

October 18, 2022

The Honorable Charles F. Sams III
Director
National Park Service
1849 C Street NW
Washington, D.C. 20240

Subject: Native American Graves Protection and Repatriation Act Proposed Rule (RIN: 1024-AE19)

Dear Director Sams,

The Natural Science Collections Alliance appreciates the opportunity to provide some additional perspectives from the museum community on the proposed Native American Graves Protection and Repatriation Act (NAGPRA) rule (1024-AE19) issued by the National Park Service.

The Natural Science Collections (NSC) Alliance is a non-profit association that supports natural science collections, their human resources, the institutions that house them, and their research activities for the benefit of science and society. Our membership consists of institutions that are part of an international network of museums, botanical gardens, herbaria, universities, and other institutions that contain natural science collections and use them in research, exhibitions, academic and informal science education, and outreach activities.

Across the country, museums remain committed to doing everything they can to facilitate the identification and safe, respectful repatriation of Native American and Native Hawaiian human remains, funerary objects, as well as important cultural and ceremonial items to tribes and communities. However, there are concerns that the proposed revisions to NAGPRA regulations, if implemented, could place substantial administrative, staffing, and financial burdens on museums.

Of primary concern is the change to the timeline for various actions related to (i) what must happen after receiving a repatriation claim, (ii) the time allowed for assembling information necessary to assess a claim, and (iii) the time allowed for handling competing requests for the same claim.

Specifically, if a new rule is finalized as drafted, museums holding human remains would have 60 days—instead of the previous 90 days—from the time a claim is received for assembling all necessary information and making an informed decision in consultation with all the appropriate tribes and claimants. This shorter, seemingly arbitrary deadline ignores the complex process for determining whether a repatriation claim is valid, whether the requestor has rights to claim, whether the claim meets the NAGPRA regulations, and whether there are competing interests from other lineal descendants for the same materials. This would result in an inordinate amount of work falling on already understaffed museums, particularly smaller museums that typically only have one or two staff dedicated to this work. Furthermore, museums would have merely 7 days to send a written response to competing requests—a change that also disregards the same complexities mentioned above. The amount of work required to assess and consider such requests and objections is enormous. Such arbitrary deadlines are unnecessary and unreasonable.

Museums are still reeling from the impacts of the COVID-19 pandemic. If these new, increased requirements are imposed on museums without the provision of new funding to assist museums with compliance, our institutions will struggle to undertake repatriation efforts in a timely and appropriate manner. Museums will also require trained staff and administrative resources to comply with new regulations in a timely manner, which is not a realistic expectation in the context of the financial constraints many museums are currently facing.

An additional concern is the shift in definition of ‘affiliation’ from cultural to geographic. For institutions holding remains that cannot be affiliated with any specific group or groups on the basis of available evidence, a determination of affiliation based on geography will not necessarily result in the return of ancestors to lineal descendent communities—the intent of repatriation. It must be recognized that determination of affiliation based on culture and continuity over time, but not necessarily in space, seeks to apply evidence-based scholarship to the question, intended to ensure that remains can be properly returned to descendent communities, rather than to whomever is the first to make a request, whomever is most active or speaks with the most impactful voices. History shows that occupation of a given location by humans is seldom permanent, often transient, and frequently is non-exclusionary. Shifting the determination to a geographic basis can result in the return of ancestors to the wrong groups. Moreover, this shift will place undue burden on repositories by requiring limited staff to devote effort to new inventories, additional research, and new consultations involving a much greater number of communities, including some that may be of marginal or indeterminate relevance.

The NSC Alliance community strongly supports and remains dedicated to enabling the mission of NAGPRA. Given the challenges presented above, however, we strongly urge that any finalized rule account for the staffing and resource limitations of our nation’s museums as well as their tribal partners. Furthermore, we request that any new rule changes provide clear guidelines to enable museums to comply with NAGPRA regulations efficiently and in a timely manner.

We welcome an opportunity to discuss these issues with you in more detail. Please do not hesitate to contact me if the NSC Alliance can be of further assistance on this important matter.

Sincerely,



Gil Nelson, Ph.D.
President
Natural Science Collections Alliance