

DEPARTMENT OF JUSTICE (DOJ) -- FALL 2019

Statement of Regulatory Priorities

The solemn duty of the Department of Justice is to uphold the Constitution and laws of the United States so that all Americans can live in peace and security. As the chief law enforcement agency of the United States Government, the Department of Justice's fundamental mission is to protect people by enforcing the rule of law. To fulfill this mission, the Department is devoting resources and utilizing the legal authorities available to combat violent crime and terrorism, prosecute drug traffickers, and enforce immigration laws. Because the Department of Justice is primarily a law enforcement agency and not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

This year, the Department of Justice continues to revise and improve its procedures for evaluating new regulatory actions and analyzing the costs that would be imposed. Executive Order 13771 (EO 13771), titled "Reducing Regulation and Controlling Regulatory Costs," 82 Fed. Reg. 9339 (Feb. 3, 2017), requires an agency, unless prohibited by law, to identify two prior regulations for elimination for every one new regulation issued. In furtherance of this requirement, section 2(c) of EO 13771 requires the new incremental costs associated with new regulations, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Section 3(a) states that starting with fiscal year 2018, "the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of [EO 13771], and provide the agency's best approximation of the totals costs or savings associated with each new regulation or repealed regulation."

In addition to the new cost analyses being conducted pursuant to EO 13771, the Department is actively carrying out the provisions of EO 13777, "Enforcing the Regulatory Reform Agenda," 82 Fed. Reg. 12285 (Mar. 1, 2017). The Department's Regulatory Reform Task Force continues

actively working to evaluate existing Department regulatory actions and to make recommendations regarding their repeal, replacement, or modification in order to reduce unnecessary burdens.

The regulatory priorities of the Department include initiatives in the areas of federal grant programs, criminal law enforcement, immigration, and civil rights. These initiatives are summarized below. In addition, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not separately discussed in this overview of the regulatory priorities, those components have key roles in implementing the Department's anti-terrorism and law enforcement priorities.

Executive Office for Immigration Review (EOIR)

EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings, appellate reviews, and administrative hearings. The immigration judges adjudicate approximately 150,000 cases each year to determine whether aliens should be ordered removed from the United States or should be granted some form of protection or relief from removal. The Board of Immigration Appeals (BIA) has jurisdiction over appeals from the decisions of immigration judges, as well as other matters. Accordingly, the Attorney General has a continued role in the conduct of immigration proceedings, including removal proceedings and custody determinations regarding the detention of aliens pending completion of removal proceedings. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

In particular, EOIR intends to propose revisions to the existing asylum regulations, pursuant to the Attorney General's statutory authority, to ensure the faithful and efficient execution of asylum processes. Specifically, the Department is working, in conjunction with the Department

of Homeland Security (DHS), on a regulation that will implement, pursuant to the authority of the Attorney General, bars to asylum eligibility for certain classes of aliens (RIN 1125-AA87). Additionally, the Department and DHS are working on a regulation to provide for procedural improvements to the asylum process (RIN 1125-AA94). This will serve as guidance when dealing with frivolous and incomplete applications and provide for updated definitions on asylum-specific concepts. Finally, the Department has a standalone asylum regulation that will address continuances and asylum applications filing procedures in the immigration courts (RIN 1125-AA93). Asylum reform is one of the Department's regulatory priorities.

In other pending rulemaking actions, the Department is working to revise and update the regulations relating to immigration proceedings to increase efficiencies and productivity, while also safeguarding due process. In particular, EOIR is working to expand upon its Public Notice of June 25, 2018, by publishing a proposed rule regarding its new EOIR Case and Appeals System, which provides for greatly expanded electronic filing and calendaring for cases before EOIR's immigration courts and BIA (RIN 1125-AA81). In addition, EOIR is planning to publish a regulation to finalize an interim final rule from 2005 regarding background and security investigation checks (RIN 1125-AA44), and is working to finalize a jurisdiction and venue rule that will provide clarification regarding an immigration judge's authority to conduct proceedings, how venue is determined, and what circuit court law EOIR adjudicators will apply (RIN 1125-AA52). In particular, EOIR is developing mechanisms in this rule intended to streamline certain venue changes to achieve cost savings to the agency and increase due process to the parties. In addition, in response to Executive Order 13563, the Department is retrospectively reviewing EOIR's regulations to eliminate regulations that unnecessarily duplicate Department of Homeland Security regulations and update outdated references to the pre-2003 immigration system (RIN 1125-AA71). The Department plans to publish a notice of proposed rulemaking to increase the fees charged for certain EOIR application forms, as no increase has occurred in almost three decades (RIN 1125-AA90). A fee waiver process would remain available for those

who cannot afford the fee. The Department also continues to work toward rulemaking that will assist in identifying and sanctioning those who defraud the system itself and the individuals who appear before EOIR (RIN 1125-AA82).

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

ATF issues regulations to enforce the Federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. ATF's mission and regulations are designed to, among other objectives: (1) curb illegal traffic in, and criminal use of, firearms and explosives; and (2) assist State, local, and other Federal law enforcement agencies in reducing violent crime. ATF will continue, as a priority during fiscal year 2020, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals. ATF plans to update its regulations requiring notification of stored explosive materials to require annual reporting (RIN 1140-AA51). This regulatory action is intended to increase safety for emergency first responders and the public.

ATF also anticipates issuing regulations to finalize the current interim rules implementing the provisions of the Safe Explosives Act (RIN 1140-AA00). ATF is also seeking to finalize a proposed rule to codify regulations (27 CFR part 771) governing the procedure and practice for proposed denial of applications for explosives licenses or permits and proposed revocation of such licenses and permits (RIN 1140-AA38). As proposed, this rule is a regulatory action that clarifies the administrative hearing processes for explosives licenses and permits. This rule promotes open government and disclosure of ATF's procedures and practices for administrative actions involving explosive licensees or permittees.

ATF also has begun a rulemaking process that amends 27 CFR part 447 to update the terminology in ATF's import control regulations based on similar terminology amendments made by the Department of State on the U.S. Munitions List in the International Traffic in Arms

Regulations, and the Department of Commerce on the Commerce Control List in the Export Administration Regulations (RIN 1140-AA49).

Drug Enforcement Administration (DEA)

DEA is the primary agency responsible for coordinating the drug law enforcement activities of the United States and also assists in the implementation of the President's National Drug Control Strategy. DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended, collectively referred to as the Controlled Substances Act (CSA). DEA's mission is to enforce the CSA and its regulations and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

Pursuant to its statutory authority, DEA plans to update its regulations to implement provisions of the Comprehensive Addiction and Recovery Act of 2016 (RIN 1117-AB45) relating to the partial filling of prescriptions for Schedule II controlled substances. This is one of the Department's Regulatory Plan initiatives. In fiscal year 2020, DEA anticipates issuing a rulemaking action addressing suspicious orders of controlled substances (RIN 1117-AB47). This proposed rule would implement the Preventing Drug Diversion Act of 2018, and clarify the procedures a registrant must follow regarding suspicious orders. DEA also anticipates amending its regulations to implement the Agriculture Improvement Act of 2018, Pub. L. 115-334, specifically by amending the definitions of hemp and marijuana, and the listings of tetrahydrocannabinols (RIN 1117-AB53). All total, DEA plans to publish ten deregulatory

actions (RINs 1117-AB36, 1117-AB37, 1117-AB40, 1117-AB43, 1117-AB44, 1117-AB45, 1117-AB46, 1117-AB47, 1117-AB52, and 1117-AB53). Consistent with EO 13771 and EO 13777, DEA is continuing to review existing regulations to identify those that are outdated, unnecessary, or ineffective. DEA will solicit public comments during such reviews, as appropriate, to engage with the affected DEA registrant community and members of the public.

Civil Rights (CRT)

CRT regulations implement Federal laws relating to discrimination in employment-related immigration practices, the coordination of enforcement of non-discrimination in federally assisted programs, and Federal laws relating to disability discrimination.

Pursuant to the regulatory reform provisions of Executive Orders 13771 and 13777, CRT is undertaking a review of its guidance documents to determine whether any of those documents may be outdated, inconsistent, or duplicative, and to ensure compliance with the Attorney General's November 16, 2017 Memorandum entitled Prohibition on Improper Guidance Documents.

Office of Justice Programs (OJP)

OJP provides innovative leadership to Federal, State, local, and tribal justice systems by disseminating state-of-the-art knowledge and practices and providing financial assistance for the implementation of crime fighting strategies. OJP will continue to review its existing regulations to streamline them, where possible.

OJP published a notice of proposed rulemaking for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Formula Grant Program on August 8, 2016, and in early 2017 published a final rule addressing some of those provisions. For other provisions included in the proposed rule, OJJDP received many comments that require additional time for OJJDP to consider. OJP anticipates publishing at least one additional final rule removing certain

provisions of the regulations that are no longer legally supported and to make technical corrections. OJJDP then plans to publish a second notice of proposed rulemaking addressing amendments to the Juvenile Justice and Delinquency Prevention Act included in the Juvenile Justice Reform Act signed into law on December 21, 2018, and the remaining changes that OJJDP intends to make to the formula grant program regulation.

Bureau of Prisons (BOP)

BOP issues regulations to enforce the Federal laws relating to its mission of protecting society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. During the next 12 months, BOP will continue efforts to modify and add regulations to conform with recent legislative changes enacted in the First Step Act of 2018 (P.L. 115-391, December 21, 2018, 132 Stat. 5194), to (1) broaden the Good Conduct Time Credit system; (2) improve inmate disciplinary procedures and sanctions; and (3) provide effective literacy programming which serves both general and specialized inmate needs.

Federal Bureau of Investigation (FBI)

The Federal Bureau of Investigation is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to Federal, State, municipal, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking. For example, the FBI is currently drafting a rule that establishes the criteria for use by a designated entity(ies) in making a determination of fitness as described under the Child Protection Improvements Act (CPIA), 34 United States Code § 40102, Public Law 115-141. The CPIA requires that the Attorney General shall, by rule, establish the criteria

for use by designated entities in making a determination of fitness described in subsection (b)(4) of the Act concerning whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity. Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858f).