



## SOCIETY FOR AMERICAN ARCHAEOLOGY

December 13, 2024

Bureau of Indian Affairs  
RACA  
1001 Indian School Road NW  
Suite 229  
Albuquerque, NM 87104

**RE: RIN 1076–AF78**

The Society for American Archaeology (SAA) is pleased to present the following comments on the proposed rule for the implementation of the Safeguard Tribal Objects of Patrimony Act (STOP Act). We support the draft regulation in general but point out some areas that need clarification and make several suggestions for improvement.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The SAA was one of the many organizations that worked to secure enactment of the STOP Act, a law that created an explicit prohibition on the export of items obtained in violation of federal laws including the Native American Graves Protection and Repatriation Act (NAGPRA) or the Archaeological Resources Protection Act (ARPA). Once fully in effect, the STOP Act will enhance Native American tribes' ability to access other nations' law enforcement mechanisms to regain their stolen cultural property, facilitate the voluntary return of such objects from private collections, and establish an export certification procedure for the legitimate trade in tribal art, among other things.

The STOP Act is the product of years of consultation and input between tribal leaders, federal agencies, archaeologists, art dealers, and others who passionately care about cultural heritage in the United States. It is imperative that the regulations implementing the statute reflect the urgency of the situation that necessitated the law in the first place.

These comments and questions will address the draft rule section by section.

**1194.2 How are key terms defined in the part?**

Human remains—the SAA agrees with the draft rule's addition of human remains to the list of items prohibited from export, in recognition of Native American and Native Hawaiian cultural and religious beliefs regarding the treatment of such objects.

Repatriation—the SAA supports this definition for the purposes of STOP Act enforcement, while noting that the term has a very different meaning for implementation of the Native American Graves Protection and Repatriation Act (NAGPRA) and that the Department of the Interior (DOI) must maintain this distinction at all times.

#### **§1194.101 What is the purpose of the Federal Register notice under this part?**

Subsection (d) includes descriptions of the characteristics of items made solely for commercial purposes that are presumed to not qualify as items requiring export certification, unless challenged by an Indian tribe or Native Hawaiian organization. It states that tribal authorization “may be used as evidence to demonstrate that an item would not qualify as an Item Requiring Export Certification.” Does this mean that contemporary tribal artists would have to provide certificates of provenance for their work in order to prove that such items do not need export certificates? This area might require greater clarity.

#### **§1194.104 What is the process for the Office to review an export certification?**

The rule allows Indian tribes and Native Hawaiian organizations nine business days to review export certification applications and their supporting documents to determine if items are eligible for export, as prescribed in the statute. Tribal and Native Hawaiian offices (NHOs) are often understaffed and overburdened with all kinds of notifications and requests for consultations. To determine the cultural sensitivity of an object will often require consultation with tribal religious leaders and other knowledgeable persons, and we fear that given their limited resources, tribes and NHOs will be hard-pressed or even unable to provide thorough reviews of items in question. Additional resources for both the DOI and tribes and NHOs will be necessary in order for the certification system to function and should be included in the FY 2026 DOI budget request.

#### **§1194.107 What is the export certification database?**

Regarding subsection (d): if there is multi-tribal affiliation, how will the removal of an export application from the database take place? Can only one of the tribes involved make such a request?

#### **§1194.108 When are export certification fees assessed?**

For subsection (a), the SAA supports the \$500 per application and one item per application, but when considered in conjunction with the possible lack of clarity in §1194.101(d), caution must be exercised to ensure that the rule does not provide a chilling effect on the market for contemporary tribal art.

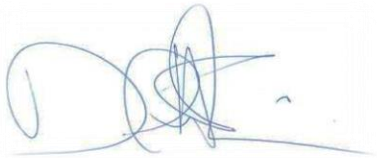
#### **§1194.201 When can CBP detain certain items?**

The description of the process in this subsection needs additional information on how Customs and Border Patrol will be trained to identify possible items covered by the statute. Regarding subsection (h), an exporter has five calendar days to retrieve items denied export under the rule. Will this be enough time to retrieve such items before they are considered abandoned? The SAA also supports the comments by the National Association of Tribal Historic Preservation Officers: “Native American human remains and cultural items must be treated with an appropriate duty of care while in Federal custody. NATHPO requests that the following subsection be added: ‘**(k) the CBP and the Office will ensure that all human remains and cultural items in their custody are cared for in a manner consistent with the requirements of 43 CFR 10.1 (d)(3).**’”

Finally, the SAA also notes that the proposed rule anticipates the placement of the operations of the STOP Act enforcement program within the Office of the Assistant Secretary for Indian Affairs. The SAA concurs with this placement.

Again, we appreciate the opportunity to comment on this important rulemaking.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Sandweiss", enclosed in a light blue rectangular box.

Daniel H. Sandweiss, Ph.D., RPA  
President