who reports directly to the Assistant Secretary in the performance of these duties, to support the civil penalty responsibilities of the Assistant Secretary. The proposed rule would clarify that written allegations of a museum’s failure to comply with the requirements of NAGPRA are to be sent to the NAGPRA Civil Penalties Coordinator, in the National NAGPRA Program.

Paragraph (i)(3). The Manager, National NAGPRA Program provides staff to support the civil penalty responsibilities of the Assistant Secretary (Secretarial Order 3261, Section 4c, May 23, 2005). The proposed rule would clarify that a petition for relief should therefore be sent to the NAGPRA Civil Penalties Coordinator in the National NAGPRA Program.

Paragraph (j)(1). The address for filing a written, dated request for a hearing on a notice of failure to comply or notice of assessment has changed since the rule was promulgated. The proposed rule would correct the mailing address. The proposed rule would also move the final sentence of this paragraph to paragraph (j)(6).

Paragraph (j)(6)(i). The proposed rule would move the final sentence of paragraph (j)(1) to this location, which is more logical. The sentence reads, “Hearings must take place following the procedures in 43 CFR part 4, Subparts A and B.”

Paragraph (k)(1). The address for filing a “Notice of Appeal” has changed since the rule was promulgated. The proposed rule would correct the mailing address.

Paragraph (k)(3). The address for obtaining copies of decisions in civil penalty proceedings under NAGPRA has changed since the rule was promulgated. The proposed rule would correct the mailing address.

§ 10.13 Future Applicability

Paragraph (c)(2). Section 104 of the Federally Recognized Indian Tribe List Act of 1994, codified at 25 U.S.C. 479a–1 (2006), requires publication of the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. The proposed rule would correct the citation of that legal authority.

§ 10.15 Limitations and Remedies

Paragraph (c)(1). The proposed rule would clarify, consistent with the Administrative Procedure Act (5 U.S.C. 704), that administrative remedies relate

only to Federal agencies and not to museums.

Paragraph (c)(1)(ii). The proposed rule would clarify, consistent with NAGPRA, that Federal collections, rather than Federal lands, are subject to 43 CFR part 10, Subpart C.

Appendix A to Part 10—Sample Summary and Appendix B to Part 10—Sample Notice of Inventory Completion

Since the publication of the initial rules, new templates have been developed that address specific actions that museums and Federal agencies must take to comply with NAGPRA and satisfy the requirements of due process. These templates are published by the Manager, National NAGPRA Program, at www.nps.gov/nagpra, and include:

- Notice of Inventory Completion Template for culturally affiliated inventories of Native American human remains and associated funerary objects and disposition with approval from the Secretary in situations not covered by 43 CFR 10.11;
- Notice of Inventory Completion Template for culturally unidentifiable inventories of Native American human remains from tribal or aboriginal land to tribal/aboriginal land Indian tribes, 43 CFR 10.11(c)(1);
- Notice of Inventory Completion Template for culturally unidentifiable inventories of Native American human remains from tribal or aboriginal land to Indian tribes that are not the tribal or aboriginal land Indian tribe, 43 CFR 10.11(c)(2)(i);
- Notice of Inventory Completion Template for culturally unidentifiable inventories of Native American human remains from tribal or aboriginal land with the recommendation of the Secretary to disposition to Indian groups that are non-federally recognized or for reinterment under state law, 43 CFR 10.11(c)(2)(ii);
- Notice of Intent to Repatriate Template for culturally affiliated unassociated funerary objects, sacred objects, and/or objects of cultural patrimony;
- Correction Template (used to correct a previously published notice); and
- Notice of Intended Disposition Template for Native American human remains and cultural items removed from Federal or tribal land after November 16, 1990.

As museums, Federal agencies, Indian tribes, and Native Hawaiian organizations can easily access these and other templates electronically, and as the current templates likely will be supplemented by others in the future,

the proposed rule would delete these appendices from this part.

Compliance With Other Laws and Executive Orders; Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or

unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

In accordance with the Presidential Memorandum entitled "Government to Government Relations with Native American Tribal Governments" (59 FR 22951, April 29, 1994); Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000); the President's Memorandum for the Heads of Executive Departments and Agencies on the Implementation of Executive Order 13175 (Nov. 5, 2009); and the Secretary of the Interior's Order No. 3317—Department of the Interior Policy on Consultation With Indian Tribes (Dec. 1, 2011); we have evaluated this rule and determined that it has no substantial direct effects on federally recognized Indian tribes because it amends the regulations to correct only minor inaccuracies or inconsistencies in 43 CFR part 10.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act is not required.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, or the sections where you feel lists or tables would be useful.

Drafting Information

This proposed rule was prepared by staff of the National NAGPRA Program and of the Office of the Solicitor, Division of Parks and Wildlife and Division of Indian Affairs.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to

afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—claims, Indians—lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 43 CFR part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

1. The authority for part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

2. Amend § 10.2 by revising paragraphs (c)(1) and (3) to read as follows:

§ 10.2 Definitions.

* * * * *

(c) * * *

(1) *Secretary* means the Secretary of the Interior or a designee.

* * * * *

(3) *Manager, National NAGPRA Program* means the official of the Department of the Interior designated by the Secretary as responsible for administration of matters relating to this part. Communications to the Manager, National NAGPRA Program should be sent to the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>.

* * * * *

2. Amend § 10.4 by revising paragraph (d)(1)(iii) to read as follows:

§ 10.4 Inadvertent discoveries.

* * * * *

(d) * * *

(1) * * *

(iii) Notify any known lineal descendants, Indian tribes, or Native Hawaiian organizations likely to be culturally affiliated with the remains or objects, the Indian tribe or Native Hawaiian organization that aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization known to have a cultural relationship to the remains or objects. This notification must be by telephone with written confirmation and must include information about the kinds of remains or objects, their condition, and the circumstances of their discovery;

* * * * *

3. Amend § 10.5 by revising paragraph (b)(1)(i) to read as follows:

§ 10.5 Consultation.

* * * * *

(b) * * *

(1) * * *

(i) Any known lineal descendants of the individual whose remains and associated funerary objects have been or are likely to be excavated intentionally or discovered inadvertently; and

* * * * *

4. Amend § 10.6 by revising paragraphs (a)(2) introductory text and (a)(2)(iii)(B) to read as follows:

§ 10.6 Custody.

(a) * * *

(2) When a lineal descendant cannot be ascertained, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

(iii) * * *

(B) If a preponderance of the evidence shows that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the remains or objects, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the remains or objects.

* * * * *

5. Amend § 10.8 by revising paragraph (e) introductory text to read as follows:

§ 10.8 Summaries.

* * * * *

(e) *Using summaries to determine affiliation.* Museum and Federal agency officials must document in the summary the following information and must use this information in determining the lineal descendants, Indian tribes, and Native Hawaiian organizations with which objects are affiliated:

* * * * *

6. Amend § 10.10 by revising paragraphs (a)(1)(ii)(B), (b)(1)(ii)(B), (c)(2), and (g) to read as follows:

§ 10.10 Repatriation.

- (a) * * *
 (1) * * *
 (ii) * * *

(B) By presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

* * * * *

- (b) * * *
 (1) * * *
 (ii) * * *

(B) Has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization under section 7(a)(4) of the Act; and

* * * * *

- (c) * * *

(2) Circumstances where there are multiple requests for repatriation of remains or objects and the museum or Federal agency, after complying with this part, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. In these circumstances, the museum or Federal agency may retain the remains or objects until the competing requesting parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction; or

* * * * *

(g) *Culturally unidentifiable human remains.* If the cultural affiliation of human remains cannot be established under this part, the human remains must be considered culturally unidentifiable.

(1) Museum and Federal agency officials must report the inventory information regarding these human remains in their holdings to the Manager, National NAGPRA Program, who will send this information to the Review Committee.

(2) The Review Committee will:

(i) Compile an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency; and

(ii) Recommend to the Secretary specific actions for disposition of any human remains not already addressed in § 10.11.

7. Amend § 10.11 by revising paragraph (b)(2)(ii) to read as follows:

§ 10.11 Disposition of culturally unidentifiable human remains.

* * * * *

- (b) * * *
 (2) * * *

(ii) From whose aboriginal lands the human remains and associated funerary

objects were removed. Aboriginal occupation for purposes of this section may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.

* * * * *

8. Amend § 10.12 by:

A. Revising paragraph (c).

B. Revising paragraph (i)(3).

C. Adding introductory text to paragraph (j).

D. Revising paragraphs (j)(1) and (j)(6)(i).

E. Revising paragraphs (k)(1) and (k)(3).

The revisions to read as follows:

§ 10.12 Civil penalties.

* * * * *

(c) *How to notify the Secretary of a failure to comply.* Any person may file an allegation of failure to comply. Allegations are to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>. The allegation must be in writing, and should:

(1) Identify each provision of the Act with which there has been a failure to comply by a museum;

(2) Include facts supporting the allegation;

(3) Include evidence that the museum has possession or control of Native American cultural items; and

(4) Include evidence that the museum receives Federal funds.

* * * * *

(i) * * *

(3) *File a petition for relief.* You may file a petition for relief within 45 calendar days of receiving the notice of assessment. A petition for relief is to be sent to the NAGPRA Civil Penalties Coordinator, National NAGPRA Program, at the mailing address listed on the National NAGPRA Contact Information Web site, <http://www.nps.gov/nagpra/CONTACTS/INDEX.HTM>. Your petition may ask the Secretary not to assess a penalty or to reduce the penalty amount. Your petition must:

(i) Be in writing and signed by an official authorized to sign such documents; and

(ii) Fully explain the legal or factual basis for the requested relief.

* * * * *

(j) *How you request a hearing.* You may file a written, dated request for a hearing on a notice of failure to comply

or notice of assessment with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 405 South Main Street, Suite 400, Salt Lake City, UT 84111. You must also serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice.

(1) Your request for a hearing must:

(i) Include a copy of the notice of failure to comply or the notice of assessment;

(ii) State the relief sought;

(iii) State the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment; and

(iv) State your preferred place and date for a hearing.

* * * * *

(6) * * *

(i) Hearings must take place following the procedures in 43 CFR part 4, subparts A and B. The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554–557.

* * * * *

(k) * * *

(1) Either you or the Secretary may appeal the decision of an administrative law judge by filing a Notice of Appeal. Send your Notice of Appeal to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203, within 30 calendar days of the date of the administrative law judge's decision. The notice must be accompanied by proof of service on the administrative law judge and the opposing party.

* * * * *

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 800 North Quincy Street, Suite 300, Arlington, VA 22203. Fees for this service are established by the director of that office.

* * * * *

9. Amend § 10.13 by revising paragraph (c)(2) to read as follows:

§ 10.13 Future applicability.

* * * * *

(c) * * *

(2) The list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau

of Indian Affairs is published in the **Federal Register** as required by section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1 (2006)).

* * * * *

10. In § 10.15, revise paragraph (c)(1) to read as follows:

§ 10.15 Limitations and remedies.

* * * * *

(c) * * *

(1) A person's administrative remedies are exhausted only when the person has filed a written claim with the responsible Federal agency and the claim has been duly denied under this part. This paragraph applies to both:

(i) Human remains, funerary objects, sacred objects, or objects of cultural patrimony subject to subpart B of this part; and

(ii) Federal collections subject to subpart C of this part.

* * * * *

Appendices A and B [Removed]

11. Remove Appendices A and B.

Dated: March 30, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012-9228 Filed 4-17-12; 8:45 am]

BILLING CODE 4312-50-P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 12-05]

Non-Vessel-Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission is issuing this Notice of Inquiry seeking comments on its rules which exempt non-vessel-operating common carriers who enter into service arrangements from certain tariff filing requirements of the Shipping Act of 1984.

DATES: Comments are due on or before June 18, 2012.

ADDRESSES: Submit comments to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001; or email non-confidential comments to: Secretary@fmc.gov (email comments as attachments preferably in Microsoft Word or PDF).

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal

Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573-0001, Phone: (202) 523-5725, Fax: (202) 523-0014, Email: Secretary@fmc.gov.

Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573-0001, (202) 523-5740, Fax (202) 523-5738, Email: GeneralCounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

Background

In December 2004, the Commission issued a final rule exempting¹ non-vessel-operating common carriers (NVOCCs) who enter into NVOCC service arrangements (NSAs) from certain tariff requirements of the Shipping Act of 1984 (Act).² The rule allows NVOCCs to enter into NSAs with their customers in lieu of publishing those arrangements in a publicly-available tariff, as otherwise would be required by Sections 8(a) and 10 of the Shipping Act. In the preamble to the final rule, the Commission stated that it would continue to consider how it could remove limitations on shipper participation while ensuring that the criteria of Section 16 were met. 69 FR 75850, 75852 (December 20, 2004).

The ability of two or more unaffiliated NVOCCs to jointly offer NSAs was not included in part 531, in part due to ongoing litigation that included arguments on whether two or more NVOCCs acting concertedly in NSAs were immune from the prohibitions of the antitrust laws. See *United States v. Gosselin World Wide Moving, N.V.*, 411 F.3d 502 (4th Cir. 2005), cert. denied,

¹ Section 16 of the Shipping Act grants the Commission the authority to make rules exempting regulated entities from the requirements of the Shipping Act if it finds such an exemption will not result in substantial reduction in competition or detriment to commerce. 46 U.S.C. 40103. The Commission must make an affirmative finding, based on information gathered in a public record, that these adverse consequences will not result from any exemption it may grant.

² 46 CFR part 531. The Commission's rules provide that an NSA means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. 46 CFR 531.3(p). An NSA shipper is a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or a non-vessel-operating common carrier. 46 CFR 531.3(o). Specifically, the exemption allows individual NVOCCs (including corporately affiliated NVOCCs), who are compliant with the other requirements of the Shipping Act and the FMC's regulations at 46 CFR part 515 and 46 CFR part 520, to enter into an NSA with one or more NSA shippers. 46 CFR 531.2.

547 U.S. 1002 (2006).³ The ruling in the *Gosselin* case alleviated the Commission's concerns that NVOCCs acting jointly through NSAs would create a potential for reduction in competition through immunity from the antitrust laws. In August 2005, the Commission issued a notice of inquiry to consider expanding the exemption provided for in 46 CFR part 531 to enable two or more unaffiliated NVOCCs to jointly offer NSAs.⁴ Commenters were given until October 20, 2005, to address a set of questions designed to provide information and perspectives on the likely impact of joint NSA authority.⁵

In its Plan for Retrospective Review of Existing Rules, published on November 4, 2011, the Commission announced its intention to conduct a full review of part 531, governing NSAs, no later than 2013. The purpose of the review is to determine whether the NSA regulations should be modified, streamlined, expanded, or repealed to make them

³ *Gosselin World Wide Moving, N.V. and The Pasha Group*, involved in the shipping of household goods of American military personnel to and from Europe, were accused of bid rigging in violation of the Sherman Act. They argued, and the district court agreed, that they had antitrust immunity based on three provisions of the Shipping Act: (1) 46 U.S.C. app. § 1706(a)(4), now 46 U.S.C. 40307(a)(5); (2) 46 U.S.C. app. § 1706(a)(2), now 46 U.S.C. 40307(a)(3); and (3) 46 U.S.C. app. § 1706(c)(1), now 46 U.S.C. 40307(c). On cross appeals, the Fourth Circuit rejected the district court's findings and the companies' arguments. First, the court found that the parties' behavior did not solely concern a foreign inland segment as required by 46 U.S.C. 40307(a)(5). The court rejected the argument that *United States v. Tucor Int'l, Inc.*, involving shipments of household goods belonging to military personnel from U.S. military bases in the Philippines to Filipino seaports, was analogous. See *United States v. Tucor Int'l, Inc.*, 35 F. Supp. 2d 1172 (N.D. Cal. 1998), *aff'd*, 189 F.3d 834 (9th Cir. 1999). Second, the court found it was not reasonable for the companies to rely on 46 CFR 520.13(c) to believe their collusive behavior was exempt from the antitrust laws. Finally, the court rejected the argument that an adverse determination on the two grounds for statutory immunity discussed above constituted a denial or removal such that any penalty could only be imposed prospectively. The court also stated that exceptions to federal antitrust laws should be construed narrowly. See also *In re Household Goods Movers Antitrust Litigation*, 2009 WL 8234043 (D.S.C. Sep. 10, 2009); *U.S. v. Daily Gazette*, 567 F. Supp 2d 859, 871 (S.D.W.Va. 2008) (following *Gosselin*).

⁴ Docket No. 05-06, 70 FR 52345 (September 2, 2005).

⁵ The Commission received comments from: The United States Department of Justice ("DOJ"); the United States Department of Transportation ("DOT"); the World Shipping Council ("WSC"); the International Trade Surety Association ("ITSA"); and Joint Comments of the National Industrial Transportation League, United Parcel Service, Inc., FEDEX Trade Networks Transport & Brokerage, Inc., Transportation Intermediaries Association, North Atlantic Alliance Association, Inc., and the Agriculture Ocean Transportation Coalition ("Joint commenters"). All comments were supportive of expanding the exemption to enable two or more unaffiliated NVOCCs to jointly offer NSAs.