



March 13, 2015

Melanie O'Brien
Acting National NAGPRA Program Manager
National NAGPRA Program National Park Service
1201 Eye Street, NW 8th floor (2253)
Washington, D.C. 20005

Dear Ms. O'Brien,

Please forgive my delay in responding to your January 20, 2015, e-mail. In your e-mail, you asked what guidelines are outside of legal requirements, and for specific examples of Notices of Inventory Completion (NIC) whose content and quality have been called into question.

With regard to your question on how the template diverges from legal requirements, I've attached a table that compares the NIC template to the sections of the statute and regulations that address notification. By quoting all sources directly, the chances of misinterpretation are diminished. However, I believe that I can sum up the issue by saying that the statute and regulations indicate that a Notice is a very brief inventory summary, yet the NIC template seems to recreate the inventory itself. I hope that this information is sufficient to address our question about why the NIC template asks for more information than the statute and regulations require.

You also asked for examples of problematic NICs and I offer the following. Please note that this is not meant to be an exhaustive list, but simply recent examples of Notices that SAA members have brought to my attention.

1) Inclusion of remains that are not Native American:

Example: The following NIC includes two individuals who likely have European ancestry.

http://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/nic1911.html:

2) Inclusion of objects that are not associated funerary objects:

Example: The following NIC includes 92 funerary objects from four graves but human remains from just one of the graves. Where are the human remains from the other three graves? If not present, the objects must be considered unassociated funerary objects.

http://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/nic1871.html

Example: The following NIC has classified all the material from an excavation unit

as funerary without being able to ascertain whether or not they were placed with the human remains as part of a death rite or ceremony. It also lists all historic period material--including recent historic material--as associated funerary objects from Mississippian sites that date from ca. AD 1050-1440.

<http://www.gpo.gov/fdsys/pkg/FR-2014-07-21/pdf/2014-17092.pdf>

3) Insufficient consultation. This has very significant consequences, because insufficient consultation will lead to incorrect cultural affiliations and notifications to affected tribes.

Example: The following notice shows evidence of insufficient consultation, because there is more than one federally recognized Delaware Tribe.

http://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/nic1813.html

Example: The following notice shows evidence of insufficient consultation; based on land cessions there are multiple tribes to consult regarding Los Angeles County and based on potential cultural affiliation the Navy should have consulted the Santa Ynez Band of Chumash.

<https://www.federalregister.gov/articles/2015/02/26/2015-04060/notice-of-inventory-completion-us-department-of-defense-department-of-the-navy-washington-dc>

4) Cultural affiliation that does not meet the statutory or regulatory definition (e.g., no identifiable earlier group, no relationship of shared group identity, no tribe with standing).

Example: The following notice describes a geographic, not cultural, affiliation.

http://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/nic1882.html:

Example: The following notice presents the reasons for cultural affiliation to the Lipan Apache, but then affiliates to the Comanche and Mescalero Apache.

<https://www.federalregister.gov/articles/2015/02/26/2015-04058/notice-of-inventory-completion-kerr-county-attorneys-office-kerr-county-tx>

5) Significant technical errors (e.g., MNI)

Example: The following NIC includes an MNI that is incorrect. Based on the minimal description of the remains that is provided in the notice, the MNI should be 2, not 12.

http://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/nic1884.html

6) Generalized descriptions of human remains, associated funerary objects, and/or provenience that do not allow a tribe to determine if it has an interest.

Example: The following NIC does not contain information about the types of associated funerary objects to enable a tribe to determine if it has an interest in the case. Based on the problem with consultation enumerated above, it is important that the descriptions provide a "backup" measure to consultation if a group has been overlooked.

http://www.nps.gov/nagpra/FED_NOTICES/NAGPRADIR/nic1871.html

I hope this provides you enough detail to understand our concerns. Thank you for your consideration, and please contact us if you have any questions.

Sincerely,

A handwritten signature in dark ink, reading "Jeffrey H. Altschul". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jeffrey H. Altschul, Ph.D., RPA
President