



SOCIETY FOR AMERICAN ARCHAEOLOGY

October 29, 2020

Ms. Sherri Thompson  
Assistant Director, Leasable  
USDA—Forest Service  
1617 Cole Boulevard  
Building 17  
Lakewood, Co 80401

Dear Ms. Thompson:

The Society for American Archaeology (SAA) appreciates this opportunity to provide comments on the United States Forest Service's (USFS) proposed revisions to its regulations governing Federal oil and gas resources on Forest Service lands, contained in 36 CFR Parts 214, 228, and 261.

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 nearly 7,000 members, 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. SAA has members throughout the U.S., as well as in many nations around the world.

The SAA is cognizant of the USFS' need to comply with the directives contained in Executive Order 13783 to avoid and reduce unnecessary regulatory burdens in the production of domestic energy. We are also generally supportive of the USFS' goal of providing greater alignment between these regulations in this field of activity and those of the Bureau of Land Management, given the fact that the final decision on whether or not to grant oil and gas leases on Federal lands, including those managed by the USFS, rests with the Secretary of Interior. Nevertheless, we have identified several areas of concern where we feel that the proposed revisions could be improved.

First, there does not appear to be any requirement for the operator's submission of Surface Use Plan of Operations (SUPO) in §228.106 to include any consideration for how to deal with cultural resources (either known or yet undiscovered) located in the proposed leasing area. In fact, in the explanation of the proposed revisions to §228.103, the USFS states that "The proposed rule would remove references to other laws and regulatory requirements, particularly with respect to complying with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) and their implementing regulations. Instead, the proposed rule would favor letting those laws and regulations "speak for themselves" while noting that "...lessees must still comply with all applicable laws and regulations." The SAA believes that this is not only unnecessary and inadequate, but in fact would create an incentive not to comply with either those statutes and, by extension, the National Historic Preservation Act. To ensure compliance with all applicable laws and regulations protecting both natural and cultural resources, an explicit requirement to include such compliance measures in leasing proposals be addressed in the SUPOs.

Second, and with further regards to § 228.103, the draft makes no mention of public review and comment. The process outlined in this section is reminiscent of the NEPA process but without public involvement. While it is encouraging to see that the USFS has consulted with Native American tribes on the drafting of this proposed rules change, the SAA is concerned that the streamlining measures envisioned would actually have the effect of limiting the ability of the public—including tribes—on potential leasing activities. For some years now the general trend of congressional legislation and federal agency policy has been to achieve improved project planning efficiency, but that efficiency has come too often at the expense of the public's ability to review and comment upon activities that have great impact upon our irreplaceable resources. These revisions appear to continue this trend. The SAA urges the USFS to include clearly defined time periods for public comment on potential lease sales and SUPOs in the proposed regulations.

Third, §228.107(d) requires the USFS to issue a decision on a leasing application no later than 30 days after the application has been deemed complete. We are doubtful that 30 days will be enough time for a comprehensive review given the current staffing needs at the Forest Service.

Finally, because this proposed directive applies to federal lands, other cultural resource laws would apply, specifically the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. The draft rule, however, makes no mention of compliance with these statutes. How will these be addressed?

The SAA strongly urges the USFS to account for these shortcomings to the proposal in a new draft, and seek further stakeholder input before promulgating a final rule.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe E. Watkins".

Joe E. Watkins, Ph.D., RPA  
President