

DEPARTMENT OF JUSTICE (DOJ) -- FALL 2020

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 the vast majority of its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

Within the areas of responsibility in which it nonetheless exercises regulatory authority, 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, to 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and provide the agency's best approximation of the totals costs or savings associated with each new regulation or repealed regulation."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.

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 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).

Bureau of Prisons (BOP)

BOP issues regulations to enforce the Federal laws relating to its mission: to protect public safety by ensuring that federal offenders serve their sentences of imprisonment in facilities that are safe, humane, cost-efficient, and appropriately secure, and to provide reentry programming to ensure their successful return to the community.

In February, 2020, BOP developed its Incident Action Plan in response to the COVID-19 pandemic, involving BOP offices at all levels nationwide and the National Institute of Corrections (NIC) that coordinates with state and local prisons and jails. The BOP implemented its approved Pandemic Influenza Plan, its Incident Command System (ICS) framework, and guidance and directives from the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), the Office of Personnel Management (OPM), DOJ, and the Office of the Vice President. The BOP Incident Action Plan includes the COOP plans, supplies, inmate movement, visitation, staff training, and official staff travel.

During the next 12 months, BOP will continue its planned emergency operations under the difficult conditions brought on by the COVID-19 pandemic. BOP will also continue efforts to modify regulations to conform with legislative changes enacted in the First Step Act of 2018 (P.L. 115-391, December 21, 2018, 132 Stat 5194), to broaden the Good Conduct Time Credit system, provide First Step Act Time Credits as authorized by the Act, enhance inmate disciplinary procedures and sanctions, and provide effective literacy programming which serves both general and specialized inmate needs.

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. In fiscal year 2021, DEA anticipates finalizing 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 plans to finalize a rulemaking proposed on March 23, 2020, that amends the application process for persons seeking to become registered with DEA to grow marijuana with the intent of increasing the number of registered growers (RIN 1117-AB54). All total, DEA plans to publish 13 proposed or final deregulatory actions (RINs 1117-AB36, 1117-AB37, 1117-AB40, 1117-AB43, 1117-AB45, 1117-AB46, 1117-AB47, 1117-AB52, 1117-AB53, 1117-AB54, 1117-AB55, 1117-AB56, and 1117-AB57). 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.

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 cases to determine whether aliens should be ordered removed from the United States or should be granted some form of protection or relief from removal. In Fiscal Year 2019, immigration judges completed more than 275,000 cases. 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.

Asylum reform continues to be one of EOIR's top regulatory priorities. EOIR intends to propose and to finalize further revisions to the asylum regulations, pursuant to the Attorney General's statutory authority, to ensure the faithful and efficient execution of asylum processes, which have been burdened by

extensive backlogs. Specifically, EOIR is working with the Department of Homeland Security (DHS) to finalize a joint rule that will implement bars to asylum eligibility for certain classes of criminal aliens (RIN 1125-AA87); a joint rule that provides for the implementation of Asylum Cooperative Agreements, in an effort to prospectively share the distribution of hundreds of thousands of asylum claims (RIN 1125-AA98); a joint rule that governs asylum claims of aliens who enter or attempt to enter the United States across the southern land border between the United States and Mexico after failing to apply for protection from persecution or torture while in a third country through which they transited en route to the United States (RIN 1125-AA91); and joint rules that respond to the COVID-19 public health emergency by applying the security bars to asylum and withholding of removal to certain aliens who have been outside the United States (RIN 1125-AB09 and 1125-AB09). Additionally, EOIR and DHS continue to work towards finalizing a regulation that provides guidance when dealing with frivolous and incomplete applications and provides for updated definitions on asylum-specific concepts (RIN 1125-AA94). Finally, EOIR continues to work towards publishing a proposed rule, which will constitute a standalone asylum regulation that will address continuances and asylum applications filing procedures in the immigration courts (RIN 1125-AA93).

In other pending rulemaking actions, EOIR 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 continues to work towards 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 working on a regulation to improve coordination and oversight of the Office of the Chief Administrative Hearing Officer (OCAHO) in expectation of a future increased caseload (RIN 1125-AB06). EOIR is also working toward finalizing a rule that revises the appeals process at the BIA to ensure consistency, efficiency, and quality of its adjudications (RIN 1125-AA96). EOIR continues to work toward finalizing 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). This rule would streamline certain venue changes to achieve cost savings to the agency and increase due process to the parties.

In addition, EOIR is working to finalize a rulemaking that would increase the fees charged for certain EOIR application forms, as no increase has occurred in nearly three decades (RIN 1125-AA90). A fee waiver process would remain available for those who cannot afford the fee.

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).

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.