

# ISSUE BRIEF

No. 4411 | MAY 21, 2015

## Seven Objectives for Effective and Productive Energy Legislation in 2015

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Members of the U.S. Senate and the U.S. House of Representatives are calling for a comprehensive energy bill in 2015. If past is prologue, however, such wide-ranging energy bills do much more economic harm than good. For instance, the last two major energy bills signed into law by President George W. Bush, while including some seemingly pro-market titles, contained policies that restrict consumer choice, mandate production of ethanol, and pick winners and losers by subsidizing politically preferred energy technologies. Congress should operate from the basic principle that free markets work efficiently and that any new legislation should get government out of the way of the market and innovation.

### Getting the Government Out of the Energy Business

Some Members of Congress operate on the misguided notion that America needs a national energy policy, and that, because the federal government has not passed a major energy law in years, they need to do something new. Policymakers mischaracterize the market and assume levels of dysfunction that warrant government interference. Past energy bills have attempted to address concerns about scarcity, restricted choice, lack of information, decreasing

dependence on oil, market failures, and overcoming the investor's "valley of death," where, allegedly, a good idea is unable to attract private investment because the start-up costs are too high or the technology is unproven, and therefore taxpayer money is necessary to move the project forward.

In almost all of these instances—such as the failed push to use more biofuels as transportation fuels—the problem was not the result of market dysfunction, market monopoly, or lack of government spending to verify the technology, but the result of policies promoted by a particular politician or special interest group. The reality, much to the dismay of some politicians, is that oil is a more economical and reliable fuel source than biofuels. The free market—not a massive government program or policy—will determine if and when biofuels, batteries, natural gas, or another technology replaces oil.

Preferential treatment by the government significantly obstructs the long-term success and viability of the technologies and energy sources it intends to promote. Instead of relying on a process that rewards competition, government intervention creates dependence on government and prevents a company from truly understanding the price point at which the technology will be economically viable. When the government plays favorites, it traps valuable resources in unproductive places.

Market inefficiencies exist—but they provide no justification for a government energy policy. Members of Congress should not assume that a government policy will correct the inefficiency better or as well as the free market—or at all. In almost every instance, the attempted policy solution exacerbates the problem with unintended consequences and

This paper, in its entirety, can be found at <http://report.heritage.org/ib4411>

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government-imposed dysfunction. The objective for Congress and the federal government should not be to implement a national energy policy, but to pursue legislative reforms that allow the private sector to meet America's energy needs. That would provide Americans with the most secure fuel choices at the lowest prices, and provide the choices and products that consumers value most.

## Seven Objectives for Energy Legislation in 2015

Any new energy bill should reverse the trend of increasing government interference, not add bureaucratic, market-distorting layers to it. In order to prevent repeating past mistakes and further capitalize on the abundance of energy America possesses, Congress should pursue reforms that pull back government intervention. While not all-encompassing, these seven objectives address many of the issues that Congress is considering this year. When considering any energy bill, Congress should seek to achieve the following objectives:

**1. Open access to domestic resources.** In January, the Department of the Interior announced its next step for the Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2017 to 2022 as required by the Outer Continental Shelf Lands Act of 1953.<sup>1</sup> Although the Administration touted the plan as pro-development with 14 potential lease sales, the draft restricts access in energy-rich areas off Alaska's coast and blocks access to the Pacific. The Bureau of Ocean and Energy Management conditionally supports Shell's drilling plan in the Chukchi Sea off the coast of Alaska, but several permitting hurdles remain and several areas remain off limits. Rather than allowing the Interior Department to draft five-year plans that continually limit energy-production and job-creation potential, Congress and the Admin-

istration should open all federal waters and all non-wilderness, non-federal-monument lands to exploration and production. Further, Congress should force the Interior Department to conduct lease sales if a commercial interest exists.

**2. Allow access to freely traded energy sources.**

America's surge as the world's largest oil and natural gas producer has positioned the U.S. to export more energy. Antiquated and anti-free-trade laws thwart those opportunities. Freely trading energy and energy technologies would yield tremendous economic benefits by providing Americans with more opportunities to sell their products. Further, providing America's allies with more energy choices produces important geopolitical benefits. Congress should lift any government-imposed restrictions on exporting energy and ensure that other potential export opportunities are not blocked by overzealous regulators.

**3. Eliminate and block burdensome regulations.**

The biggest threat to affordable, reliable energy in the United States is the current onslaught of regulations implemented by unelected bureaucrats. The Obama Administration's regulations on new and existing power plants will effectively prohibit the construction of new coal-fired power plants and drive America's operating fleet out of business.<sup>2</sup> The Environmental Protection Agency's (EPA's) proposed Waters of the United States (WOTUS) rule is an attack on private property rights and would significantly limit land use, including energy production.<sup>3</sup> Furthermore, the EPA's more stringent ozone standards would choke off energy and economic development all over the country and could be the most expensive regulation in history.<sup>4</sup> Congress should recognize that these regulations impose extraordinary costs on Americans with zero to little

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1. Bureau of Ocean Energy Management, "OCS Lands Act History," <http://www.boem.gov/OCS-Lands-Act-History/> (accessed May 18, 2015).  
2. Kevin D. Dayaratna, Nicolas D. Loris, and David W. Kreuzer, "The Obama Administration's Climate Agenda: Underestimated Costs and Exaggerated Benefits," Heritage Foundation *Backgrounder* No. 2975, November 13, 2014, <http://www.heritage.org/research/reports/2014/11/the-obama-administrations-climate-agenda-underestimated-costs-and-exaggerated-benefits>.  
3. Daren Bakst, "What You Need to Know About the EPA/Corps Water Rule: It's a Power Grab and an Attack on Property Rights," Heritage Foundation *Backgrounder* No. 3012, April 29, 2015, <http://www.heritage.org/research/reports/2015/04/what-you-need-to-know-about-the-epacorps-water-rule-its-a-power-grab-and-an-attack-on-property-rights>.  
4. Daren Bakst, "Alleged Benefits from Proposed Ozone Standard Have Little to Do with Ozone: Statement to the EPA," The Daily Signal, February 13, 2015, <http://dailysignal.com/2015/02/13/alleged-benefits-proposed-ozone-standard-little-ozone-statement-epa/>.

environmental benefit and should steadfastly prohibit implementation of these regulations.

**4. Eliminate handouts and workforce-training programs.** The 2005 Energy Policy Act and the 2007 Energy Independence and Security Act included provisions that envisioned taxpayer-funded programs jumpstarting new industries, reducing dependence on conventional sources of energy, and combating climate change. While energy subsidies have propped up certain industries, they have done far more economic harm than good. Whether the preferential treatment is a targeted tax credit, a government-backed loan or loan guarantee, or a direct grant, these programs have squandered billions of taxpayer dollars, directed private investment away from projects that do not receive government support, and used taxpayer money to finance projects that the private sector would have funded without the government program in place. Furthermore, competitive companies should not need support from the government. The global energy market is worth \$6 trillion.<sup>5</sup> If an alternative energy technology is competitive, a wealth of opportunity is available to supply electricity or transportation fuel. When the government involves itself in financing these projects, it disincentivizes companies from innovating to lower costs and compete without handouts.<sup>6</sup>

Congress should also reject taxpayer-funded energy-related worker-training programs. Whether the jobs-training program is for the welders, nuclear engineers, or specialists to install more energy-efficient windows, market forces will meet demand much more efficiently than any government program can. Lags will exist in certain workforces, but that does not mean that a government program can (or should) fill the gap. The private sector expands and trains workers appropriately

to meet demand or capture more opportunities, and it will make those investments with its own resources. The onus is on businesses to expand and contract as necessary to meet demand.

**5. Remove government-forced efficiency and renewable-fuel mandates.** Almost every year, Congress aims to take up some sort of bipartisan energy-efficiency bill on account of an alleged market failure or so that politicians can boast that they are saving money for the American public. But individuals, families, and businesses have an inherent interest in saving money; they do not need help from the federal government. Consumers will make savings decisions by themselves, and the government should not override their choices by nudging them toward the government's preferred outcome.<sup>7</sup> Congress should repeal existing efficiency provisions, and strip away any authority of the Department of Energy to implement new standards. Doing so will create a market standard for how much consumers value efficiency versus other preferences and trade-offs they consider when purchasing homes, vehicles, and appliances.

Another mandate that Congress should eliminate is the Renewable Fuel Standard (RFS), which requires refineries to blend biofuels, mostly corn-based ethanol, into America's fuel, regardless of the cost. Through higher food and fuel expenses, the RFS has made most Americans worse off. The higher costs paid by American families benefit a select group of special interests that produce renewable fuels. The federal government should not mandate the type of fuel that drivers use in the first place. Congress should repeal the RFS.

**6. Streamline, not subsidize, energy-infrastructure projects.** The recent growth in domestic oil and gas production—sometimes in non-traditional

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5. SelectUSA, "The Energy Industry in the United States," <http://selectusa.commerce.gov/industry-snapshots/energy-industry-united-states> (accessed May 18, 2015).

6. Nicolas D. Loris, "Spurring Investment in America's Clean Energy Technology," testimony before the Committee on Energy and Natural Resources, U.S. Senate, July 18, 2013, <http://www.heritage.org/research/testimony/2013/09/spurring-investment-in-americas-clean-energy-technology>.

7. W. Kip Viscusi and Ted Gayer, "Behavioral Public Choice: The Behavioral Paradox of Government Policy," Mercatus Center at George Mason University, March 31, 2015, <http://mercatus.org/publication/behavioral-public-choice-behavioral-paradox-government-policy> (accessed May 18, 2015).

areas, such as North Dakota—has resulted in transportation delays. Streamlining the environmental review and permitting processes for new pipelines and grid investments is a welcome step for managing new supplies; however, taxpayers should not subsidize those investments, and Congress should eliminate any federally imposed cost-socialization requirements where regulatory agencies provide cover to build expensive, uneconomic projects by spreading the costs to citizens who derive little, if any, benefit from those projects. Additionally, Congress should be mindful of protecting private property rights, and maintain that states have the authority to control local and regional needs.

**7. Return power to the states and the people.**

The federal estate is massive, consisting of some 635 million acres. The effective footprint is perhaps even larger, as limitations on federal lands often impact the use of adjacent state and private lands, as government agencies lock up lands through informal designations and study areas, and as regulatory pushes for WOTUS and other rules threaten to put almost all of the United States under federal jurisdiction. Federal ownership, as well as new and existing federal regulations of public lands, restricts economic activity

and in many instances has created environmental problems due to mismanaged lands and lack of a proper incentive structure to maintain the properties. Congress should recognize that states, local governments, and individuals are the best arbiters of how to manage land and should explore opportunities to privatize land and devolve regulatory authority to the states for land use as well as environmental protection.

**Here's a Plan: Let the Market Work**

Americans should rightly be wary of any comprehensive energy plans that Congress concocts, since these plans generally provide opportunities for Members to bolster their pet projects. The result is a hodgepodge of initiatives that take U.S. energy policy further from the free market, toward bad policies that concentrate benefits on the politically connected few. America does not need a federal energy policy. Congress should recognize that free energy markets work and should enact legislative reforms to achieve those seven objectives that make the U.S. energy economy freer and more competitive—to the benefit of all Americans.

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