





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Full Board

FROM: Jeffrey W. Cannell 

SUBJECT: Amendment of Regents Rule §3.27, Relating to Museum Collections Management Policies

DATE: May 5, 2011 

AUTHORIZATION(S):

Summary

Issue for Decision (Consent Agenda)

Should the Regents adopt the proposed amendment of §3.27 of the Rules of the Board of Regents, relating to museum collections management policies?

Reason for Consideration

Implementation of Regents policy.

Proposed Handling

The attached proposed amendment will be presented to the Full Board for action at the May 2011 Regents meeting.

Procedural History

The proposed amendment was discussed by the Cultural Education Committee at the February 2011 Regents meeting.

A prior emergency rule on deaccessioning was adopted at the December 2008 Regents meeting and readopted several times in 2009 and through July 2010, during

which time State Education Department staff worked with the Legislature and with museum constituents to develop revised standards for a permanent rule on museum deaccessioning. However, the emergency rule expired on October 6, 2010 after the Board of Regents decided at its September 2010 meeting to form an ad-hoc committee to review and make recommendations regarding deaccessioning procedures to the Cultural Education Committee and the Full Board. The Board of Regents Ad-Hoc Advisory Committee on Deaccessioning was established by the Regents at their November 2010 meeting.

A Notice of Proposed Rule Making was published in the State Register on March 2, 2011. An Assessment of Public Comment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendment has been recommended by the Board of Regents Ad-Hoc Advisory Committee on Deaccessioning and State Education Department and State Museum management to protect collections held by museums and historical societies. Regents Rule §3.27 provides standards for chartered museums and historical societies with collections. Section 3.27 was first promulgated effective March 1971, and the Regents added a collections management policy requirement effective July 1998. An amendment to §3.27 in March 2006 greatly expanded the standards by providing increased oversight for collections and resources held in the public trust.

In the current financial downturn, museums face deficits that threaten the ownership or integrity of their collections. Museum constituents have asked for specific criteria and guidance relating to deaccessioning and use of collections proceeds. We believe current Regents Rules on collections need to be more explicit on acceptable criteria for deaccessioning collections. Even if a museum fails, we want to keep collections in the public trust and not lose them to debt or insolvency.

The proposed amendment would apply to chartered museums and historical societies authorized to own and hold collections under Rule §3.27, and would:

- Enumerate ten specific criteria under which an institution may deaccession an item or material in its collection.
- Specify that proceeds from deaccessioning be restricted in a separate fund to be used only for the acquisition of collections or the preservation, conservation or direct care of collections.
- Require that all museums report annually a list of all deaccessions.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraphs (6) and (7) of subdivision (c) and subdivision (e) of section 3.27 of the Rules of the Board of Regents be amended, as submitted, effective June 8, 2011.

Timetable for Implementation

If adopted by the Board of Regents at the May meeting, the proposed amendment will become effective on June 8, 2011.

Attachment

PROPOSED AMENDMENT OF SECTION 3.27 OF THE RULES OF THE BOARD OF REGENTS PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 215, 216, 217 AND 233-aa, RELATING TO MUSEUM COLLECTIONS MANAGEMENT

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, the State Education Department received the following comments:

1. COMMENT:

Two comments were received in support of the proposed amendment, noting the rule was consistent with the standards of the museum field, including the practices recommended by the American Association of Museums and the American Association for State and Local History, and that the ad hoc deaccessioning committee, appointed by the Board of Regents to develop the proposed rule, has done a very good job of balancing collection stewardship with fiscal reality.

DEPARTMENT RESPONSE:

No response is necessary as the comments are supportive in nature.

2. COMMENT:

One comment was supportive of the proposed amendment, but also requested that future consideration be given to how the provision in section 3.27(c)(6)(vi), requiring institutions to ensure that collections shall not be capitalized, relates to Financial Accounting Standards Board (FASB) guideline 116, which indicates that if museums are to refrain from capitalizing their collections, proceeds may be used only for acquisitions and not for direct care, conservation or other similar activities. In order to use deaccession proceeds for anything other than acquisition, the collections must be

capitalized. Only museums that comply with FASB 116 are given accreditation status by the American Association of Museums.

DEPARTMENT RESPONSE:

Accreditation by the American Association of Museums (AAM) is optional and not required by New York law or regulation. AAM is a private not-for-profit corporation that asserts its museum accreditation holds institutions to a higher standard of performance and operation. Therefore, New York museums seeking to acquire or retain such accreditation must weigh the value of using proceeds from deaccessioning for the sole purpose of acquisition against the value of using proceeds for the conservation and direct care of collections, in addition to acquisitions.

3. COMMENT:

(i) No provision is made for relevant good governance issues, such as who in the museum or historical society has authority to authorize or approve deaccession.

(ii) No provision is made for any advance notice to museum or historical society members or to the public of the proposed deacquisition of, at the least, historically significant or particularly valuable items.

(iii) No provision is made for notice to donors or their representatives of proposed deaccessions, except for restricted gifts.

(iv) No provision is made for how the deaccession is to be effected, for example notice to other institutions that may have an interest in the items, auction, private sale whether or not after competitive bids.

(v) Section 3.27(c)(7)(x), which permits deaccessioning where the item has been lost or stolen, does not deal with due diligence search efforts, for example filing police reports, filing reports of the loss or theft with Art Loss Register and similar organizations.

DEPARTMENT RESPONSE:

The comments are beyond the scope of this proposed rule making. The proposed rule is intended to establish general criteria for deaccessioning and not to address the specific procedures that must be followed in every instance.

The rule was developed based on the recommendations of the Regents Ad Hoc Advisory Committee on Deaccessioning, which included representatives from across the museum community. The charge of the Ad Hoc Advisory Committee was to develop general criteria for museum deaccessioning that all sectors of the museum community could agree upon. The Ad Hoc Advisory Committee discussed how prescriptive the proposed rule should be and concluded that the rule should set a general standard applicable to all museums and that specific decisions should be left to local museums, so that differences between the various types of museums operating across the State can be accommodated and decisions can be made by local museum professionals, who are in the best position to make such decisions. There was also concern that an overly prescriptive regulation would impose unnecessary burdens and costs on institutions that are already facing challenges in the current economic climate.

It was recognized that not all issues could be addressed in the proposed rule and consideration is being given to establishing a more permanent advisory group to consider museum issues, including refinements of the deaccessioning regulation, and to ensure that all sectors of the museum community have input into the development of

regulations addressing such issues. Issues relating to good governance and the authority to approve deaccessioning are largely driven by statute and would require a broader policy discussion by such an advisory group. Proposals such as requiring notice of each deaccessioning to members and the public, prescribing notice to donors, prescribing due diligence standards for searches of lost collection items and requiring notice of each deaccessioning to other institutions would impose burdens on museums and their impact needs to be fully assessed. A careful balance needs to be struck between protecting the public interest in preserving and protecting collections and imposing paperwork and other burdens on museums that could affect their ability to function. Accordingly, the issues raised in the above comments may be referred to a successor advisory group for further consideration.

4. COMMENT:

No provision is made for the deaccession of collection items that were given for the purpose of being sold, sooner or later, for the benefit of the donee. Shouldn't the proceeds from such sales be available for general purposes, unless restricted by the donors?

DEPARTMENT RESPONSE:

The Department maintains that items donated to a museum specifically to be sold for the purpose of raising funds for general purposes are donor-restricted gifts, and should not be accessioned into the collection. The proceeds from such sales may be used for general purposes unless restricted by the donor. Clarification of any such issues would be more appropriately addressed in guidance.

5. COMMENT:

No provision is made for earnings on the restricted fund referred to in section 3.27(c)(6)(vii) or for its earnings to be dedicated to the restricted purpose. Nor does the rule provide for filing of any insurance claims or the deposit of any insurance proceeds in the separate fund.

DEPARTMENT RESPONSE:

The comments are beyond the scope of this rulemaking since the proposed rule does not address any aspect of the management of the separate fund in section 3.27(c)(6)(vii). The Department believes that these issues are appropriate for guidance, at least in the first instance, and that if a regulatory mandate is needed, it should be developed through a representative museum advisory group. Consideration is being given to establishing a permanent museum advisory group and these issues may be referred to such advisory group for further consideration.

6. COMMENT:

The distinction in section 3.27(e) between items or lots deaccessioned and disposed of is unclear.

DEPARTMENT RESPONSE:

The distinction between items and lots of items came from representatives of natural history museums, who accession similar specimens in lots (such as butterflies of a certain species), and who sought clarification that they can list in their annual report the lots deaccessioned rather than individually list the potentially hundreds of items included in the lots. Individual listing would be extremely costly and burdensome to such museums and is not necessary to carry out the purpose in requiring transparency in deaccessioning.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 216, 217 and 233-aa of the Education Law and Chapter 220 of the Laws of 2008.

1. Paragraph (6) of subdivision (c) of section 3.27 of the Rules of the Board of Regents is amended, effective June 8, 2011, as follows:

(6) Collections Care and Management. The institution shall:

(i)

(ii)

(iii) ensure that deaccessioning of items or materials in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision;

(iv) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a)

(b)

(c)

(d)

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, which shall be consistent with paragraph (7) of this subdivision, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph (vii) of this paragraph;

[(iv)] (v) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

[(v)] (vi) ensure that collections shall not be capitalized; and

[(vi)] (vii) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition of collections, or the preservation, [protection] conservation or direct care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses or for any purposes other than the acquisition, preservation, [protection] conservation or direct care of collections.

2. Paragraph (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents is amended, effective June 8, 2011, as follows:

(7) Deaccessioning of Collections. An institution may deaccession an item in its collection only in a manner consistent with its mission statement and collections management policy and where one or more of the following criteria have been met:

(i) the item is inconsistent with the mission of the institution as set forth in its mission statement;

(ii) the item has failed to retain its identity;

(iii) the item is redundant;

(iv) the item's preservation and conservation needs are beyond the capacity of the institution to provide;

(v) the item is deaccessioned to accomplish refinement of collections;

(vi) it has been established that the item is inauthentic;

(vii) the institution is repatriating the item or returning the item to its rightful owner;

(viii) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;

(ix) the item presents a hazard to people or other collection items; and/or

(x) the item has been lost or stolen and has not been recovered.

[(7)] (8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

3. Subdivision (e) of section 3.27 of the Rules of the Board of Regents is amended, effective June 8, 2011, as follows:

(e) Annual reports. Each institution shall file with the commissioner an annual report, in a form prescribed by the commissioner, which records the educational and cultural activities of the institution and presents an accurate statement of all financial operations. Each institution shall include in its annual report a list of all items or item lots deaccessioned in the past year and all items or item lots disposed of in the past year.