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[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)**Draft CalNAGPRA Enforcement Regulations  
Summary of Tribal Comments and Responses**

On May 9, 2025, the Native American Heritage Commission (NAHC) released draft CalNAGPRA enforcement regulations for a 90-day tribal comment and consultation period. During that time, the NAHC conducted two virtual listening sessions and engaged in individual consultation with one tribe. Comments received during these listening sessions and consultations as well as written comments provided by three tribes were compiled and summarized in the following document.

The NAHC reviewed and considered all comments and has provided 29 summaries of comments and our direct responses below, combining similar comments where appropriate.

In response to these comments, the draft regulations were revised to clarify the manner of notice provided; include a definition for “complaining party”; clarify that a Commissioner who is also a complaining party may not participate in a public hearing; and require quarterly reporting of allegations and findings. Additionally, the draft regulations were revised to conform with Office of Administrative Law numbering conventions and to more clearly indicate statutory authority versus references.

## **General**

1. **Comment:** One commentor expressed that they hoped that CalNAGPRA would surpass federal law, and give non-federally recognized tribes rights, but due to changes in the Native American Graves Protection and Repatriation Act (NAGPRA) regulations, this is not the case.

**NAHC Response:** The NAHC is aware of frustrations surrounding the changes in federal law and continues to support non-federally recognized tribes by maintaining a CalNAGPRA database for transparency and dialogue with institutions regarding collections in California.

2. **Comment:** We received a comment that there is a desire for more control over ancestors and cultural artifacts for non-federally recognized tribes.

**NAHC Response:** While we understand this concern, due to the federal law, if an Institution is subject to NAGPRA, there are limitations that the NAHC is unable to address. However, we are committed to providing resources and guidance to non-federally recognized tribes to the extent that the law allows.

3. **Comment:** We received a comment that the NAHC may want to contact the federal NAGPRA program to inform them of these regulations and the fact that they will be asked about NAGPRA compliance.

**NAHC Response:** The NAHC considered this comment and will advise the federal program of these draft regulations.

4. **Comment:** We received a request to publish a list of allegations and findings on the NAHC website, with quarterly updates and include the name of the Institution, name of the complaining party, the general finding, and whether a civil penalty was imposed.

**NAHC Response:** The NAHC considered this comment and revised the draft regulations to include a quarterly reporting requirement.

## **Section 31022            Definitions**

5. **Comment:** It was requested that we add a definition of complaining party.

**NAHC Response:** The NAHC considered this request and revised the draft regulations to define complaining party.

## **Section 31023            Violations of the Act**

6. **Comment:** We received a comment that subsection (a) should provide details regarding penalties for violations, including the timeline for when penalties will be collected; which agency or entity will be responsible for collecting them; and how the collected penalties will be allocated or disbursed.

**NAHC Response:** The NAHC considered this comment and updated the draft regulations to include this information.

7. **Comment:** One comment received was that subsection (a) should be revised to increase the penalty amount, that each day of non-compliance be considered a separate violation and that the draft regulations should contain enhancements for willful or intentional violations.

**NAHC Response:** Because Health and Safety Code section 8029 provides for a maximum penalty amount of \$20,000, the regulations cannot impose a higher penalty. Because calculating the days in which an Institution has not been in compliance may not be calculable, the NAHC declines to make this change. Additionally, the determination as to whether a violation is willful or intentional is subjective and could result in disparate outcomes, we declined to make this change.

8. **Comment:** One tribe strongly recommended that any funds collected through civil penalties be directed to the affected tribe(s) rather than deposited into a General Fund.

**NAHC Response:** Because Health and Safety Code section 8029 does not provide for the specific direction of these funds, under state law, all civil penalties collected must be deposited into the General Fund.

## **Section 31024 Penalties and Enforcement Procedures**

9. **Comment:** One comment requested that if a civil penalty is imposed, NAHC staff should schedule a follow up interview with the complaining party and the Institution within 12 months to learn whether the penalty was paid, the Institution has rectified the compliance failure, and whether the complaining party agrees that the failure was rectified. A summary of this information should then be posted on the NAHC website.

**NAHC Response:** The NAHC considered this comment and declines to make this change to the draft regulations. However, there is nothing that would prohibit a complaining party from contacting Commission staff with concerns regarding the Institution's compliance with applicable law.

10. **Comment:** One tribe requested that the regulations include timeframes for implementing Health and Safety Code Section 8029(c), authorizing the Attorney General to act on behalf of the Commission to institute a civil action to collect penalties.

**NAHC Response:** Because the statute provides for Attorney General enforcement "after the time for judicial review has passed or the party subject to the civil penalty has appealed the penalty or after a final judgment has been rendered on appeal of the order", the regulations are unable to prescribe specific timelines.

11. **Comment:** We received a comment that this section should include guidance on how to characterize multiple violations, specifically that an Institution will be assessed a civil penalty for each separate violation of CalNAGPRA.

**NAHC Response:** Because section 31023 (a) states that the civil penalty may be assessed for each violation, we have determined that there is no need for additional language.

12. **Comment:** Commenting on subsection (a), one tribe noted that complaining parties may have a strong, good-faith reason to believe that an Institution is violating CalNAGPRA but is unable or

unwilling to provide specific evidence at the complaint stage. To address, it was suggested that the complaining party be able to keep their identity confidential or that the allegations will be viewed under a “good faith” standard.

**NAHC Response:** Upon consideration of this comment, we decline to incorporate this suggestion.

- 13. Comment:** One comment suggested that for clarity, subsection (a)(1) should be revised to insert “alleged to have” between “Institution” and “that.”

**NAHC Response:** The NAHC considered this comment and has made the change.

- 14. Comment:** We received a suggestion that the process could be streamlined by revising subsection (b) so that prior to making a determination regarding federal compliance, Commission staff would distinguish claims implicating CalNAGPRA from those implicating federal law to allow for more efficient processing of CalNAGPRA claims.

**NAHC Response:** Because these draft regulations only apply in instances where an Institution is not in compliance with NAGPRA or if the claim arises solely under CalNAGPRA, this change is not necessary.

- 15. Comment:** We received a comment that subsection (b) does not provide a mechanism for NAHC staff to consult with the complaining party prior to determining whether an Institute is in compliance with the law. It was recommended that before determining an Institution’s compliance with federal law, the complaining party be provided with the opportunity to meet with Commission and national NAGPRA staff to discuss the matter.

**NAHC Response:** We considered this comment but because the draft regulations already provide an opportunity for NAHC staff to request additional information from the complaining party, we decline to make this change.

- 16. Comment:** One tribe requested that subsections (b), (c), and (d) include timelines.

**NAHC Response:** After review of the draft regulations, we have revised (d) for clarity purposes and have included the timeline that could be inferred from a prior subsection. However, because the actions taken under (b) and (c) may take varying amounts of time depending on the facts and circumstances of an individual case, we decline to include timelines.

- 17. Comment:** We received a suggestion that subsection (c) be revised to clarify that Commission staff will review the complaint if all or some allegations arise under CalNAGPRA.

**NAHC Response:** Upon consideration of this comment, we have determined that clarification of the existing language is unnecessary.

**18. Comment:** Regarding subsection (c)(1) we received a comment that NAHC staff should meet with the complaining party prior to determining whether allegations are founded or unfounded.

**NAHC Response:** Because subsection (c) provides that if necessary to complete the evaluation Commission staff shall request additional information from the complaining party, it is not necessary to add additional language, imposing a meeting requirement.

**19. Comment:** A tribe suggested that subsection (c)(1), (2) be revised from “the allegations are unfounded” and “the Institution is not in compliance” to “noncompliance found” and “noncompliance not found.”

**NAHC Response:** The NAHC considered this comment and declines to make the suggested changes.

**20. Comment:** We received a comment that subsection (c)(2) is ambiguous with respect to the role of the “complaining party.” Specifically, the comment stated that it is unclear whether the complaining party will receive notice of any informal resolution or whether it may request a public hearing or otherwise seek full Commission involvement.

**NAHC Response:** We have considered this comment and note that subsection (c)(2)(i) requires that notice of informal resolution be sent to the complaining party. The draft regulations do not permit a complaining party to request a public hearing or request full Commission involvement.

**21. Comment:** One comment received recommended that subsection (c)(2)(i) be revised to reduce the 45-day deadline for seeking informal resolution to 14 days as the Institution has already been found to be noncompliant and there should not be additional time for noncompliance to continue.

**NAHC Response:** The NAHC reviewed this comment and determined that based on the time needed to schedule and engage in informal resolution discussions, 45 days is reasonable.

**22. Comment:** One tribe recommended that subsection (d) be revised to provide additional guidance on how to calculate civil penalties, especially with respect to missing Ancestors or Cultural Items and multiple violations of repatriation law.

**NAHC Response:** Because it is unclear from the comment as to what is being requested to include as additional guidance, the NAHC declines to make changes to this subsection.

**23. Comment:** We received a request to revise subsection (d) to include factors that may result in an increase or decrease in the amount of the civil penalty. Some factors that may warrant an increased penalty include desecration; continued classroom or scientific use; continued acquisition; and failure to follow duty of care requirements. Some factors that may warrant a decrease in the penalty amount include having internal policies that include tracking; making reasonable efforts to locate items; reimbursing tribes for repatriation and reburial costs; and policies or actions that lead to more timely and respectful repatriation.

**NAHC Response:** After consideration of this comment, we determined that an overly specific factor analysis in fee determination introduces too much subjectivity and unpredictability in these regulations, a straightforward penalty for violations with minimum variation is objective and fair.

**24. Comment:** One tribe requested that subsection (d) contain penalty criterion related to the Institutions' responsiveness and cooperation.

**NAHC Response:** We considered this comment but because responsiveness and cooperation are subject to various interpretations and could lead to disparate outcomes, we declined to make this change.

**25. Comment:** We received a request that for purposes of transparency and accountability subsection (d) should require that a report be made available to tribal stakeholders.

**NAHC Response:** Upon review of the draft regulations, it is noted that the complaining party will receive a copy of the evaluation.

**26. Comment:** It was requested that we consider under subsections (e) (2), (3) whether a complaining party should be allowed to request informal discussions with Commission staff or a public hearing.

**NAHC Response:** We considered this comment and note that the key focus of these regulations is to provide an expedient and predictable process for the enforcement of CalNAGPRA. Creating informal discussions introduces subjectivity and potential conflicts of interest.

#### **Section 31025 - Public Hearing Procedures**

**27. Comment:** One comment noted that a Commissioner who makes a complaint should not participate in any public hearing on the matter.

**NAHC Response:** The draft regulations have been updated to reflect that a Commissioner who makes a claim will not participate in any public hearing other than as the complaining party.

**28. Comment:** A commentor noted that it is not obvious whether the Commission must accept testimony from a tribe that is not a complaining party and that this point should be clarified.

**NAHC Response:** Subsection (d)(5) requires that in reaching a decision, the Commission shall consider comments received from the public, which includes a tribe that is not a complaining party, in accordance with the Bagley-Keene Act.

**29. Comment:** We received a request to revise subsection (h) so that the Commission's decision is also issued to the complaining party.

**NAHC Response:** The draft regulations have been revised to require that the complaining party receive a copy of the Commission's decision.