

# Center for Regulatory Effectiveness

Suite 500

1601 Connecticut Avenue, N.W.

Washington, D.C. 20009

Tel: (202) 265-2383

Fax: (202) 939-6969

[secretary1@mbsdc.com](mailto:secretary1@mbsdc.com)

[www.TheCRE.com](http://www.TheCRE.com)

June 19, 2012

US Department of Energy  
Office of the General Counsel  
1000 Independence Avenue SW  
Room 6A245  
Washington DC 20585

**Re: Center for Regulatory Effectiveness Comments on Regulatory Burden RFI, 77 FR 28518<sup>1</sup> (May 15, 2012) and 77 FR 31548 (May 29, 2012)<sup>2</sup>**

Dear Sir or Madam:

The Center for Regulatory Effectiveness (CRE) is pleased to submit these comments to the Department of Energy (DOE) on how DOE can best review its existing regulations and to identify whether any of its existing regulations should be modified, streamlined, expanded or repealed. While CRE applauds DOE for reviewing its current regulations to screen for costly inefficiencies, the CRE recommends that DOE takes a more proactive role and review select regulations across all federal agencies that have a major impact on the United States energy policy and energy development. In addition, DOE should ensure that all major regulations and environmental analyses relating to U.S. energy policy are conducted in a transparent manner that includes public participation. Finally, the CRE has developed an Interactive Public Docket on the Retrospective Review of Regulations that can assist DOE in identifying burdensome regulations.

---

<sup>1</sup> Available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-15/pdf/2012-11450.pdf>

<sup>2</sup> Available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-29/pdf/2012-13054.pdf>

***I. DOE Should Review Select Existing Regulations Across All Agencies that Have a Major Impact on the National Energy Policy***

Recognizing that prior to 1977, “responsibility for energy policy, regulation, and research, development and demonstration [was] fragmented in many departments and agencies and thus [did] not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs,”<sup>3</sup> Congress passed the Department of Energy Organization Act to create the Department of Energy. Congress found that the “formulation and implementation of a national energy program require[d] the integration of major Federal energy functions into a single department in the executive branch,”<sup>4</sup> and thus it integrated all major Federal energy functions into DOE.

Despite the clear mission and objective of DOE, the national energy policy still remains fragmented across many agencies. Specifically, energy policy is affected by, to name a few agencies, the Bureau of Land Management (BLM), the Bureau of Ocean Energy Management, the Department of Transportation (DOT), and the Environmental Protection Agency (EPA).

For example, BLM is currently revisiting decisions made in 2008 regarding the nation’s oil shale development in Colorado, Utah, and Wyoming. The Government Accountability Office states, “The U.S. Geological Survey (USGS) estimates that the Green River Formation contains about 3 trillion barrels of oil, and about half of this may be recoverable, depending on available technology and economic conditions. **This is an amount about equal to the entire world’s proven oil reserves.**”<sup>5</sup> Nevertheless, BLM is now proposing to reduce the amount of federal land available for oil shale development by 75%, with a 90% reduction in Colorado. BLM is seeking to effectively eliminate oil shale development in the United States without offering any compelling basis, except for a lawsuit challenging their initial 2008 oil shale determinations.<sup>6</sup>

DOE should play a more active role in energy decisions made by other agencies. In the case of the BLM PEIS on oil shale, DOE should ensure that any amendments to the resource management plans relating to oil shale should be based on sound science and not reactions to lawsuits filed by interested parties. This fragmented and arbitrary approach to energy policy

---

<sup>3</sup> 42 USC § 7111

<sup>4</sup> *Id.*

<sup>5</sup> Government Accountability Office, *ENERGY-WATER NEXUS A Better and Coordinated Understanding of Water Resources Could Help Mitigate the Impacts of Potential Oil Shale Development*, page 1 (October 2010) available at <http://www.gao.gov/assets/320/311896.pdf> (emphasis added).

<sup>6</sup> BLM justifies its choice to reevaluate the land use plans with the 2012 PEIS by stating, “As part of a settlement agreement entered into by the United States to resolve the lawsuit *and in light of new information that has emerged since the 2008 OSTIS PEIS was prepared*, the BLM has decided to take a fresh look at the land allocations analyzed in the 2008 OSTIS PEIS and to consider excluding certain lands from future leasing of oil shale and tar sands resources.” BLM, *Draft Programmatic Environmental Impact Statement and Possible Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming*, p ES-3 (2012), available at <http://ostseis.anl.gov/documents/peis2012/index.cfm>

does “not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs,” that DOE was created to establish.

Accordingly, DOE should expand its retrospective review to select agency regulations and environmental decisions that have a major impact on US energy policy

***II. DOE Must Ensure That Future Energy Regulations and Environmental Analyses are Transparent, Including Releasing Public Comments to the Public***

Public access to public comments on a public proceeding is basic prerequisite of open government.

For decades federal agencies have made public comments available to the public, first through docket rooms and then, as the internet developed, through online systems developed by each agency. Agency-specific solutions to providing public access to public comments were superseded by [Regulations.gov](http://www.regulations.gov). President Obama has emphasized the importance of the public comment portal and has enhanced its operation.

Despite the Administration’s emphasis on the use of Regulations.gov to promote public participation and collaboration in agency proceedings, the Bureau of Land Management has repeatedly refused to release public comments on the 2012 Oil Shale and Tar Sands PEIS. Instead, BLM has chosen to bypass the open process in favor of their own comment processing system, a system which excludes the public from reading public comments. Moreover, BLM’s internal comment processing system has the capabilities to post the comments online, which the previous administration had done for the 2008 Oil Shale and Tar Sands PEIS.<sup>7</sup> Despite these capabilities, BLM has chosen secrecy over transparency in the PEIS process.

BLM’s lack of transparency is troubling, especially in light of the current Administration’s Open Government Initiative. CRE urges DOE to embrace a more transparent process in conducting environmental analysis under NEPA than that which has been exemplified by BLM, and ensure that decisions affecting the national energy policy are done transparently. Moreover, DOE should monitor energy regulations and environmental analyses conducted by other agencies to ensure that they are done with transparency. Thus, DOE must adopt a policy to review all energy regulations and environmental analyses to confirm the public was properly included in the process and to embrace the transparency required by the Open Government Initiative, which necessarily encompasses making public comments available to the public.

---

<sup>7</sup> 2008 PEIS Comments available at [http://ostseis.anl.gov/involve/draftcomments/dsp\\_commentlist.cfm?PageNum=1&browse#rec](http://ostseis.anl.gov/involve/draftcomments/dsp_commentlist.cfm?PageNum=1&browse#rec)

### **III. Conclusion**

As a nationally recognized clearinghouse for methods to improve the federal regulatory process, CRE is very well acquainted with the significant impact and costs the regulatory framework can have on the U.S. economy. Accordingly, CRE is pleased to learn that the DOE is continuing to review this essential issue, and is working closely with the public to create a regulatory landscape that is less burdensome and more efficient.

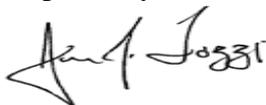
CRE has established an interactive public docket<sup>8</sup> (IPD) on the [Retrospective Review of Regulations](#)<sup>9</sup> to provide the public with an avenue to submit comments and feedback on burdensome regulations that are debilitating small businesses and job growth, including DOE regulations. We welcome DOE to consider and incorporate the analyses and comments from the public in its work on reducing the regulatory burden on the public.

The IPD will provide an invaluable resource of public input and analysis for the DOE, which it can continually draw from as burdensome regulations are promulgated. The IPD provides: (1) the public with the opportunity to present the impacts and costs of particular regulations; (2) agencies to respond to said comments and justify the cost of their regulations, (3) offer the DOE relevant analysis on a continuous basis, and (4) will allow DOE to identify costly energy regulations promulgated by other agencies. The IPD will be a particularly useful tool, because there is a substantial number of parties, across government and private sector lines, which are affected by regulatory burdens. The IPD will function to keep all parties apprised of developments, while also providing a collective resource of information for DOE in order to carry out its work on relieving job creators from regulatory burdens.

The CRE recommends that all parties submitting comments on DOE's Regulatory Burden RFI also publish their comments on the Retrospective Review of Regulations IPD at <http://www.thecre.com/forum2/>.

If you need further information regarding any issue discussed in this comment letter, please do not hesitate to contact me at [secretary1@mbsdc.com](mailto:secretary1@mbsdc.com) or (202) 265-2383.

Respectfully submitted,



Jim Tozzi  
Member, Board of Advisors

---

<sup>8</sup> [http://en.wikipedia.org/wiki/Interactive\\_Public\\_Docket](http://en.wikipedia.org/wiki/Interactive_Public_Docket)

<sup>9</sup> <http://www.thecre.com/forum2/>