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December 2, 2008

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Nick J. Rahall II
Chairman
The Honorable Don Young
Ranking Minority Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Bureau of Land Management: Oil Shale Management-General*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Bureau of Land Management (BLM), entitled “Oil Shale Management-General” (RIN: 1004-AD90). We received the rule on November 17, 2008. It was published in the *Federal Register* as a final rule on November 18, 2008, with a stated effective date of January 17, 2009. 73 Fed. Reg. 69,414.

The final rule sets out the policies and procedures for the implementation of a commercial leasing program for the management of federally-owned oil shale and associated minerals located on federal lands. In doing so, this final rule implements section 15927 of title 42, United States Code. This rule also provides for these leases to incorporate the standard components of a BLM mineral leasing program, including work requirements and milestones to ensure diligent development of leases and other standard components of a BLM mineral leasing program.

Enclosed is our assessment of the BLM’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that BLM complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Ted R. Hudson
Acting Division Chief, Regulatory Affairs
Bureau of Land Management
Department of the Interior

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY
DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
ENTITLED
"OIL SHALE MANAGEMENT-GENERAL"
(RIN: 1004-AD90)

(i) Cost-benefit analysis

The Bureau of Land Management (BLM) analyzed the costs and benefits of this final rule. BLM notes that this rule has the potential to generate net economic benefits to the United States by allowing for the development of our vast domestic oil shale resources, but that there is substantial uncertainty about the magnitude and timing of these benefits. BLM estimates that the net present value of the potential monetary costs and benefits considered in this analysis will be approximately \$13.6 billion using a 7-percent discount rate, \$28.5 billion using a 3-percent discount rate, and \$1.8 billion using a 20-percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

BLM determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

BLM determined that this final rule does not contain any mandates on state, local, or tribal governments and that the overall impact on the private sector does not exceed \$100 million.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

BLM promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On November 22, 2004, BLM requested public comments on the potential for oil shale development at certain locations. 69 Fed. Reg. 67,935. BLM published a notice of intent to prepare a Programmatic Environmental Impact Statement (PEIS) on December 13, 2005, made the draft PEIS available for comment on December 21, 2007, and made the final PEIS

available on September 5, 2008. 70 Fed. Reg. 73791; 72 Fed. Reg. 72,751; 73 Fed. Reg. 51,838.

On August 25, 2006, BLM published an advance notice of proposed rulemaking requesting comments and subsequently extended the comment period on September 26, 2006. 71 Fed. Reg. 50,378, 72 Fed. Reg. 56,085. BLM received 48 comments in response to the advance notice. On July 23, 2008, BLM published the proposed rule. 73 Fed. Reg. 42,926. BLM received over 75,000 comment letters on the proposed rule from individuals, federal and state governments and agencies, interest groups, and industry representatives. BLM responded to those comments in the final rule. 73 Fed. Reg. 69,416–69,448.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

This rule contains an information collection requirement entitled “Parts 3900–3930–Oil Shale Management–General.” The Office of Management and Budget (OMB) reviewed this requirement and assigned it OMB Control Number 1004-0201. BLM estimates that the total annual hour burden for this requirement to be 1,794 hours and that there will be processing and cost recovery fees of \$526,652.

Statutory authorization for the rule

BLM promulgated this final rule under the authority of sections 351–359 of title 30, section 15927 of title 42, and sections 1701–1787 of title 43, United States Code.

National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. sections 4321–4370f

BLM prepared an environmental assessment for this final rule and found that this rule does not constitute a major federal action significantly affecting the quality of the human environment under the Act.

Executive Order No. 12,630 (Takings)

BLM determined that this final rule is not a government action capable of interfering with constitutionally protected property rights and that a takings assessment is not required.

Executive Order No. 12,866

BLM determined that this final rule is economically significant under the Order because it will have an effect of \$100 million or more on the economy. This final rule was reviewed by the Office of Management and Budget.

Executive Order No. 12,988 (Civil Justice Reform)

BLM determined that this final rule will not unduly burden the judicial system and that it meets the requirements of the Order.

Executive Order No. 13,132 (Federalism)

BLM determined that this final rule will not have a substantial direct effect on states, the relationship between the federal government and states, or on the distribution of power and responsibilities among the levels of government.

Executive Order No. 13,175 (Consultation and Coordination with Tribes)

BLM determined that this final rule may include policies that have tribal implications under the Order. BLM consulted with potentially affected tribes on the proposed rule.

Executive Order No. 13,211 (Energy)

BLM determined that the rule will likely increase energy production and will not have an adverse effect on the supply, distribution, or use of energy.

Executive Order No. 13,352 (Cooperative Conservation)

BLM determined that this final rule will not impede facilitating cooperative conservations; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in the land or other natural resources; properly accommodates local participation in the federal decision making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.