

From: Angela Donlan  
Sent: Monday, October 03, 2011 12:17 PM  
To: Melissa Miller-Henson  
Subject: Fish and Wildlife Service regulatory review

Melissa,

Attached is a link to one of the documents we discussed on Friday. This is the document related to the Fish and Wildlife Service Regulatory Review process currently underway. It may be of interest to the regulatory and permitting work group.

Thanks,  
Angela

Angela Donlan  
Department of Fish and Game

**Department of the Interior  
Plan for Retrospective Regulatory Review**



*“Through this process, we want to gather the best ideas from the public on how to fix regulations that need fixing, eliminate those that are no longer needed, and make government work better for the people we serve.”*

*- Secretary Ken Salazar*

**Department of the Interior (DOI)  
Plan for Retrospective Regulatory Review**

**Table of Contents**

**Executive Summary ..... 3**

**Current DOI Efforts to Review Regulatory and Reporting Requirements ..... 6**

**Initial List of Candidate Rules for Review Over the Next Two Years..... 10**

**Scope..... 15**

**Public Access, Participation, and Transparency ..... 15**

**Proposed Process for Future Retrospective Review ..... 17**

**Components of Retrospective Cost-Benefit Analysis..... 20**

**Continued Commitment to Public Input ..... 21**

**Appendix I ..... 22**

**DOI Request for Information ..... 22**

**Appendix II..... 27**

**DOI Second Request for Information ..... 27**

**Appendix III ..... 31**

**318 DM 8..... 31**

## Executive Summary

This plan implements President Obama’s Executive Order 13563 of January 18, 2011, “Improving Regulation and Regulatory Review,” which seeks to make the U.S. Government’s regulatory system work better for the American public. DOI recognizes the importance of maintaining a consistent culture of retrospective review, and this plan charts a path to make DOI regulations:

- more efficient, by consolidating or eliminating duplicative or unnecessary regulations;
- less burdensome, by providing more flexibility and simpler means of compliance, where appropriate;
- more functional, while accomplishing the DOI mission and complying with statutes;
- more transparent, using the Internet to improve access and public participation; and
- more credible, by ensuring that decisions are based on sound science.

This plan seeks to strengthen and maintain a culture of retrospective review at DOI by incorporating and consolidating retrospective review requirements into DOI’s existing annual regulatory planning process. It also discusses DOI’s existing commitment to regulatory review and highlights several recently completed or ongoing efforts at DOI that meet the regulatory review framework. Finally, it presents additional significant regulations that DOI proposes to review within the next two years, including:

- **Oil and Gas Royalty Valuation Rules (Office of Natural Resources Revenue)** – DOI is exploring a simplified market-based approach to arrive at the value of oil and gas for royalty purposes that could dramatically reduce accounting and paperwork requirements and costs on industry and better ensure proper royalty valuation by creating a more transparent royalty calculation method.
- **Endangered Species Act Rules (Fish and Wildlife Service)** – The Fish and Wildlife Service (FWS), working in conjunction with the National Marine Fisheries Service, will revise and update the ESA implementing regulations and policies to improve

conservation effectiveness, reduce administrative burden, enhance clarity and consistency for impacted stakeholders and agency staff, and encourage partnerships, innovation, and cooperation.

- **Commercial Filming on Public Land Rules** – This joint effort between the National Park Service (NPS), Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), Bureau of Reclamation (BOR) and Bureau of Indian Affairs (BIA) will create consistent regulations and a unified fee schedule for commercial filming and still photography on public land. It will provide the commercial filming industry with a predictable fee for using federal lands, while earning the government a fair return for the use of that land.
- **Offshore Energy Safety and Environmental Rules (BOEMRE)** – In the wake of the Deepwater Horizon oil spill, DOI immediately instituted regulatory reforms that strengthened the protection of workers’ health and safety and enhance environmental safeguards. BOEMRE is now considering ways to apply “safety case” type performance standards, such as those widely applied internationally, to the U.S. offshore drilling regulatory regime. A hybrid combination of performance-based and prescriptive standards will provide flexibility to adapt to changing technologies and increasingly complex operational conditions, while maintaining worker and environmental protections.
- **Leasing (BIA)** – BIA is amending its leasing regulations to eliminate the need to follow multiple cross-references in the regulations. The amendments will also delete the requirement for BIA review of permits, which some view as unjustified and excessively burdensome.
- **Land Classification Regulations (BLM)** – BLM is amending its regulations to remove obsolete land classification regulations and consolidate these regulations into the existing planning system regulations. This will benefit the public by consolidating all land use decisions into one systematic process.

DOI sought public comment on all aspects of this plan throughout its development. This included an initial 30-day comment period before a plan was drafted and another 30-day period for comment on a preliminary draft plan. The public will continue to have an opportunity to comment on this plan, the list of proposed rules for review, and any other aspects of DOI's regulations through DOI's [Open Government](#) website and through email at [RegReview@ios.doi.gov](mailto:RegReview@ios.doi.gov).

DOI emphasizes that Executive Order 13563 calls not for a single exercise, but for “periodic review of existing significant regulations.” It explicitly states that “retrospective analyses, including supporting data, should be released online wherever possible.” Consistent with the commitment to periodic review and to public participation, DOI intends to continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. DOI welcomes public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, DOI intends to give those suggestions careful consideration.

## Current DOI Efforts to Review Regulatory and Reporting Requirements

In addition to routine review by DOI bureaus and offices in the normal course of their operations, various statutes and Executive Orders impose specific requirements for retrospective review of regulations.<sup>1</sup> The DOI Departmental Manual incorporates these requirements by requiring bureaus to review all rules, regardless of significance, every five years. See Appendix III. Additionally, DOI has an important and unique relationship with Tribal Nations that requires ongoing consultation and review. Through a separate effort, DOI is revising and strengthening its Tribal consultation policy to create a framework for synchronizing consultation practices in all applicable circumstances where statutory or Administrative opportunities to consult exist, including rulemakings.

DOI recently reviewed, or is currently reviewing, several regulations under these existing frameworks. DOI has also issued, or is completing, non-regulatory guidance and planning processes that complement the goals of retrospective regulatory analysis. These regulatory and non-regulatory efforts include:

- **Opening Federal Waters to Renewable Energy Development (BOEMRE)** – The Energy Policy Act of 2005 required DOI to complete a rule within nine months that would allow companies to receive permits to site wind and other renewable energy projects in federal waters. The rule had not been completed by the close of the previous Administration due to interagency jurisdictional disagreements. The rule was a priority to the new Administration and was completed in April 2009. It creates a comprehensive framework for allowing renewable energy development on federal waters for the first time; from preliminary study and lease issuance, to construction and operation, to decommissioning of projects. The rule also ensures that DOI properly considers safety, environmental protection, and other uses of the sea and seabed, coordinates with other

---

<sup>1</sup> Statutes, Executive Orders, and Memoranda related to current regulatory review include, in part: the Regulatory Flexibility Act of 1980 (RFA), the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), and Executive Order 12866 - Regulatory Planning and Review.

federal agencies, and state, local and tribal governments, and receives a fair return for the public for use of federal waters.

- **Eliminating Redundancy in Offshore Wind Development Rules (BOEM<sup>2</sup>)** – BOEM is continuously reviewing the offshore renewable energy framework to reduce the total time involved in the leasing and permitting process. By eliminating redundancy, a recent amendment to the regulations could shorten the leasing process by six to twelve months. These regulations apply to areas being considered for commercial offshore wind leasing. Currently, if BOEM issues a request for interest and receives only one response, BOEM must nevertheless issue a second request for interest to ensure there is no competitive interest in that area. This process can take several months, and the bureau determined that it is redundant. The proposed amendment would eliminate the requirement for the second request for interest and potentially shorten the leasing process by six to twelve months. This would significantly reduce burdens and would promote more rapid offshore wind development.
- **Fostering “Smart from the Start” Renewable Energy Development on Public Lands (Bureau of Land Management)** –BLM is pursuing a landscape-level planning approach for renewable energy projects on public lands that is built around the identification of solar energy zones in which large scale solar projects should be preferentially cited. To implement this approach, BLM is revising its rules to prevent conflicting land use claims from arising when applications for solar and wind energy projects are sought in preferred zones. These revisions will allow lands that are included in wind or solar energy applications to be temporarily segregated, and therefore, not subject to conflicting mining claims or other land appropriations while the applications are pending. Under current rules, lands being considered for wind or solar energy right-of-way applications can remain open to mining claims while the BLM considers the applications, creating potential conflict and uncertainty. In furtherance of this approach, BLM and the Department of Energy are jointly preparing a “programmatic environmental impact

---

<sup>2</sup> This rulemaking is currently managed by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). On October 1, 2011, BOEMRE will reorganize into two new entities, with the Bureau of Ocean Energy Management (BOEM) assuming responsibilities for this rulemaking.



statement” that will assess the environmental, social, and economic impacts associated with solar energy development on lands managed by the BLM in Arizona, California, Colorado, Nevada, New Mexico, and Utah. This study will identify proposed “solar energy zones” on public lands in those states that are most suitable for environmentally-sound, utility-scale solar energy production. This exercise provides the foundation for BLM permitting reforms that will prioritize the permitting of renewable energy projects that are within zones that represent preferred areas for solar development, and which have already been the subject of significant environmental analysis. Overall, BLM’s efforts will create a faster, more effective, and less burdensome process for allowing the development of renewable energy projects on public lands.

- **Modernizing Offshore Energy Safety and Environmental Rules (BSEE<sup>3</sup>)** In the wake of the Deepwater Horizon oil spill, BOEMRE (BSEE as of October 1, 2011) has undertaken a comprehensive reorganization of its structure and revised major aspects of its regulatory framework. These completed and ongoing reforms include:
  - Emergency Review, Report to the President, and Immediate Rulemaking – At the President’s request, DOI undertook an emergency review of its applicable offshore regulations and requirements immediately after the spill began. Within several weeks of the spill and with input from third-party scientists and engineers, DOI identified potential safety enhancements for implementation that were delivered in a report to the President. DOI began implementing these enhancements immediately, issuing new guidance and, through an emergency rulemaking process, promulgating a drilling safety rule that makes several safety enhancements identified in the report to the President mandatory. The new drilling safety rule requires permit applications for drilling projects to meet new standards for well-design, casing, and cementing, and be independently certified by a professional engineer. Under the new guidance, deepwater drilling operators

---

<sup>3</sup> This rulemaking is currently managed by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). On October 1, 2011, BOEMRE will reorganize into two new entities, with the Bureau of Safety and Environmental Enforcement (BSEE) assuming responsibilities for this rulemaking.

must demonstrate that they are prepared to deal with the potential for a blowout and worst-case discharge. Operators are also required to provide a corporate compliance statement and review of subsea blowout containment resources for deepwater drilling. Under these changes, deepwater operators must now demonstrate - in advance of drilling a well - that they have a plan and the systems available to deal with a deepwater blowout should one occur. BOEMRE will also be coming forward shortly with an advanced notice of proposed rulemaking that addresses a next generation of enhanced safety measures, including blowout preventer features and testing and drilling safety standards.

- Enhanced Workplace Safety – Under a new workplace safety rule, BOEMRE also imposed, for the first time, performance-based safety and environmental standards requiring offshore operators to develop and maintain comprehensive Safety and Environmental Management Systems (SEMS) programs. These programs include the development of hazards and risk mitigation analyses for offshore drilling and production operations, as well as compliance with standards for equipment, safety practices, environmental safeguards, and management oversight of operations and contractors. BOEMRE will be issuing a second SEMS rule shortly that will capture additional systemic safety reforms, including mandatory third party audits.

These reforms were completed in unprecedented timeframes, in the wake of crisis, and during the course of a complete agency reorganization, while still including comprehensive outreach to industry, the public, and other stakeholder groups, including through nationwide public forums, rule-specific public comment periods, individual meetings, and the utilization of outside experts and advisory panels. Overall, these efforts have resulted in more effective regulations to improve the safety of offshore oil and gas development and better protect the environment from future spills.

- **Reducing Paperwork for Indian Country (Department-wide)** – Through paperwork reduction efforts, the Department will reduce the total paperwork burden by

approximately 50,000 hours in 2011 across all of DOI's bureaus and offices that affect Native Americans.

- **Improving Transparency in Land Appeals Proceedings (Interior Board of Land Appeals)** – The Interior Board of Land Appeals published new rules to codify procedures established through Board decisions and practice but not formally published elsewhere. These regulatory changes were requested by practitioners to ensure a clear set of rules for all those appearing before the Board, and will benefit the parties who appear before the Board as well as facilitate expeditious administrative review.

## **Initial List of Candidate Rules for Review Over the Next Two Years**

In addition to the ongoing review efforts described above, DOI is committed to reviewing additional regulations under the framework provided by EO 13563. Over the next two years, DOI proposes to review the following regulations:

- **Oil and Gas Royalty Valuation Rules (Office of Natural Resources Revenue)** – Interior's Office of Natural Resources Revenue (ONRR) collects an average of \$10 billion dollars per year from royalties for oil and gas that is extracted from our public lands and our offshore resources. The rules that govern the valuation of the oil and gas resources against which the royalty rate is applied have been in place, with various amendments, since the 1980s. These regulations require transaction-by-transaction evaluation of the negotiated price for the oil and gas produced on public lands, followed by an individually-based analysis of the costs associated with transportation and gas processing. (The royalty is applied against the final price, net of applicable transportation and processing costs.) The regulations' reliance on case-by-case evaluations of price and transportation and processing cost deductions requires that both ONRR and industry engage in extremely labor-intensive, complex calculations and extensive recordkeeping to determine applicable rates and allowable cost deductions. In addition to the up-front costs of undertaking the calculations, extensive resources are required to engage in audit

and compliance-related activities, enforcement actions, and the like. The intensity of these efforts is directly related to the high stakes involved, given the billions of dollars that are on the line.

We published an Advance Notice of Proposed Rulemaking on May 27, 2011 (76 FR 30878) that will evaluate the potential adoption of a radically different, simplified, and market-based approach to establish the value of oil and gas upon which federal royalties are calculated. More specifically, we are exploring the use of geographically-based market prices as the presumptive value of oil and gas produced in that region. The royalty rate would then be applied to this market-based value, removing the need to undertake a transaction-by-transaction, fact-specific evaluation of contract amounts, and transportation and processing costs. These changes could dramatically reduce accounting and paperwork requirements and costs on industry and better ensure proper royalty valuation by creating a more transparent royalty calculation method.

- **Endangered Species Act Rules (FWS)** – Numerous public comments identified the Endangered Species Act implementing regulations as strong candidates for retrospective review. Many of these regulations, most of which the Fish and Wildlife Service jointly administers with the National Marine Fisheries Service, have not been updated since the 1970s or 1980s and have been subject to extensive litigation. The two Services have identified key areas in these regulations and associated policies where there is both a need and opportunity for improving administration of the Endangered Species Act. With input from the regulated, conservation, and other stakeholder communities, the following changes to the ESA implementing regulations or policies will improve conservation effectiveness, reduce administrative burden, enhance clarity and consistency for impacted stakeholders and agency staff, and encourage partnerships, innovation, and cooperation:
  - Minimize requirements for written descriptions of critical habitat boundaries in favor of map- and internet-based descriptions. Map- and internet-based descriptions are clearer and more accessible methods of showing critical habitat boundaries. Additionally, reducing written boundary description requirements will save taxpayer money.

- Clarify, expedite, and improve procedures for the development and approval of conservation agreements with landowners, including habitat conservation plans, safe harbor agreements, and candidate conservation agreements.
  - Expand opportunities for the states to engage more often and more effectively in the implementation of the ESA’s various provisions, especially those pertaining to the listing of species.
  - Review and revise the process for designating critical habitat to design a more efficient, defensible, and consistent process.
  - Clarify the definition of the phrase “destruction or adverse modification” of critical habitat to provide a consistent basis for determining, during Section 7 consultation, whether a Federal action will negatively impact critical habitat in a manner that would affect the recovery of a listed species.
  - Clarify the scope and content of the incidental take statement, particularly with regard to programmatic actions or other actions where direct measurement is difficult. An incidental take statement is a component of a biological opinion that specifies the impact of an incidental taking of an endangered or threatened species and provides reasonable and prudent measures that are necessary to minimize those impacts. Greater flexibility in the quantification of anticipated incidental take could reduce the potential for project delays caused by needing to reinitiate consultations due to exceeding the authorized amount of take and should also reduce the litigation risk for the Service and the action agencies.
  - Working through an interagency workgroup of senior policy leaders from FWS, the National Oceanic and Atmospheric Administration, and the Environmental Protection Agency, craft a multi-faceted strategy to address the challenge of the conservation of endangered species and the administration of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). One major element of this effort is to address core scientific issues underlying the effective integration of FIFRA and ESA responsibilities.
- **Commercial Filming on Public Land Rules (NPS, FWS, BLM, BOR, and BIA)** – This joint effort between the NPS, FWS, BLM, BOR and BIA will create consistent

regulations and a unified fee schedule for commercial filming and still photography on public land. The USDA's Forest Service will also be a partner in this effort to ensure consistent regulations on Forest Service land. This rule will provide common criteria for permitting commercial filming on public land in a manner that protects natural and cultural resources and minimizes the impact of the activity on other visitors to an area. The rule will also allow most still photography activities to occur without a permit, lessening the burden on that community. The rulemaking will further include the adoption of a shared location fee schedule, providing the commercial filming industry with a predictable fee for using federal lands, while earning the government a fair return for the use of that land. Overall, these changes will bring needed efficiencies and predictability to the commercial filming and still photography industries, while preserving the government's ability to protect public lands and receive a fair return for the use of those lands.

- **Offshore Energy Safety and Environmental Rules (BOEMRE/BSEE)** – In the wake of the Deepwater Horizon oil spill, DOI immediately instituted regulatory reforms that strengthened the protection of workers' health and safety and enhanced environmental safeguards. BOEMRE (BSEE as of October 1, 2011) is studying the potential benefits and challenges of further reforms that would, over the long term, improve regulations designed to respond to high impact, low probability events. For example, BOEMRE is considering ways to apply "safety case" type performance standards, such as those widely applied internationally, to the U.S. offshore drilling regulatory regime. BOEMRE's recent Safety and Environmental Management Systems (SEMS) rule added certain performance-based standards to its predominantly prescriptive safety and environmental management regime. Additional safety case performance standards would have to be tailored to the unique scale and complexity of the U.S. offshore oil and gas industry. A hybrid combination of performance-based and prescriptive standards will provide flexibility to adapt to changing technologies and increasingly complex operational conditions, while maintaining worker and environmental protections. BOEMRE/BSEE will continue to work closely with

stakeholders as it assesses the costs, benefits, timelines, and challenges of incorporating a safety case regulatory approach.

- **Leasing (BIA)** – The current leasing regulations apply to non-agricultural leases but do not include guidance on how the provisions apply to different types of these leases. This requires BIA employees in the field to make ad hoc determinations on how to apply the rules to vastly different types of leases and leads to inconsistency and unpredictability. Proposed changes would replace these general provisions with subparts specifically addressing each of the three types of non-agricultural leases of Indian land: business leasing, residential leasing, and wind and solar resource leasing. Each new subpart would be as free-standing as possible, thus eliminating the need for the reader to follow multiple cross-references. The draft regulations would also delete the requirement for BIA review of permits, which has been deemed unjustified and excessively burdensome.
- **Land Classification Regulations (BLM)** – A substantial portion of BLM’s land classification regulations have been outdated by subsequent legislation. BLM proposes to amend its regulations to remove obsolete land classification regulations and make the classification process a part of the existing planning system regulations. This would benefit the public by clarifying that land use decisions are made by the more systematic land use planning process, and provide needed housekeeping to the BLM regulations.

## Scope

This plan for retrospective regulatory review was developed in cooperation with, and applies to, all bureaus and offices in the Department of the Interior. DOI will coordinate with the National Oceanic and Atmospheric Administration (NOAA) on matters related to the Endangered Species Act. The plan applies only to significant rules.<sup>4</sup>

## Public Access, Participation, and Transparency

DOI believes public participation is a foundational principle to creating more effective, less costly, more flexible, and less burdensome regulations. Those who must comply with regulations often have information that can improve the regulations and contribute to better results. Moreover, increased compliance can result when regulated entities have an opportunity to participate in the development of the regulations they will need to abide by. Accordingly, DOI has strongly encouraged public participation in developing this plan and will continue to seek public input as this plan is implemented and refined.

DOI's first step in developing this plan was to ask the public for ideas and suggestions. DOI published a request for information in the Federal Register on February 25, 2011, seeking the public's comments (76 FR 10526) (available at <http://edocket.access.gpo.gov/2011/pdf/2011-4241.pdf> and attached as Appendix I). DOI further advertised this request for public comment through a press release and a dedicated page on DOI's [Open Government](#) website. On this site, the public has easy access to DOI's existing regulations and can submit comments via email. Additionally, DOI encouraged individual bureaus and offices to notify their stakeholders, advisory groups, and other potentially interested parties of the open request for comments. The

---

<sup>4</sup> Executive Order 12866, reaffirmed and incorporated in Executive Order 13563, defines a significant rule to be any regulatory action likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.



formal comment period for the first notice closed on March 28, 2011. DOI published a second notice asking the public for comments on its preliminary plan for retrospective review on July 11, 2011 (76 FR 40645) and attached as Appendix II. The comment period for this second notice closed on August 10, 2011. DOI received one comment on the second notice that was supportive of DOI's plan to review certain Endangered Species Act regulations. DOI will continue to accept public comments through its [Open Government](#) website and the email address [RegReview@ios.doi.gov](mailto:RegReview@ios.doi.gov).

DOI received 42 comments in response to the first Federal Register notice. The comments are summarized below and are available in their entirety at Regulations.gov under docket number DOI-2011-0001. DOI has considered these comments in developing this plan and in selecting regulations that are candidates for review over the next two years.

<b>Comments related to...</b>	<b>suggested the following changes...</b>
General issues	<ul style="list-style-type: none"> <li>• Conduct regular retrospective regulatory reviews</li> <li>• Emphasize the importance of independently verifiable science as the basis for decision making</li> <li>• Write regulations in plain language</li> </ul>
U.S. Fish and Wildlife Service	Revise regulations implementing the following: <ul style="list-style-type: none"> <li>• Endangered Species Act</li> <li>• Convention on International Trade in Endangered Species</li> <li>• Wild Bird Conservation Act</li> <li>• Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act</li> <li>• Lacey Act</li> </ul>
Bureau of Ocean Energy Management, Regulation and Enforcement and Bureau of Land Management	Revise regulations governing: <ul style="list-style-type: none"> <li>• Management, permitting, and leasing of oil and gas resources</li> <li>• Renewable energy resources (hydropower and wind)</li> <li>• Minerals leasing</li> </ul>
Bureau of Indian Affairs	Conduct meaningful consultation with tribes and local governments regarding: <ul style="list-style-type: none"> <li>• Indian Gaming Regulatory Act regulations</li> <li>• The land-into-trust program</li> </ul>

## Proposed Process for Future Retrospective Review

These recent and ongoing regulatory review initiatives at DOI are producing positive results, but the permanent culture of regulatory review encouraged by E.O. 13563 will require a more robust and systematic approach. To accomplish this, DOI will *incorporate* the regulatory review principles and requirements of E.O. 13563 and *consolidate* current regulatory review requirements into its annual regulatory planning process. Existing regulatory review requirements under the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, Executive Order 12866, the existing Departmental Manual, and additional Executive Orders and Memoranda<sup>5</sup> will be consolidated under this change.

The Department's annual regulatory planning process is a formal process within DOI that establishes future regulatory priorities. The process results in an annual regulatory plan that is published each fall in the Federal Register. Management throughout the Department uses the plan to set priorities and allocate resources. Incorporating regulatory review principles and existing requirements into this existing, internally important process will best ensure a lasting commitment to retrospective review at DOI.

The following elements will define the incorporation and consolidation of retrospective review principles and requirements into the annual regulatory planning process:

**1. Annual Identification of Candidate Regulations.** In developing annual regulatory plans, DOI offices and bureaus will be required to identify at least one regulation that addresses the factors for retrospective review. (Step 2 below). Although the identified regulations may be a priority for reasons other than the retrospective review factors, the regulations identified should

---

<sup>5</sup> Revocation Of Certain Executive Orders Concerning Regulatory Planning And Review; Presidential Memorandum - Administrative Flexibility (State, local and Tribal governments); Presidential Memorandum - Regulatory Flexibility, Small Business, and Job Creation; Presidential Memorandum - Accountable Government Initiative 9-14-2010, Presidential Memorandum - Tribal Consultation, Memorandum for the Heads of Executive Departments and Agencies 3-9-09 (scientific integrity), Memorandum for the Heads of Executive Departments and Agencies (Endangered Species Act); Transparency and Open Government.

squarely address at least one of these factors. This requirement will ensure that retrospective review quickly becomes a part of DOI's regulatory culture and remains a lasting priority.

**2. Factors for Selecting Rules for Retrospective Review.** A regulation is a candidate for retrospective review within the annual regulatory planning process if it:

- a. Is obsolete due to changes in the law or practice;
- b. Duplicates or conflicts with other rules;
- c. Has not been reviewed in 10 years; or
- d. Is considered burdensome or unnecessarily restrictive based upon public or internal comments.

**3. Structure and Staffing.** The regulatory planning process is managed by the Office of Executive Secretariat and Regulatory Affairs within the Office of the Secretary. The retrospective review process will be managed by this Office as a component of the annual regulatory planning process. In addition to the continuous oversight of the process by this Office, the Associate Deputy Secretary will have overall responsibility to ensure that regulatory review principles remain a required aspect of the regulatory planning process.

**4. Independent oversight of the review process.** The Office of Executive Secretariat and Regulatory Affairs, a part of the Office of the Secretary of the Interior, is structurally, financially, and managerially independent from the Department's regulatory bureaus and offices. The Office's mission is focused on the efficient administration of the entire regulatory process and completion of process-oriented requirements and priorities. The Office's independence is already proven within DOI through its long-standing administration of the annual regulatory process. Once regulations are selected for review and analysis, the Office of Executive Secretariat and Regulatory Affairs remains the conduit for senior leadership review of regulations and the approval for publication of notices and rules. Given this history and structure, this Office will be able to independently administer a retrospective review requirement through the annual regulatory plan process.

**5. Public Participation and Online Posting “Opt Out.”** Once a regulation is identified for retrospective review, the bureau or office will strive to maximize public input in its review and development. Tribal consultation on relevant regulations will occur early, before general public comment. Moreover, retrospective analyses, including supporting data, will be released online whenever possible. The Office of Executive Secretariat and Regulatory Affairs will require bureaus and offices to seek public input at all appropriate stages of the rulemaking process and to publicly post retrospective analyses and supporting data unless that bureau or office provides reasonable grounds for opting out of this requirement.

**6. Principles of Review.** When reviewing and promulgating rules, bureaus and offices will always consider DOI’s mission. They will also consider, among other things, the following:

- **Clarity.** DOI’s policy is to use plain writing principles to make rules readable and understandable.
- **Flexible regulatory tools.** Writers and reviewers of regulations should consider ways to make rules less burdensome by providing flexibility and freedom of choice whenever possible. This may include using default rules with opportunities to opt out, warnings, disclosure requirements, alternative methods of compliance, sunset provisions, or rules that are less prescriptive and more results oriented.
- **Scientific Integrity.** Consistent with the President’s Memorandum for the Heads of Executive Departments and Agencies, “Scientific Integrity” (March 9, 2009), and its implementing guidance, bureaus and offices should review scientific and technological information for objectivity and to ensure actions are based on sound science.
- **Costs and Benefits.** Analysis of rules should include careful consideration of costs and benefits (both qualitative and quantitative) and to the extent consistent with law, rules should be promulgated only after a reasoned determination that the benefits justify the costs.
- **Environmental Justice.** In accordance with Executive Order 12898, bureaus and offices should write regulations that do not have a disproportionate adverse impact on minority and low income populations.
- **Consultation with Indian Tribes.** The DOI policy on Tribal consultation will guide all review efforts, when applicable. Bureaus or Offices will refer to this policy during

review of regulations with Tribal implications. They will act in good faith to seek meaningful consultation with Indian Tribes when appropriate and will seek and promote cooperation and participation between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding any Departmental action with Tribal implications.

- **Improving Efficiency.** Bureaus and offices should consider how they can make regulations more efficient by seeking the greatest benefit at the least cost.

**7. Institutionalization in the Departmental Manual.** The Departmental Manual will be revised to incorporate the process and principles outlined here.

## Components of Retrospective Cost-Benefit Analysis

As DOI conducts the future review of its regulations, it will consider new information that may be available on the benefits and costs of these rules. When appropriate, it will conduct a new analysis to determine if rules should be modified or repealed. Retrospective regulatory review provides an opportunity to measure costs and benefits in the light of history and experience. It is an opportunity to verify the assumptions made before the rule was promulgated and applied to the real world. As stated by Professor Michael Greenstone, recently chief Economist at the Council of Economic Advisers, “The single greatest problem with the current system is that most regulations are subject to a cost-benefit analysis only in advance of their implementation. This is the point when the least is known and any analysis must rest on many unverifiable and potentially controversial assumptions.”

In conducting retrospective reviews, the Department will rely on stakeholder, regulated community, and Tribal input, its internal expertise, and consultant or academic input on a case-by-case basis. Once a regulation is selected for review under this plan, the implementing bureau will seek public input on the regulation, and seek detailed data that can inform the retrospective analysis. If feasible and appropriate, the Department will consider experimental or quasi-experimental designs, including randomized controlled trials. Given that DOI’s regulations impact areas important to the energy industry, conservation community, and various scientific

and academic disciplines, DOI historically receives extensive public input in its rulemaking efforts. This should continue in retrospective reviews, especially because the regulations being reviewed will be selected for their significant impact on regulated communities.

Moreover, DOI has access to a wide variety of internal scientific professionals and data resources that it relies on when reviewing and creating regulations. DOI has numerous standing advisory committees, such as BOEMRE's recently formed Ocean Energy Safety Advisory Committee, that can provide relevant, market-oriented insight into review efforts. DOI, especially through the USGS, also has deep relationships with academic institutions nationwide that could be enlisted for specific review efforts. Finally, DOI can rely on its staff economists at the bureau level, as well as its independent economist resources within the Policy, Management, and Budget offices of the Office of the Secretary to assist in its regulatory reviews.

### Continued Commitment to Public Input

DOI is committed to seeking public input as it refines and implements its retrospective review process. This plan and the list of all significant regulations designated for retrospective review will be published on DOI's [Open Government](#) website and DOI will accept public comments through [RegReview@ios.doi.gov](mailto:RegReview@ios.doi.gov). This website will continue to provide easy access to DOI's existing regulations and DOI will continue to accept public comments on its existing regulations through this email address.

## Appendix I<sup>6</sup>

### DOI Request for Information

Federal Register: February 25, 2011 (Volume 76, Number 38)]

#### DEPARTMENT OF THE INTERIOR

2 CFR Chapter XIV  
25 CFR Chapters I, II, III and V, VI, VII  
30 CFR Chapters II, IV, VII, and XII  
36 CFR Chapter I  
41 CFR Chapter 114  
43 CFR Subtitle A and Chapters I and II  
48 CFR Chapter 14  
50 CFR Chapters I and IV

[Docket Number: DOI-2011-0001]

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Office of the Secretary, Interior.

ACTION: Request for information.

-----

SUMMARY: The Department of the Interior (DOI) is preparing a preliminary plan to review its existing significant regulations in response to the President's Executive Order 13563 on

---

<sup>6</sup> Executive Order 13563 encouraged agencies to seek public input in developing plans for retrospective regulatory review. DOI has made an effort to share its plan as widely as possible. DOI published two requests for public comment on this Plan (see Appendix II). Appendices I and II are copies of these notices. They provide a record of the efforts made by DOI to request public comment, and the questions DOI asked of the public. Additionally, DOI published its preliminary plan on its Open Government website.

improving regulation and regulatory review. The purpose of this regulatory review is to help DOI manage the Nation's public lands and national treasures, honor our tribal trust obligations, protect the environment and endangered species, distribute and monitor water resources, and help America become energy independent in ways that are more effective and less burdensome. DOI is asking for ideas and information from the public in preparing the plan and identifying opportunities to improve any of its significant regulations by modifying, streamlining, expanding, or repealing them.

**DATES:** You must submit any comments on or before March 28, 2011.

**ADDRESSES:** All comments must include "Comments on improving DOI's regulations-- Docket Number DOI-2011-0001". You must submit comments by any (but only one) of the following methods:

Federal eRulemaking portal: Go to <http://www.regulations.gov>, find Docket DOI-2011-0001, and follow the instructions for submitting your comments electronically. Mail: Regulatory Review, Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 7328, Washington, DC 20240.

Hand Delivery or Courier: Regulatory Review, Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7311, 1849 C Street, NW., Washington, DC 20240.

E-mail: [RegsReview@ios.doi.gov](mailto:RegsReview@ios.doi.gov).

**FOR FURTHER INFORMATION CONTACT:** Mark Lawyer, Office of the Secretary, 202-208-3181, [Mark\\_Lawyer@ios.doi.gov](mailto:Mark_Lawyer@ios.doi.gov).

**SUPPLEMENTARY INFORMATION:** President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review," on January 18, 2011. He stated that our "regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation" and it must "use the best, most innovative, and least burdensome tools to achieve regulatory ends." The Executive Order directed agencies to develop and submit a preliminary plan within 120 days that will



explain how they will review existing significant regulations and identify regulations that can be made more effective or less burdensome in achieving regulatory objectives.

## Request for Information

This request to the public for information is DOI's first step in complying with the President's directive to develop a plan that will make the Department's regulations more effective and less burdensome. DOI is asking you to suggest how the Department can develop regulations to protect the environment, honor our trust obligations, manage public lands, protect endangered species, distribute and monitor water resources, and promote clean energy independence in ways that will work best for the American people. Knowledge about the full effects of regulations on people and the economy is widely dispersed in society. DOI recognizes that members of the public are likely to have useful information and perspectives about how it could streamline or improve its regulations. This request for information from the public will help the Department obtain information that will inform its decisions as the Department develops a plan to review its existing regulations.

## Questions for the Public

DOI intends the questions below to elicit useful information as the Department develops a preliminary plan to review its significant regulations. These questions are not intended to be exhaustive. You may raise other issues or make suggestions unrelated to these questions that you believe would help the Department develop better regulations. Comments will be most helpful if they provide examples and a detailed explanation of how the suggestion will support DOI's mission in a way that is more efficient and less burdensome. DOI specifically asks you to provide comments related to the questions that follow to help the Department prepare a preliminary plan to review its significant regulations.

(1) How can DOI best review its existing rules in a way that will identify rules that should be changed, streamlined, consolidated, or removed? DOI encourages those submitting comments to include a proposed process under which review could be regularly undertaken.

(2) How can DOI reduce burdens and maintain flexibility and choice for the public in a way that will promote its mission?

(3) Does DOI have rules or guidance that are duplicative or that have conflicting requirements among its bureaus or with other agencies? If so, please specifically identify the rules or guidance and suggest ways DOI can streamline, consolidate, or make these regulations work better. Please suggest specific language that would make these rules or guidance more efficient and less burdensome where possible.

(4) Are there rules or reporting requirements that could be improved to accomplish their regulatory objectives better? If so, please specifically identify the rule or reporting requirement and suggest alternative language where possible.

(5) How can DOI best assure that its regulations are guided by objective scientific evidence?

(6) Are there better ways to encourage public participation and an open exchange of views when DOI engages in rulemaking?

(7) Is there a rule or guidance that is working well that DOI could use as a model for improving other regulations or guidance? If so, please specifically identify the rule or guidance and explain the aspects of the rule or guidance that work well and why you think it works well.

(8) How can DOI better scale its regulations to lessen the burdens imposed on small entities within the existing statutory requirements? Please identify any regulations that, under the applicable laws, could exempt small entities or provide more flexible or less burdensome requirements.

(9) Are DOI regulations and guidance written in language that is clear and easy to understand? Please identify specific regulations and guidance that are good candidates for a plain language re-write.

(10) What are some suggestions that DOI can use to assure that its regulations promote its mission in ways that are most efficient and least burdensome?

DOI will consider public input as we develop a plan to periodically review the Department's significant rules. The Department has created a Web site at <http://www.doi.gov/open/regsreview> to facilitate participation by the public. This website provides links to the Department's regulations and a link to an e-mail in-box at [RegsReview@ios.doi.gov](mailto:RegsReview@ios.doi.gov) that interested parties may use to suggest, both during the comment period and on an ongoing basis, improvements to DOI's regulations.

The Department is issuing this request solely to seek useful information as it develops a plan to review its existing significant regulations. While responses to this request do not bind DOI to any further actions related to the response, all submissions will be made available to the public on <http://www.regulations.gov>.

Before including your address, or other personal identifying information in your comment, you should be aware that your entire comment--including your personal identifying information--may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

Authority: E.O. 13653, 76 FR 3821, Jan. 21, 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

Dated: February 18, 2011.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2011-4241 Filed 2-24-11; 8:45 am]

BILLING CODE 4310-10-P

## Appendix II

### DOI Second Request for Information

DEPARTMENT OF THE INTERIOR

2 CFR Chapter XIV

25 CFR Chapters I, II, III, V, VI, and VII

30 CFR Chapters II, IV, VII, and XII

36 CFR Chapter I

41 CFR Chapter 114

43 CFR Subtitle A and Chapters I and II

48 CFR Chapter 14

50 CFR Chapters I and IV

[Docket Number; DOI-2011-0001]

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability, request for comment.

-----  
SUMMARY: The Department of the Interior (DOI) is requesting public comment on its plan to review its significant regulations in response to the President's Executive Order 13563 on Improving Regulation and Regulatory Review. DOI will consider public comments in preparing the final plan for retrospective regulatory review. The purpose of this plan is to help DOI manage the Nation's public lands and national treasures, honor our tribal trust obligations, protect the environment and endangered species, distribute and monitor water resources, and help America become energy independent in ways that are more effective and less burdensome.

DATES: You must submit any comments on or before August 10, 2011.

ADDRESSES: All comments must include "Comments on DOI's Plan for Retrospective Regulatory Review--Docket Number DOI-2011-0001". You must submit comments by any of the following methods:

Federal eRulemaking portal: Go to <http://www.regulations.gov>, find Docket DOI-2011-0001, and follow the instructions for submitting your comments electronically.

Mail: Regulatory Review, Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 7328, Washington, DC 20240.

Hand Delivery or Courier: Regulatory Review, Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7311, 1849 C Street, NW., Washington, DC 20240.

Fax: (202) 219-2100.

FOR FURTHER INFORMATION CONTACT: Mark Lawyer, Office of the Secretary, 202-208-3181, [Mark\\_Lawyer@ios.doi.gov](mailto:Mark_Lawyer@ios.doi.gov).

SUPPLEMENTARY INFORMATION: DOI published a notice on February 25, 2011, asking the public for ideas and information as it prepared a preliminary plan for retrospective regulatory review to comply with President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review." DOI received helpful information in response to this request, which it considered in preparing the preliminary plan. DOI published a preliminary plan on May 18, 2011. DOI is now finalizing the plan. The preliminary plan is available on DOI's Open Government Web site at: <http://www.doi.gov/open/regsreview/>. This Web site provides links to the plan, the Department's regulations, and an e-mail in-box at [RegsReview@ios.doi.gov](mailto:RegsReview@ios.doi.gov) that interested parties may use to suggest, on an ongoing basis, improvements to DOI's regulations.

#### Questions for the Public

DOI specifically asks the public to provide comments related to the questions that follow to help the Department finalize the plan to review its significant regulations.

(1) DOI seeks to establish a culture of retrospective review that will produce regulations that accomplish the Department's mission in a way that works best for the American public. Are there any changes to DOI's plan for retrospective regulatory review that would further this goal? DOI encourages those submitting comments to include specific ideas that would improve DOI's process for systematically reviewing its regulations.

(2) DOI has proposed specific rules to review over the next two years. Are there other rules that could benefit from retrospective review in the near future? If so, please specifically identify the rules and suggest ways DOI can streamline, consolidate, or make these regulations work better. Please suggest specific language that would make these rules or guidance more efficient and less burdensome where possible.

(3) Are there ways DOI can better scale its regulations to lessen the burdens imposed on small entities within the existing statutory requirements? Please identify any specific regulations that, under the applicable laws, could exempt small entities or provide more flexible or less burdensome requirements.

(4) Are DOI regulations and guidance written in language that is clear and easy to understand? Please identify specific regulations and guidance that are good candidates for a plain language re-write.

(5) What are some suggestions that DOI can use to assure that its regulations promote its mission in ways that are most efficient and least burdensome?

The Department is issuing this request solely to seek useful information as it finalizes its plan to review its existing significant regulations. While responses to this request do not bind DOI to any further actions related to the response, all submissions will be made available to the public on <http://www.regulations.gov>.

Before including your address, or other personal identifying information in your comment, you should be aware that your entire comment--including your personal identifying information--may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

Authority: E.O. 13653, 76 FR 3821, Jan. 21, 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

David J. Hayes,

Deputy Secretary.  
[FR Doc. 2011-17295 Filed 7-8-11; 8:45 am]  
BILLING CODE 4310-10-P

## Appendix III

### 318 DM 8

Department of the Interior

Departmental Manual

Effective Date: 5/14/98

Series: Administrative Procedure

Part 318: Federal Register Documents

Chapter 8: Review of Rules

Originating Office: Executive Secretariat and Office of Regulatory Affairs

### 318 DM 8

8.1 What does this chapter do? This chapter provides guidance for the periodic review of Department rules to ensure that they are needed, up to date and easily understood. In this chapter, "you" refers to a bureau in the Department of the Interior.

8.2 How often must I review my rules? Each bureau must review its existing rules on a cyclical basis. Secretarial Officers must ensure that bureau reviews are conducted and approve the results of each review.

A. Review Cycle. You must review each CFR part at least every five years. A bureau or Secretarial Officer may establish more frequent reviews or special reviews of selected rules.

B. Review Schedule. You must develop a review schedule that provides for review of each CFR part at some point during each five-year period. You must update this schedule annually. You must identify in the semiannual agenda (see Section 2.8) those CFR parts that you are reviewing.

8.3 How long may I take to review an individual CFR part? You must complete each review within one year of its inception.

A. If you need more than one year to review a CFR part that has a significant economic effect on a substantial number of small entities, then you must publish a notice to that effect in the Federal Register. Your Secretarial Officer must approve the notice.



B. Your Secretarial Officer may extend the completion date of the review under this paragraph by one year at a time for a total of not more than five years.

8.4 What criteria should I consider when reviewing a rule? When reviewing an existing CFR part, consider the factors below.

A. Is the rule well organized, clearly written, and visually appealing? Does the rule use minimal jargon and as many visual aids (e.g., tables or charts) as possible? Does each section address only one topic? Are items within each section listed rather than strung out as narrative?

B. Is the regulation required by law or made necessary by some compelling public need? If so, is there a feasible alternative that will achieve the same result without using a regulation?

C. What are the benefits of the regulation, and do these outweigh its costs? Did you develop a cost/benefit analysis when you published the rule and, if so, is the analysis still valid?

D. Are there inconsistencies or duplications with other Federal, State, tribal, or local laws or regulations that can be resolved in the regulation without adversely affecting the Federal program?

E. Does the regulation (either by itself or in conjunction with other Federal, State, tribal, or local regulations) impose an excessive burden on small business?

F. Have statutory or other authorities authorizing or requiring the program been repealed, amended, or superseded?

G. Have economic or other conditions changed, requiring amendments to fee schedules or other provisions?

H. Have industry, environmental, or other standards upon which the regulation is based been changed or become clearly outdated?

I. Have Administration policies changed?

8.5 What do I do with the results of my review? You must detail the results of each review in a written report. The report must address the criteria in section 8.4. After your Secretarial Officer approves the report, you must send us a copy.

5/14/98 #3212

Replaces 12/26/85 #2663