

# Proposed federal rule threatens 2 decades of established law

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The Society for American Archaeology (SAA) has condemned a proposed rule by the U.S. Department of Interior that would put in jeopardy the highly productive compromise that was reached when the Native American Graves Protection and Repatriation Act (NAGPRA) was passed in 1990.

On October 16, 2007, the Department of the Interior published draft regulations that would destroy the use of cultural affiliation as the principle for repatriation decisions, which is at the core of NAGPRA and supported by seventeen years of hard work and effort by tribes, archaeologists, and museum personnel, and replace it with an undefined notion of "cultural relationship."

“The Department’s proposed regulations have no basis in law or science and reflect an attempt to impermissibly legislate in a manner not prescribed by Congress. The adoption of the regulations as they stand would force the NAGPRA process back to square one,” said Dean Snow, president of SAA. “This ill-advised rule would irreparably diminish the archaeological record of the entire U.S. “The damage to some of our most cherished institutions and the cost to science and the public is incalculable.”

The Department’s proposed rules alter the 1990 compromise between archeologists, museums, scientists, federal agencies and representatives of federally-recognized Native American tribes that resulted in passage of NAGPRA.

“The act represents a careful balance of multiple perspectives regarding human remains and objects,” said Snow. “Over the last 17 years, tribes, museums, and federal agencies have developed relationships of trust and mutual understanding of the law. The proposed rule effectively dismisses those hard-earned accomplishments.”

NAGPRA requires federally-funded museums, universities, governmental agencies and similar institutions to transfer control of human remains, sacred or funerary objects, and other culturally important artifacts to federally-recognized Native American tribes that demonstrate cultural affiliation.

NAGPRA represents a carefully-crafted compromise that has served to repatriate, protect, and preserve human remains for almost two decades, and forms a basis by which all entities involved in American archaeology abide. Since NAGPRA was passed in 1990, thousands of human remains have already been repatriated to culturally affiliated tribes and more are in the process of repatriation.

The Department of Interior’s proposed rule extends to the disposition of human remains that are culturally unidentified. Snow pointed out that the proposed rules would put museums in the uncomfortable and inappropriate position of determining “Indianness” of claimants who are not federally-recognized and of weighing competing claims among federally-related, non-federally related, and non-Native American claimants.

The Department’s proposed rule would apply to most of the nation’s museums, universities, federal agencies, and could extend to medical specimens or forensic evidence collections whether they have Native American human remains or not.

Source: Society for American Archaeology

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