



August 22, 2013

Mr. Neil Kornze
Principal Deputy Director
Bureau of Land Management
1849 C Street NW #2134LM
Washington, D.C. 20240

RE: RIN 1004-AE26

Dear Director Kornze,

The Society for American Archaeology (SAA) appreciates this opportunity to provide comments on the revised proposed rule, published in the May 24, 2013 edition of the *Federal Register* (78 FR 31636), regarding hydraulic fracturing on federal and Indian lands.

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.

In addition to valuable natural resources, federal and Indian lands contain an enormous number of archaeological sites, both known and as-yet undiscovered. They are the physical traces of the numerous peoples who have called this part of North America home over many thousands of years. They tell the story of our past. Once an archaeological site is disturbed or destroyed, however, the information it contains is lost forever. Recognizing the federal government's stewardship responsibility toward the archaeological and cultural resources on its land, Congress enacted a number of statutes, including the National Historic Preservation Act (NHPA) and the National Environmental Protection Act (NEPA), designed to preserve and protect these irreplaceable assets. Under current law, proposals for undertakings on federal lands must take into account, prior to the granting of an operating permit, the activity's impact on cultural resources, and utilize appropriate mitigation measures if necessary. While the revised proposed rule ("the rule") is not intended to weaken these requirements when it comes to hydraulic fracturing ("fracking"), given the sheer number of fracking wells on public land (along with the potential for many more), the extensive presence of cultural resources, and the damage that fracking could do to those objects, its implementation will have direct bearing on the care of archaeological materials under Bureau of Land Management (BLM) control. It is from this perspective that we provide the following comments.

Streamlining

SAA understands the desire to streamline the permitting process and provide greater flexibility for stakeholders. The changes envisioned in the rule could bring about some improvements. For example, allowing multiple wells with similar geology to be reviewed within a single permit application is justifiable. As stated above, however, the permitting process also requires full compliance with the statutes that protect cultural resources, including the NHPA. Efforts to realize greater efficiencies cannot succeed without sufficient funding for State and Tribal Historic Preservation Officers, and increased numbers of trained cultural resources personnel within the federal government. Streamlining will work only if qualified professionals are there to oversee the process and integrate new technology and methodologies with respect to reviews and reporting. Though such matters are beyond the purview of the rule, they are important to its success.

We disagree with BLM's proposal that information related to wellbore integrity not be submitted until after the commencement of fracking activity. A faulty or deficient wellbore could lead to the damage or destruction of nearby archaeological objects that were not discovered during the permit process, or were thought to be outside of the site's impacted area. Operators must still be held to a standard that requires their certification, in writing, that all applicable federal, Tribal, state, and local laws and regulations pertaining to fracking fluids have been complied with before a fracture is attempted. Given this, it seems reasonable that they should also have to certify, prior to the start of work, that wellbore integrity is sound. Further, the operator should also be required to certify that integrity was maintained throughout operations.

Public disclosure

While SAA supports the rule's requirement that operators identify at least some of the chemical materials used during extraction, it also allows for such disclosure to take place after the substances have been applied. In the event of an accident or unforeseen discovery of cultural resources once work began, archaeological materials could potentially be exposed to destructive substances. Given this, we are concerned that the rule's provisions on post-fracturing disclosure and certification do not provide adequate assurances that federal and Indian cultural resources will be protected during fracking operations.

Tribal concerns

Regarding the provisions for fracking on Tribal lands, the rule seems to reflect the understanding gained from the numerous regional and individual consultation meetings that with Tribal officials that BLM has held over the past two years. The agency is to be credited for trying to ensure that Indian lands and Tribal communities receive the same level of protections to those non-Tribal lands and peoples impacted by the rule. We appreciate BLM's awareness of Tribal sovereignty and the rule's clarification that state and local laws do not apply to Indian lands, and, as such, that a separate certification process must be completed for work to be performed on Indian land. BLM was also correct to note that Tribal entities reserve the right to

assert additional control over oil and gas operations on their land by entering into Tribal Energy Resource Agreements under the Indian Energy Development and Self-Determination Act, and to pursue contracts under the Indian Self-Determination and Education Assistance Act. Finally, SAA also supports the language in the rule allowing Tribal governments to work with the agency to craft variances deeming operator compliance with state or Tribal fracking regulations as compliance with BLM's rule, if the state or Tribal regulations meet or exceed BLM standards.

There is one area that SAA believes the agency should keep in mind as a potential concern going forward. If implementation of the rule is found to increase costs for firms to conduct extraction operations on Tribal versus private lands, it could place Tribes at a competitive disadvantage, forcing them to make an impossible choice between increased revenues through development, or protection of natural and cultural resources. We strongly encourage BLM, in consultation with the Tribes, to consider ways to help offset the costs to private developers for operating on Tribal lands.

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

Sincerely,

A handwritten signature in blue ink that reads "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