

DEPARTMENT OF JUSTICE (DOJ) -- FALL 2021

Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to protect the public against foreign and domestic threats, to provide Federal leadership in preventing and controlling crime, and to ensure equal justice under the law for all. In carrying out this mission, the Department is guided by the core values of integrity, fairness, and commitment to promoting the impartial administration of justice—including for those in historically underserved, vulnerable, or marginalized communities. Consistent with its mission and values, the Department is prioritizing activities that strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, and reform criminal justice systems. Because the Department of Justice is primarily a law enforcement agency, not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

The regulatory priorities of the Department include initiatives in the areas of immigration, criminal justice reform, and gun violence reduction. Those initiatives, as well as regulatory initiatives by several other components carrying out key law enforcement priorities, are summarized below.

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 2021, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

ATF plans to finalize regulations regarding definitions of firearm, firearm frame or receiver, gunsmith, complete weapon, complete muffler or silencer device, privately made firearm, and readily, and finalize regulations on marking and recordkeeping that are necessary to implement these new or amended definitions (RIN 1140-AA54). The intent of this rulemaking is to consider technological developments and modern terminology in the firearms industry, and to enhance public safety by helping to stem the proliferation of unmarked, privately made firearms that have increasingly been recovered at crime scenes. Further, ATF plans to finalize regulations to implement certain provisions of Public Law 105-277, Omnibus

Consolidated and Emergency Supplemental Appropriations Act, 1999 (RIN 1140-AA10), and to set forth factors considered when evaluating firearms with an attached stabilizing brace to determine whether they are considered firearms under the National Firearms Act and/or the Gun Control Act (RIN 1140-AA55). This second rule would make clear that all weapons that fall under the National Firearms Act, however they are made, are subject to its heightened regulations—including registration and background check requirements. 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.

Over the past year, the Bureau has successfully implemented its Incident Action Plan, developed in response to 2020 pandemic conditions to facilitate continuity of operations, supplies, inmate movement, visitation, staff training, and official staff travel. As pandemic conditions continue to evolve, BOP plans to continue to employ and improve its Incident Action Plan, currently comprised of BOP's 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.

In the near future, BOP plans to finalize procedures for eligible inmates to earn FSA Time Credits, as authorized by the First Step Act of 2018 (FSA), Pub. L. No. 115-391, 132 Stat. 5194 (2018). The FSA provides that eligible inmates earn FSA Time Credits towards prerelease custody or early transfer to supervised release for successfully completing approved Evidence-Based Recidivism Reduction (EBRR) Programs or Productive Activities (PAs) assigned to each inmate based on the inmate's risk and needs assessment.

BOP will also finalize regulations implementing additional legislative changes enacted in the FSA to broaden the Good Conduct Time Credit system, revise inmate disciplinary regulations, and provide effective

literacy programming which serves both general and specialized inmate needs.

Civil Rights Division (CRT)

CRT works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in three separate rulemakings under the Americans with Disabilities Act (ADA).

First, CRT plans to amend its current regulations under section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability in programs and activities conducted by an Executive agency, to bring them up to date. Second, the Department plans to publish a new ANPRM seeking public input on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities and public accommodations programs and services. Third, the Department of Justice intends to propose requirements for the construction and alteration of pedestrian facilities covered by subtitle A of title II of the ADA that are consistent with the Access Board's minimum "Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way." These requirements would ensure that sidewalks and other pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities.

Drug Enforcement Administration (DEA)

DEA is the primary agency responsible for coordinating the drug law enforcement activities of the United States and 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 intends to propose a regulation that allows practitioners, subject to certain limitations, to supply up to a three-day supply of buprenorphine or other medications for

maintenance and detoxification treatment of opioid use disorder, as instructed by Congress in Public Law 116-215 (RIN-1117-AB73). The intent of this rulemaking is to ensure patients with opioid use disorder have access to needed medications while longer-term treatment is being coordinated. DEA also anticipates finalizing a rulemaking action clarifying the procedures a registrant must follow in the event a suspicious order for controlled substances is received (RIN 1117-AB47).

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. Immigration judges in EOIR's Office of the Chief Immigration Judge adjudicate cases to determine whether noncitizens 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 Department of Justice has a significant role in the administration of the Nation's immigration laws. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

Consistent with Executive Order 14010, EOIR is developing numerous regulations related to the asylum system. Specifically, EOIR is working with the Department of Homeland Security (DHS) to finalize a recently proposed rule to amend the procedures for the processing of asylum claims in expedited removal proceedings (RIN 1125-AB20). In addition, EOIR and DHS intend to propose a rule to address the circumstances in which an individual would be considered a member of a "particular social group" (RIN 1125-AB13). Similarly, EOIR and DHS intend to propose a rule to rescind bars to asylum implemented by three prior rules: RIN 1125-AA87 related to an applicant's criminal activity, RIN 1125-AA91 related to an applicant's transit through third countries, and RIN 1125-AB08 related to public health concerns. Moreover, EOIR intends to issue a rule to rescind or revise previous regulatory amendments regarding the time allowed for filing applications for asylum and withholding of removal by individuals in proceedings before EOIR (RIN 1125-AB15). EOIR is developing a proposed rule that would require immigration judges to conduct a hearing in which the applicant may provide testimony on his or her application for asylum and withholding of removal before the judge could deny the application (RIN 1125-AB22).

Finally, EOIR is also working to revise and update the regulations relating to immigration

proceedings to increase efficiencies and productivity, while also safeguarding due process. EOIR is in the process of publishing a final 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 the BIA (RIN 1125-AA81). In addition, EOIR is drafting a proposed rule that would codify administrative closure procedures before the immigration courts and the BIA and make other revisions to ensure that BIA adjudications appropriately balance due process and efficiency considerations (RIN 1125-AB18). Further, EOIR is planning to finalize a rule that would establish procedures for practitioners to provide individual document assistance without triggering the full obligations required of practitioners engaging in full representation of a noncitizen in EOIR proceedings (RIN 1125-AA83)

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 in deciding fitness as described under the Child Protection Improvements Act (CPIA), 34 U.S.C. section 40102, Public Law No. 115-141, div. S. title I, section 101(a)(1), Mar. 23, 2018, 132 Stat. 1123.

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 wellbeing 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. section 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. section 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 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 published an additional final rule removing certain provisions of the regulations that are no longer legally supported, and to make technical corrections, in June 2021. OJJDP now 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.