

TESTIMONY OF ELIZABETH KLEIN
ASSOCIATE DEPUTY SECRETARY
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENT AFFAIRS
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT
UNITED STATES SENATE

“Agency Progress in Retrospective Review of Existing Regulations”

November 5, 2015

Chairman Lankford, Ranking Member Heitkamp, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss actions the Department of the Interior (Department) is taking to review and improve our existing regulations to ensure that they are efficient, functional, transparent, and less burdensome.

The Department recognizes the importance of establishing and maintaining a culture of retrospective review and has taken a number of steps to ensure that review takes place, while continuing to advance our mission of managing our natural resources to benefit all Americans, along with upholding Federal trust responsibilities to American Indians and Alaskan Natives.

Following President Obama’s issuance of Executive Orders 13563 and 13610, the Department developed a robust plan to ensure that our offices and bureaus with regulatory responsibilities are incorporating retrospective review into their annual regulatory planning processes. In doing so, we were guided by the principles in Executive Order 13563, which directs agencies to use the best available science; allow for public participation and an open exchange of ideas; promote predictability and reduce uncertainty; use the best, most innovative, and least burdensome tools to achieve regulatory ends; take into account benefits and costs; and measure and improve results of regulatory requirements. The Department, in accordance with Executive Orders 13563 and 13610, continues to make progress in fulfilling our commitment to regulatory review, and my testimony will highlight some of the efforts we have undertaken to date.

A key element of Executive Order 13563 requires agencies to develop plans to review their existing regulations in order to explore whether any rules “should be modified, streamlined, expanded, or repealed as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.” In response to this requirement, the Department published our Plan for Retrospective Regulatory Review (Plan) in August 2011. Through this Plan, the Department made retrospective review an explicit and permanent part of our planning process. Each Department bureau and office is asked to identify at least one regulation for review each year. In considering regulations for review, we ask them to consider if a rule (1) is obsolete due to changes in the law or practice; (2) is duplicative or incompatible

with other rules; (3) has been reviewed in the last 10 years; or (4) is considered burdensome or unnecessarily restrictive based upon public or internal comments.

The Department also shares your goal, and that of the President, of increasing public interest and engagement in the process of improving our regulations. We recognize that stakeholders, non-profit organizations, and the regulated public bring unique and valuable insight into our regulatory activities and may have information that is not readily available or apparent to the Department. This information can help us improve or more appropriately tailor our regulations to accomplish their intent.

The Department is working to foster greater public participation and an open exchange of ideas through the publishing of our Public Engagement Plan in December 2014. Consistent with our Public Engagement Plan, we have published Federal Register notices asking the public for additional suggestions and input. Furthermore, we have dedicated space on our web site to disseminate information regarding our retrospective regulatory review efforts and have established a permanent email address where members of the public can engage with us 24 hours per day, 365 days per year, on how we can continue to improve our regulations.

In addition, many of the bureaus and offices within the Department interact with stakeholders every day through one-on-one conversations that take place in the normal course of doing business. Our employees work closely with regulated parties and other interested parties. These stakeholders share their ideas about how we might make our regulations work better, and these conversations influence what rules have been put forward by the bureaus and offices for retrospective review.

We have submitted semi-annual reports to the Office of Information and Regulatory Affairs on our progress with respect to retrospective regulatory review since 2011. During this time, the Department has added 32 actions for retrospective review. We have completed work on 12 of these regulatory actions.

Through the regulatory review framework, we have made significant progress toward meeting the goals established by Executive Order 13563. Many of our updated rules have removed outdated requirements, streamlined processes, or modernized how we work with the public to manage our public lands, protect endangered species, responsibly develop our Nation's energy resources, and protect National treasures for this and future generations.

As we continue to carry out the Administration's commitment to improving regulation, while also implementing our policy priorities, we have turned the focus of our retrospective regulatory review efforts to regulations that promote the trust relationship between Indian tribes and the Federal government. For example, we recently completed work on a final rule revising regulations governing the process for Federal acknowledgement of Indian tribes. Our aim was to maintain the integrity of that process while trying to reduce the extraordinarily long amount of time the process has taken in the past. To help bolster tribal sovereignty and dignity through economic development, we are working on updating and making less burdensome regulations on obtaining rights-of-way across Indian lands. This should help increase tribal access to technology such as fiber optic lines that are vital to participation in a wired 21st century

economy. We are also reviewing rules to improve access to quality housing in Indian country and rules to protect the welfare of Indian children in custody proceedings. By reviewing these regulations, the Department aims to address the needs of Native Communities, fulfill the Federal trust responsibility to American Indians and Alaskan Natives, and ensure our regulations are effective and efficient.

It is also worth noting that not all rules are appropriate for retrospective review; and review for the sake of review would be unduly burdensome to agencies and an inefficient use of resources. To ensure an efficient regulatory system, agencies need to maintain discretion to prioritize which rules necessitate review. At the Department, we seek to identify rules for retrospective review that further our mission. With limited resources, it is important to prioritize the rules we select for review.

In conclusion, the Department has an obligation to manage and protect America's public lands, protect endangered species, encourage responsible development of our energy resources, preserve our National treasures for the enjoyment of this and future generations, fulfill trust responsibilities to American Indians and Native Alaskans, and develop and manage scarce water resources in the West. We must do all of this in a way that works for the American public. We understand that we need to regulate in a way that is smart, efficient, effective and not more burdensome than necessary to meet our goals. We look forward to continuing our efforts to meet these challenges.

Thank you for your time and attention. I would be happy to answer any questions you may have.