



February 10, 2015

Stanley C. Bond
Departmental Consulting Archeologist
National Park Service, Docket No. 1024-AE17
1201 Eye Street NW, 7th Floor (2275)
Washington, DC 20005

Dear Mr. Bond:

The Society for American Archaeology (SAA) is pleased to take this opportunity to comment on the Department of Interior's proposed Rule (RIN 1024-AE17) on the procedures for deaccessioning objects from Federal and federally associated collections, and for the disposition of such deaccessioned objects under 36 CFR Part 79.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,000 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

We wish to commend the Department of the Interior on the development and discussion of the proposed Rule, which has been crafted over a long period of time and reflects multiple episodes of comment and consultation. This lengthy process has strengthened many parts of the proposed Rule and removed several areas of previous concern. We note that earlier concerns regarding Sec 79.12(e)(3) were addressed and these sections cogently rewritten to clarify the need to treat future advances as a central consideration in any sampling effort. We also note that human remains have been removed from the sets of material remains subject to deaccessioning and are now listed among those material remains that may not be disposed of under the proposed Rule in Part 79.12(b)(2). Perhaps unavoidably, however, new revisions have introduced other areas of real or potential concern, and here we offer comments which will make the Rule clearer and in closer alignment with generally accepted best practices. These comments are outlined briefly below.

1. We recommend insertion of language specifying that the decision to deaccession objects must be initiated by those in direct control of the collection in question.

Previous drafts of the 79.12 proposed Rule raised concerns regarding who could initiate or mandate a deaccessioning project. SAA was particularly concerned that administrators without a clear knowledge of archaeological material or concerns might be able to impose these rules on repositories in order to reduce the size or cost of those facilities. Consequently, we commend the author(s) of the current draft in clarifying this point in 79.12(c), which specifically states that "(1) agency staff members, including archaeologists, curators, and conservators; and (2) Qualified museum professionals located in a repository that provides curatorial services for a collection held in that repository" may propose the disposal of material remains. We recommend that this phrase be revised to clarify that the agency staff members who

may propose disposal should have verifiable knowledge of the remains in question, i.e., “(1) agency staff members with verifiable knowledge of these material remains, including archaeologists, curators, and conservators; and (2) Qualified museum professionals located in a repository that provides curatorial services for a collection held in that repository” may propose disposal of material remains. We believe this to be simply a clarification of the clear intent of the original revision.

2. We recommend that the proposed Rule specify a priority order for the disposition of objects deaccessioned from Federal or Federally-associated collections.

A priority order was outlined in earlier drafts of Section 79.13(b); we recommend that the priority order in Sec. 79.13(b) be reinstated. The rule, as currently written, states “for material remains that are determined to be of insufficient interest under Sec. 79.12(e) and that were excavated or removed from lands that are not Indian lands”, the Federal Agency Official may use any of a list of methods for disposal of material remains, prior to their destruction. Objects being deaccessioned from Federal collections were collected and accessioned because of a presumption of public value, and if deaccessioned they should be offered to either other Federal agencies or to institutions affording appropriate public access, when possible. This would better match longstanding practices in non-Federal museums, as well as being in accord with recent directives from the White House Office of Science and Technology Policy (dated 20 March 2014), which specifically call for priority order for disposition of deaccessioned objects.

3. We recommend that language be inserted to clarify how potential disputes among claimant tribes will be resolved.

The Section-by-Section Analysis notes the experience of the current Departmental Consulting Archaeologist (DCA) in arbitrating difficult decisions, but as the proposed Rule and its implementation will extend beyond the careers of any one person in this position some clarification of the process for handling objections to determinations of disposition seems appropriate. We recommend adding a simple phrase to 79.16, patterned after wording from implementation of the Native American Graves Protection and Repatriation Act, that states simply “Any disputes over disposition will be resolved by the DCA in consultation with members of the tribes in question, with disposition or deaccessioning halted until a resolution between/among the parties is reached and formally agreed upon.”

4. We recommend clarification that the proposed Rule applies to objects or subsets of collections rather than collections in their entirety.

Section 79.12(e) specifies that “at least one qualified archaeological or museum professional[s] with expertise in the type of material remains being evaluated determines and documents that...Disposition of the material remains will not negatively impact the overall integrity of the original collection recovered during the survey, excavation, or other study of a prehistoric or historic resource.” Elsewhere it is less clear that the proposed Rule allows for the deaccession of objects or specific portions of collections rather than of collections in their entirety. We recommend that the Background in the Supplementary Information be amended from “This rule would establish certain circumstances under which specific procedures must be used to dispose of material remains of insufficient “archaeological interest” to read “This rule would establish certain circumstances under which specific procedures must be used to dispose of individual objects or portions of collections of material remains determined to be of insufficient “archaeological interest...” (Federal Register, Volume 79, No. 222, page 68641, second column.)

5. We recommend that the proposed Rule address whether there are restrictions on the full title to deaccessioned objects following disposition, and specifically whether deaccessioned objects may be sold or otherwise commercialized.

The process of deaccessioning objects from Federally-owned or administered collections implies that once the materials are conveyed to any other entity they will no longer be Federal property. In the absence of mechanisms to enforce restrictions on subsequent owners' use of these objects, it is unclear how the provisions of 79.14(b) that "disposed material remains may not be traded, sold, bartered, or bought as commercial goods" can be enforced. SAA has long opposed the commercialization of archaeological materials, but it is unclear what mechanisms would be in place to prevent such actions once material remains were deaccessioned and no longer Federal property. No provisions for enduring protection of these disposed/deaccessioned material remains are noted. Would their sale, purchase, or barter be subject to civil or criminal penalties or prosecution? If the intent of section 79.14(b) is simply to rule out trading, selling, and bartering as options for disposing of Federal collections, rather than a restriction on what can be done with them as soon as the official acts of deaccessioning and disposal have been completed, then we recommend that the Rule should be amended to read "(b) Can material remains be disposed of through commercial means? No. Material remains must not be traded, sold, bought, or bartered as though commercial goods during, or through, the process of disposal." In that case, we further recommend a statement within the section-by-section analysis (or elsewhere) stating that DOI explicitly understands that there are no restrictions for anyone on the use, sale, or eventual disposal of deaccessioned Federal material remains once they have been formally deaccessioned and disposed of in accordance with this proposed Rule. Our strong preference, however, would be for a prohibition of such commercialization of Federal archaeological collections following disposition. If such restrictions are intended after the disposition of archaeological objects or portions of collections under this proposed Rule, clarification of the penalties attendant on selling, trading, or illicit transfer of such objects is needed.

6. We recommend that the proposed Rule be amended to provide guidance to tribes regarding how to avoid the creation of "artificial" sites as a result of reburial of materials resulting from the disposition of deaccessioned Federal collections.

It has been an enduring concern of the SAA and other organizations, including tribes, that reburial of deaccessioned material should be undertaken in such a way that it would not generate new "artificial" sites. We remain concerned that, although reburial is not an option available to the FAO for disposal of deaccessioned materials, the reburial of deaccessioned material remains may be considered an appropriate method of disposal by tribal organizations. In these circumstances, we recommend that the Department provide guidance to the recipients of deaccessioned materials regarding how to rebury these objects, or portions of collections, in ways that will be clearly recognizable as the contemporary reburial or discard of older archaeological materials.

7. We recommend an editorial change to the criteria relevant to deaccessioning, separating "overly redundant" and "not useful for research" as distinct criteria.

In the proposed Rule Part 79.12(e)(2) one or more of three criteria ("lack of provenience information," "lack of physical integrity," or "determination to be overly redundant and not useful for research") are necessary for deaccessioning of objects or parts of collections. The last of these three conflates two quite different criteria, and we recommend that they be separated, so that "determination to be overly redundant" and "determination not to be useful for research" be considered as separate criteria in determining whether objects or parts of collections should be deaccessioned. Obviously, a single object could be determined not to be useful for any foreseeable research and yet not be overly redundant, while a massive accumulation of fire-cracked rock, slag or debitage could appear overly redundant and yet still be useful for research.

8. We recommend that a decision to deaccession objects require that one or more of the other three criteria and “not useful for research” be demonstrated.

Lack of provenience, lack of physical integrity, or redundancy do not in and of themselves necessitate that an object is “not of archaeological interest.” A more effective standard would be that at least one of these criteria apply and the object is not useful for research, either in addition to or because of one or more of those other criteria. We recommend that the wording of Sec. 79.12(e)(2) be reframed to read: “(2) At least one of the following three requirements—lack of provenience information; lack of physical integrity; overly redundant—and a determination that the material remains are not useful for research—are met:”

9. We recommend that the qualifications of Federal employees who may be temporarily added to the advisory committee as outlined in Section 79.15 (c) (5) be clarified, and that archaeological knowledge of the period, area and region be required to adequately assess whether the proposed material remains meet the criteria for disposal.

The current wording of Part 79.15(c)(5) leaves open the possibility that Federal employees could be added to the committee to consult with “knowledge of the type of material remains” but without proper archaeological training to adequately and professionally assess whether these objects are of insufficient archaeological interest. We recommend that archaeological knowledge of the period and region be a required qualification for adding Federal employees to the advisory committee as outlined in Section 79.15(c)(5).

10. We recommend that the Collections Advisory Committee include qualified non-Federal experts.

The proposed Rule requires that the Collections Advisory Committee consist of at least five members who are “qualified individuals from that Federal agency or other Federal agencies” or members of Federally-recognized tribes (Part 79.15(c)). We respectfully recommend that the expertise of non-Federal archaeologists and museum professionals be included in Collections Advisory Committees, and that this be made explicitly allowable within Part 79.15(c)(2).

11. We recommend minor revision to passages in the proposed Rule to emphasize that Collections Advisory Committee members or their immediate families may neither benefit from a disposition nor appear to do so, and that this prohibition be extended to archaeologists or museum professionals evaluating collections for possible deaccessioning.

We recommend that Part 79.15(c)(6) be revised so that both the reality and the appearance of self-interest be avoided by all members of the Collections Advisory Committee, so that the section reads “(6) Collections Advisory Committee members and their family members may not benefit or appear to benefit financially or in any other way from a disposition.” We further note that the archaeologists or museum professionals specified in Part 79.15(c)(2), who may or may not be Federal employees, should be subject to this same prohibition against self-interest in fact or in appearance.

12. We recommend clearer and more complete standards for the permanent records of the deaccessions and the disposition of deaccessioned objects.

Deaccessioning represents a permanent and unalterable modification to an archaeological collection, and records regarding those changes should be as complete as possible. Moreover, it is generally accepted that information relating to a collection is an integral part of that collection, and even if objects are deaccessioned, information regarding those deaccessioned object(s) should be permanently maintained in as complete and representative a form as practicable. We recommend that Part 79.15(e) be amended to

match language contained in Part 79.18(5). We propose that Part 79.15(e) be revised to read “The disposition action with specific information, including description and evaluation of object(s); the method of disposition and the reason for the method chosen; names and titles of persons initiating and approving the disposition; date of disposition; relevant accession and catalog and field numbers and contexts for all object(s) to the extent identifiable through prior research; photographs of the object(s) disposed; evidence of the receipt for return, transfer, or conveyance of the material remains by the recipient tribe, agency, repository, or institution, including the title to the received material remains, and the name and location of the recipient institution or entity.”

13. We recommend that the DCA not be involved in initial decisions of whether to deaccession objects or parts of collections, so that s/he can fairly and impartially review objections to the proposed disposition of deaccessioned objects.

The proposed Rule provides an appropriate and reasonable method for persons to object to a proposed disposition by requesting review by the Departmental Consulting Archaeologist within 30 days of publication of the proposed disposition in the *Federal Register*. We recommend that the DCA be prohibited from involvement in decisions to deaccession objects or portions of collections, or from participating in initial decisions regarding the disposition of deaccessioned objects, so that any perception of bias or conflict of interest in his/her review of objections to planned disposition is eliminated. We note that, while the DCA does not play a formally defined role in such decisions absent an objection, s/he might otherwise reasonably qualify for inclusion on Collections Advisory Committees as described in Part 79.15(c).

14. We recommend that the proposed Rule explicitly recognize that implementation may introduce significant costs to repositories, and clarify that funds under Sec 79.7 will be available to Federal repositories and non-Federal repositories housing Federal or Federally-associated collections to comply with all parts of the process outlined in the proposed Rule.

The proposed Rule states that “the Federal agency would be responsible for ensuring that disposition is conducted in accordance with the proposed rule and 36 CFR 79.7, “Methods to fund curatorial services” (Federal Register, Volume 79, No. 222, page 68641, second column) . The costs in labor, time, and funds to institutions to comply with this proposed Rule are not restricted to the final act of disposition but begin with the first steps to document the scale of the collection, the items to be deaccessioned, the payment of qualified specialists to assess the collection and its integrity with/without the objects to be deaccessioned, etc., and continues after the act of disposition with the museum or repository’s requirement to amend its records, etc. The exact wording of the current Rule leaves room for doubt about whether Federal funds through 36 CFR 79.7 are to be made available to repositories, whether Federally managed or housed in non-Federal institutions, through the entire process of review, deaccessioning, disposal, and documentation, and we urge that this be made clear in the final Rule, perhaps as an additional provision in Part 79.15.

15. We recommend that every deaccessioning action be considered individually.

While deaccessioning is understood in non-Federal museums as a necessary element in proper management of museum or repository collections, it is never a task to be undertaken lightly, nor is it a common occurrence in any well-managed collection. We urge that every request to deaccession archaeological materials from Federally-owned or administered collections be considered on a case-by-case basis, and that every Collections Advisory Committee be uniquely constituted to address a specific object, group of objects or portion of a collection rather than serving as a standing body within any Federal agency, entity or repository.

We have provided lengthy comments owing to the real and permanent impact the proposed Rule may have on irreplaceable archaeological collections currently held in public trust. While we support the proposed Rule and understand the need to manage collections prudently, we believe it is important that deaccessioning be explicitly understood as a rarely used tool requiring extraordinary diligence and effort in order to prevent inappropriate disposition of important evidence documenting our shared human past.

Thank you for your time and consideration of this important issue.

Sincerely,

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

Jeffrey Altschul, Ph.D., RPA
President