

STATEMENT OF
MEGAN J. UZZELL
ASSOCIATE DEPUTY SECRETARY
U.S. DEPARTMENT OF LABOR

BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

LEGISLATIVE HEARING ON AGENCY PROGRESS IN RETROSPECTIVE REVIEW OF
EXISTING REGULATIONS

THURSDAY, NOVEMBER 5, 2015

Introduction

Mr. Chairman and members of the Subcommittee, I am Megan Uzzell, Associate Deputy Secretary at the U.S. Department of Labor. I am pleased to testify before you today on the Department's efforts to conduct a robust retrospective review of our existing regulations as informed by significant outreach to a wide variety of stakeholders.

The Department administers and enforces more than 180 federal laws. These mandates and the regulations that implement them cover many workplace activities for about 10 million employers and more than 120 million workers. The Department's regulatory agenda is designed to bring opportunity, economic security, and safe workplaces to our Nation's working families, job-seekers, and retirees.

The Department is committed to retrospective review as an important and effective tool in advancing our agenda. About 1 in 5 of the items on our Department's current regulatory agenda, or almost 20 percent are retrospective reviews. Since 2011 the Department has completed 14 retrospective reviews and 15 more remain on the Department's July 2015 semi-annual progress report. DOL has estimated a cost savings of more than \$3 billion over the next five years for the subset of the completed reviews for which such analysis has been completed. In addition, the Department has deleted more than 260 pages from the CFR.

These efforts may reduce burden, withdraw duplicative or unnecessary items, align regulatory standards with industry standards or modernize outdated standards. Suggestions for retrospective review items are sought from a wide variety of sources and through regular engagement, both with stakeholders and our own employees. The Department is also making efforts to develop retrospective review as a regular part of our regulatory work through the inclusion of such reviews in the body of our regulatory proposals.

Today, I would like to tell you about the range of retrospective review efforts that the Department has pursued in this Administration. In doing so, I will summarize our retrospective review efforts since the issuance of President Obama's 2011 Executive Order (E.O.) 13563, "Improving Regulations and Regulatory Review," highlighting a number of completed initiatives and a few that are currently underway.

A Comprehensive Approach

Following the January 18, 2011, issuance of E.O. 13563, the Department developed a comprehensive updated approach to retrospective review. The Department launched an interactive website to provide the public an easily accessible avenue to suggest both general review methodologies and particular regulations for review. Over 940 online users submitted 113 individual recommendations. These public comments¹ informed the creation of the Department's first Retrospective Analysis of Existing Rules Plan in August 2011, from which we have developed a series of eight semi-annual progress reports that list those retrospective review initiatives that have been completed, those that remain ongoing, and those which have been newly added. All of the Department's reports are available on our website.

Completed Retrospective Review Initiatives

Since the issuance of E.O. 13563, the Department has completed 14 retrospective review initiatives listed in these reports, each of which resulted in updates to the Code of Federal Regulations. An additional 15 retrospective review initiatives remain in progress on the Department's most recent July 2015 semi-annual progress report, including three of the five begun thus far in 2015.²

Through these reviews, the Department has promoted a variety of policy goals. One area of focus has been the identification of duplicative, unnecessary, or inconsistent regulations that prove burdensome for employers and do not provide meaningful protection for workers. The Department's Occupational Safety and Health Administration (OSHA) has launched a series of "Standards Improvement Projects" (SIP) regulatory actions that remove unnecessary provisions and update out-of-date requirements, thus reducing the costs or paperwork burden for affected employers. OSHA has published three such SIP final rules and is currently developing a Notice of Proposed Rulemaking to implement SIP Phase IV.³ In 2011, the Administrative Conference of

¹ Available at <http://www.regulations.gov/#!docketDetail;D=DOL-2014-0006>. (Last visited Oct. 20, 2015).

² The Department has already completed the Longshore Transmission of Documents and Information rulemaking by publishing a Direct Final Rule that took effect on June 10, 2015, because no significant adverse comments were submitted. Likewise, OSHA's Streamlining State Plans Direct Final Rule took effect on October 19, 2015 for the same reason.

³ SIP Phase I was published in the *Federal Register* on June 18, 1998, 63 Fed. Reg. 33,450, <http://www.gpo.gov/fdsys/pkg/FR-1998-06-18/pdf/98-15936.pdf>; SIP Phase 2 was published on January 5, 2005, 70 Fed. Reg. 1,112, <http://www.gpo.gov/fdsys/pkg/FR-2005-01-05/pdf/04->

the United States (ACUS) recognized OSHA with the Walter Gelhorn Innovation Award Honorable Mention for nearly a decade and a half of utilizing SIP as a means to revise, update, and remove occupational health and safety standards that are outdated, obsolete, or unnecessarily burdensome for employers.

The Department has also pursued a number of retrospective reviews to reduce paperwork burdens, consistent with the President's 2012 issuance of Executive Order 13610, "Identifying and Reducing Regulatory Burdens." For example, OSHA identified for review a regulatory requirement that employers document mandatory weekly inspections of mechanical power presses. OSHA determined that this requirement was not needed for employers to maintain safe workplaces, and accordingly published a final rule eliminating the requirement. The elimination resulted in an estimated 613,600 hours of reduced paperwork burden per year without adversely affecting OSHA's inspections. Earlier this year, the Department's Office of Workers' Compensation Programs published a direct final rule that allows injured workers, their survivors, employers, insurance carriers, and OWCP to communicate and transmit documents electronically regarding claims handled by the Longshore program. In 2012 OSHA finalized a rule to conform its Hazard Communication Standard to the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals. By ensuring manufacturers do not have to produce multiple warning labels or Safety Data Sheets for different countries, OSHA estimated this rule would-result in both productivity improvements for businesses that regularly handle, store, and use hazardous chemicals and cost savings for businesses, while increasing safety and health protections for workers exposed to hazardous chemicals.

Other retrospective review initiatives modernize regulations that may have fallen behind national consensus standards set by industry bodies. For example, OSHA has published final rules updating its Acetylene, Head Protection, and Signage standards to match national consensus standards and is currently pursuing a similar rule involving Eye and Face Protection.

Still other retrospective review initiatives simply involve removing outdated and confusing rules from the Code of Federal Regulations, thereby streamlining requirements for the regulated community. For example, in 2013, the Department's Employment and Training Administration rescinded a trio of outdated regulations implementing temporary nonimmigrant worker visa programs for which statutory authority had lapsed, and OSHA recently enabled the removal of more than a hundred pages of regulations that apply to its OSHA-approved State Plans, which will help ensure stakeholders can find the latest information on a public OSHA website that is regularly updated to describe each state plan and any important changes –unlike the CFR which may be out of date between publications.

Taken together, these initiatives reduce the burden hours on the regulated community through the elimination of paperwork requirements, promote savings for employers associated with productivity improvements, avoid public confusion by deleting obsolete regulations, and align regulatory standards with accepted industry standards.

[28221.pdf](#); and SIP Phase III was published June 8, 2011, 76 Fed. Reg. 33,590, <http://www.gpo.gov/fdsys/pkg/FR-2011-06-08/pdf/2011-13517.pdf>.

The Department has also taken steps to include retrospective analysis requirements in new regulations to facilitate evaluation of their impact. For example, the Department’s Mine Safety and Health Administration announced in its 2014 Respirable Dust Final Rule that it will conduct a retrospective review to evaluate the data collected using continuous personal dust monitors in 2017. OSHA’s Final Rule on Recordkeeping and Reporting Requirements – moving from the Standard Industrial Classification System to the North American Industry Classification System for determining which industries are low-hazard and potentially exempt from recordkeeping requirements – also includes a commitment to conduct a retrospective review of the agency’s recordkeeping regulations. And in its recent Notice of Proposed Rulemaking proposing to modernize the Fair Labor Standards Act’s Overtime Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, the Department’s Wage and Hour Division proposed to consider a future retrospective review of the rule after it is finalized and implemented.

Engagement from Diverse Stakeholders

The Department continues to be interested in identifying new opportunities for retrospective reviews. Earlier this year, building upon prior efforts, the Department launched a robust, technology-driven effort to identify such prospects, aiming to obtain input on promising themes and specific targets for review and reform from a wide array of stakeholders. In particular, the Department established two initiatives to seek input from interested parties on developing smarter regulations.

First, on January 29, 2015, the Department announced a public-facing website called “Shaping Smarter Regulations” in its electronic newsletter, which reaches over 450,000 subscribers, and published a subsequent *Federal Register* notice promoting the website in February. A number of the Department’s agencies also sent email blasts to alert a broad group of diverse stakeholders, directing them to the Shaping Smarter Regulations website. This stakeholder engagement website posed questions designed to spark dialogue and to elicit ideas on a range of topics, including: tools that could be used to prioritize regulations for review; strategies that could be used to increase the flexibility of regulations; and measures that could be employed to ensure scientific integrity of data. By the close of the comment period, 718 users had registered with the website, and 65 individual recommendations had been submitted. Stakeholders could vote on ideas that had been submitted, and over a thousand votes were ultimately cast on the various recommendations. The recommendations and stakeholder responses remain available for review on the Department’s website.⁴

Second, because our own employees are in a prime position to identify regulations in need of revisions, the Department launched a program encouraging them to do so. This avenue has proven productive. For example, OSHA’s revisions to the mechanical power press recordkeeping requirement, discussed above, resulted from a suggestion by one of the agency’s employees through the internal recommendation process.

⁴ See Shaping Smarter Regulations, <http://www.dol.gov/regulations/regreview/>. The original *Federal Register* notice is available at 80 Fed. Reg. 5,716 (Feb. 3, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-02-03/pdf/2015-01916.pdf>.

The Department is undertaking efforts to directly address stakeholder and employee suggestions in a number of specific areas. For example, several stakeholders, both internal and external, recommended that the Department reform its Permanent Labor Certification (PERM) program. This is the program through which our Employment and Training Administration certifies that the employer has met the labor market test required under law in order to permanently employ a foreign worker: (a) that there are not sufficient U.S. workers able, willing, qualified, and available to do the job at the time and location required; and (b) that employment of the foreign will not adversely impact wages and working conditions of U.S. workers in similar positions. While our PERM regulations are only ten years old, the labor market has changed markedly in the last decade, and advances in technology and hiring have changed recruitment practices. Accordingly, last November, we announced a series of listening sessions with industry, advocates, and labor stakeholders, along with our own employees, to assess whether these regulations should be updated.

Through both of these processes – our PERM-specific listening sessions and our retrospective review engagement effort – stakeholders identified a number of areas of the current PERM program that concerned them. The Department took these comments seriously, announcing in our February 2015 Retrospective Review Report that ETA plans to undertake a reform of the PERM program. We are currently engaged in a comprehensive review of the PERM program based on external comments and an internal review by our staff. The Department intends to publish a new regulation to better align the program with the objectives of the immigration system and the needs of workers and employers. Though every one of the individual reforms may not result in burden reduction, as a package, we intend to use this effort to modernize the rule to account for changes in the labor market and advances in technology.

A second area where the Department is undertaking efforts to address stakeholder suggestions involves OSHA’s whistleblower program. The Department received a suggestion to ensure that potential whistleblowers understand OSHA’s role in protecting whistleblowers under substantive laws enforced by other agencies. OSHA has engaged with other a number of federal agencies to link to its Whistleblower website to inform potential whistleblowers of their protections.⁵

In addition, on April 20, 2015, OWCP published a bulletin addressing a suggestion that it would be more cost effective for the agency to grant durable medical equipment rentals to injured employees for a full year, rather than the previously available six-month period, in certain situations under the Energy Employees Occupational Illness Compensation Program Act.⁶

The overlap between the suggestions from stakeholders and our existing regulatory efforts suggests the Department’s efforts to gather stakeholder feedback are working well. The Department’s agencies already use a variety of such mechanisms. OSHA alone uses formal

⁵ Environmental Protection Agency; Federal Aviation Administration; Department of Health and Human Services; Employee Benefits Security Administration; and the Department of Defense: Office of the Inspector General.

⁶<http://www.dol.gov/owcp/energy/regs/compliance/PolicyandProcedures/finalbulletinshtml/EEOICPABulletin15-02.htm>

advisory committees, informal listening sessions, a process to petition for new rulemakings, Small Business Regulatory Enforcement and Fairness Act panels, pre- and post-hearing comment periods, and a practice of issuing regular Requests for Information.

For example, OSHA's SIP IV initiative mentioned above has been informed by both advisory committee recommendations and RFI responses. Based on such input, OSHA has identified a number of areas for possible burden reduction or more general modernization, improvement which can be made without adversely affecting workers' safety and health. For instance, some of OSHA's health standards currently require periodic chest x-rays. When the agency published these standards, such routine screening for lung cancer was appropriate clinical practice. However, since then, large studies with many years of follow-up have failed to show a benefit from this type of screening, either on lung cancer incidence or mortality. In addition, OSHA currently requires x-rays to be stored on film – an outdated requirement in an era of digital x-ray technology. Likewise, OSHA requires employers to post telephone numbers for physicians, hospitals, or ambulances at worksites located in areas where 911 emergency dispatch services are not available. However, since this regulation was adopted in 1971, 911 emergency dispatching services have been adopted in virtually all counties across the country and are available on most mobile phones networks. The requirements could be modernized for those limited areas where local dispatchers lack locating functions.

Conclusion

Going forward, a wide variety of internal and external stakeholders will continue to help refine our current and future plans for retrospective review of significant regulations. The Department is also an active participant in the broader conversation about retrospective review, participating in the Administrative Conference of the United States and attending other conferences, such as the Penn Program on Regulation's dialogue on regulatory excellence. The Department remains committed to our broad efforts to pursue retrospective review while bringing opportunity, economic security and safe workplaces to our nation's working families, job-seekers, and retirees.