



SOCIETY FOR AMERICAN ARCHAEOLOGY

April 14, 1997

Dr. Francis P. McManamon
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National Park Service
Box 37127
Washington, DC 20013-7127

Dear Frank:

On behalf of the Society for American Archaeology, I welcome the opportunity to comment on 43 CFR Part 10, the interim rule on civil penalties relating to the Native American Graves Protection and Repatriation Act. The SAA's Repatriation Committee and a number of our members have expressed concern about some of the proposed rules and their wording, and I have outlined these concerns below.

Section 10.12(b)(1)(I)

The definition of Section 10.12 (b)(1) should include the word "knowingly", and thus read: "After November 16, 1990, knowingly sells or otherwise transfers . . ." Given that NAGPRA compliance can be complicated, a good faith effort on the part of the museum is important. There are times when a museum might not know if it's doing something "in violation of NAGPRA." A museum cannot act with confidence in its assessments, and might violate NAGPRA quite innocently if knowledge or intent to violate the law is not a specific element of the rule.

Section 10.12(c), (d)

The interim rule does not clearly outline the procedures by which a museum would defend its conduct against allegations of violation. It establishes notice and response mechanisms with respect to proposed penalties, but does not afford an opportunity to respond formally to allegations of violations. Fairness would seem to require such an opportunity.

Section 10.12 (d)(3)(I)

The interim rule states that the Secretary can reduce a penalty if s/he determines that the museum "did not willfully fail to comply." This implies that a museum could unwittingly violate NAGPRA, despite all its good faith efforts to comply.

Section 10.12 (e)(1)

According to the interim rule, the Secretary will "verify" allegations of a museum's failure to comply. This might require the Secretary to determine (1) if a specific object meets the statutory definition of "cultural items," and (2) if such items are "culturally affiliated" with tribes that have standing under NAGPRA. Both of these determinations are beyond the authority of the Secretary; even the NAGPRA Review Committee's authority is only advisory.

Section 10.12 (e)(2)

The Secretary sends a copy of the notice of failure to comply to culturally affiliated tribes or organizations and/or lineal descendants (Section 10.12 (e)(2)). The interim rule presently does not include the appropriate counterpart notice when the Secretary determines that a museum has not failed to comply (i.e., Section 10.12 (c)(2) and (g)(3)), and should be revised. Misinformation and out of date information between museums and tribes can significantly hurt the relationships that these groups are trying to develop, as well as damage a museum's reputation.

Again, thank you for this opportunity to comment on the interim rule. If the SAA may be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

/s/

Vin Steponaitis
President

