

DEPARTMENT OF JUSTICE (DOJ) -- FALL 2024

Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to keep our country safe, and to protect civil rights. 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 protect the public against foreign and domestic threats, strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, prevent and control crime, 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.

Regulatory action is, however, a significant aspect of the law enforcement mission of the Department. The regulatory priorities of the Department include initiatives in the areas of criminal justice reform, immigration, civil rights, and gun violence reduction, and are effectuated through rulemaking by the various components of the Department. These initiatives, as well as others important to components' accomplishing key law enforcement priorities, are summarized below.

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

ATF issues regulations to enforce and implement federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. Such regulations are designed to promote the ATF mission to curb illegal traffic in, and criminal use of,

firearms and explosives, and to assist state, local, Tribal, territorial, and other federal law enforcement agencies in reducing violent crime.

ATF will continue, as a priority during fiscal year 2025, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

The Department is undertaking an amendment to 27 CFR part 555 to require that persons who store explosive materials must annually notify the local authority that has jurisdiction for fire safety in the locality in which the explosive materials are being stored about the type, quantity, and location of each site where the explosive materials are being stored (RIN 1140-AA51). The Department is also initiating a rulemaking to update certain provisions of the Federal explosives regulations at 27 CFR part 555, most of which have not been updated since 1971 (RIN 1140-AA59). The rulemaking is expected to address certain definitions of commonly used terms, consolidate licensing and permitting, simplify recordkeeping provisions, and clarify certain aspects of explosives storage and identification of explosive materials by multiple licensees using a single magazine.

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.

The First Step Act (FSA) of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018) has brought a host of regulatory changes for BOP. To date, BOP has successfully enacted FSA-related regulations (1) to enable eligible inmates to earn Time Credits towards prerelease custody or early transfer to supervised release, and (2) to modify the amount of Good Time

Credit to which eligible inmates are entitled. BOP's next FSA-related regulatory measure involved publishing a Notice of Proposed Rulemaking (NPRM) titled *Reservation of Funds for Reentry Under the First Step Act*. This rule proposed to implement a specific FSA provision requiring BOP to reserve a portion of the compensation inmates would otherwise receive for working to assist these inmates with costs associated with release from prison. BOP published the NPRM in November 2023 and anticipates publishing the final rule in 2025.

Another important BOP regulatory measure involving management of inmate funds is the Inmate Financial Responsibility Program (IFRP). On January 10, 2023, BOP published an NPRM titled *Inmate Financial Responsibility Program: Procedures*, which proposes to withhold a portion of inmate work pay and money received by outside sources in order to pay restitution obligations toward victims and satisfy other lawful obligations. Specifically, the rule proposes withholding 75% of all community-source deposits in inmates' commissary account; withholding 50% of pay for inmates in grades 1 through 4 of UNICOR; withholding 25% of pay for inmates in grade 5 of UNICOR and inmates receiving performance pay for institution work; removing two penalties for failure to participate in the program; and adding one penalty for an inmate's refusal to participate. BOP continues to evaluate the appropriate path forward in light of the significant number of comments received in opposition to the rule.

In November 2023, BOP published an interim final rule titled *Federal Tort Claims Act – Technical Changes*, which would revise several sections of the regulatory scheme regarding filing of tort claims against the agency. BOP received one post-promulgation comment and is presently working on drafting the final rule, which it anticipates publishing in 2025.

In February 2024, BOP published an NPRM titled *Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes*, which proposed several significant revisions and updates to the Inmate Discipline Program. BOP received 216 comments on the

rule and is presently working on drafting the final rule, which it anticipates publishing in late 2025.

Also in February 2024, BOP published an interim final rule *titled Inmate Legal Activities: Attorney Visits*, which enlarges the periods of time during the week when attorneys can visit their clients being held in pretrial custody. BOP received a handful of post-promulgation comments and is presently working on drafting the final rule, which it anticipates publishing in 2025.

In addition, BOP continues to actively pursue several proposed rules to clarify use of force policy for less-than-lethal munitions and to modify clinical guidelines related to infectious disease testing for affected inmates. Finally, BOP continues to explore procedural avenues to finalize other rules that have remained on its long-term regulatory docket.

Civil Rights Division (CRT)

CRT works to uphold the civil and constitutional rights of all persons in the United States, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in three separate rulemakings on disability rights.

First, CRT plans to amend the current DOJ regulation 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 it up to date (RIN 1190-AA73). Second, CRT intends to propose requirements for pedestrian facilities in the public right-of-way, such as sidewalks and crosswalks, covered by part 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 to help public entities meet their existing ADA obligations to make those facilities accessible (RIN 1190-AA77).

Last, CRT plans to publish an advance notice of proposed rulemaking seeking public input on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities and public accommodations' goods, services, programs, and activities, which may include hotel beds (RIN 1190-AA76).

Drug Enforcement Administration (DEA)

DEA is the agency primarily responsible for coordinating the drug law enforcement activities of the United States and also assisting 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 controlled substances laws and regulations of the United States 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 continue with the following priority regulations that appeared on the Fall 2023 Unified Agenda:

DEA published a Notice of Purposed Rulemaking (NPRM) titled Telemedicine Prescribing of Controlled Substances when the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation, in March of 2023, and received a large volume of public comments. DEA then published a Temporary Rule on May 10, 2023, to extend the pandemic-

era flexibilities through November 11, 2023. On October 10, 2023, DEA published a second Temporary Rule to further extend the pandemic-era flexibilities through December 31, 2024.

After publishing the aforementioned NPRM on March 1, 2023, and in response to the large volume of comments received, DEA published a Notice of Meeting to invite interested persons, including medical practitioners, patients, pharmacy professionals, industry members, law enforcement, stakeholders, community leaders, and other third parties, to participate in listening sessions which were held on September 12 and 13, 2023. The additional feedback received will assist DEA in potential rulemaking. Currently, DEA is considering a new NPRM to promulgate effective regulations responsive to the general public and industry concerns that would authorize the issuance of special registrations for telemedicine, and specify the circumstances in which they may be obtained and used (RIN 1117-AB40).

In conjunction with DEA's proposed telemedicine rule, DEA is proposing regulatory changes which would clarify the rights and obligations for DEA registrants when prescribing buprenorphine to patients with Opioid Use Disorder pursuant to a telemedicine encounter which utilizes audio-only telecommunication systems. Along with DEA's proposed telemedicine rule, DEA published an NPRM titled Expansion of Induction of Buprenorphine via Telemedicine Encounter in March of 2023. DEA is working to synthesize a Final Rule to clarify the rights and obligations for DEA registrants when prescribing buprenorphine that are responsive to the general public and industry concerns (RIN 1117-AB78).

Additionally, DEA intends to publish a proposed regulation to revise its regulations relating to suspicious orders of controlled substances found at 21 CFR 1301.74 and 21 CFR 1301.76. The draft regulation proposed to define the term suspicious order and specify the procedures a registrant must follow upon receiving such orders. DEA published an NPRM titled *Suspicious Orders of Controlled Substances* in November of 2020. Due to the large volume of public comments, DEA reopened the comment period until March 29, 2021 (RIN 1117-AB47).

In support of its regulatory function, DEA regularly engages with the registrant community, stakeholders, and the public at large. DEA launched “Operation Engage” for its field offices to connect and collaborate with the communities they serve through local partnerships to implement strategies and activities regarding drug use prevention and education as well as bridging public safety and public health efforts to help lower drug overdose deaths. DEA also routinely interacts and engages with registrants by developing programs and presenting topics of interest in webinar sessions, industry meetings, and conferences. These outreach events facilitate open dialogues with stakeholders and allow DEA an opportunity to better understand new and upcoming issues faced by the registrant community.

DEA also plans on improving and broadening community engagement and advancing participation of underserved communities by partnering with trusted members and leaders in the community, not-for-profit organizations, and patient advocacy groups, and by developing in-person and virtual listening sessions. As an example, in June 2024, DEA, in concert with the Department of Justice’s Office of Tribal Justice, held two Tribal Consultation calls with leaders of the American Indian/Alaska Native community to discuss the impact of telemedicine regulations on tribal health. Additionally, DEA has conducted an estimated 1,330 outreach events in the first three quarters of Fiscal Year 2024 with a total of more than 179,500 attendees. These events focused on such topics as disposal, supply chain issues, burglaries, medication for opioid use disorder (MOUD), and narcotic treatment programs (NTP). These events were conducted either by Field Offices or by HQ personnel. DEA Senior Management attended 17 of these events, speaking at 15 events.

Based on the feedback, comments, and industry concerns received from registrants, stakeholders, and the public during outreach events, presentations and routine engagement, DEA makes informed decisions to evaluate the need to update existing regulations or identify

new ones that should be proposed. DEA will continue to broaden its public engagement to support the development of future regulatory actions.

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 and appellate reviews. Immigration judges in EOIR's Office of the Chief Immigration Judge adjudicate cases to determine whether noncitizens should be removed from the United States or whether they are eligible for protection or relief from removal. The Board of Immigration Appeals (BIA) has nationwide jurisdiction over appeals from decisions of immigration judges and other matters specified by regulation. EOIR also conducts administrative hearings involving immigration-related employment practices, discrimination claims, and document fraud cases. Accordingly, the Department of Justice has a significant role in the administration of the Nation's immigration laws.

EOIR's regulatory efforts are focused on increasing administrative efficiency while safeguarding fairness interests. For example, EOIR is developing several regulations related to the asylum system, including: (1) RIN 1125-AB13, a joint EOIR and Department of Homeland Security (DHS) proposed rule to provide standards for, among others, determining whether a noncitizen qualifies for relief based on a "particular social group"; (2) RIN 1125-AB08, a joint EOIR and DHS proposed rule to rescind or modify a previously-issued rule under the same RIN that categorically barred asylum for individuals based on their passage through a country in which a communicable disease is prevalent; and (3) RIN 1125-AB22, which would propose to rescind or modify regulatory revisions made by a prior rule to procedures for asylum and withholding of removal, as well as modify requirements relating to hearings on asylum applications.

EOIR and DHS are also drafting a joint proposed rule that would provide clarity and uniformity to DHS custody procedures and EOIR bond hearing procedures (RIN 1125-AB27). The Departments believe this rulemaking will help address litigation issues and resolve varying judicial interpretations of the existing custody and bond hearing procedures among Federal circuit courts.

Federal Bureau of Investigation (FBI)

The FBI 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, local, tribal territorial, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking.

For example, the FBI drafted a proposed rule to establish 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, 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).

The FBI also published an Interim Final Rule to implement the Bipartisan Safer Communities Act of 2022 (BSCA), 28 U.S.C. section 534, 34 U.S.C. section 40901, and 34

U.S.C., Subt. IV, ch. 411, Refs. & Annos., Public Law No. 117-159, div A, title II, sections 12001(a) and 12004(h), June 25, 2022, 136 Stat. 1313 and the National Instant Criminal Background Check System (NICS) Denial Notification Act (NDNA) of 2022, 18 U.S.C. 921, 18 U.S.C. sections 925B through 925D, Public Law No. 117-103, div. W, title XI, sections 1101 through 1103, March 15, 2022, 136 Stat. 919.

In accordance with the BSCA, the FBI published regulatory amendments for authorizing and establishing the process for federal firearm licensees (FFLs) to receive access to records of stolen firearms maintained in the FBI's National Crime Information Center to verify if a firearm offered for sale to the FFL has been reported stolen (RIN 1110-AA34). Separately, the FBI is preparing a proposed rule to authorize and establish the process for FFLs to use NICS for the purpose of voluntary background checks of certain current and/or prospective employees of the FFL, to determine whether such employees are prohibited from possessing firearms (RIN 1100-AA35). In a third rule; the FBI will be publishing a proposed rule to establish the process when NICS has been contacted for the prospective transfer of a firearm to a person under the age of 21 (RIN 1110-AA36). For NICS transactions involving persons under the age of 21, proposed regulation amendments will address, but may not be limited to, the BSCA provisions regarding: (A) the application of a delay, up to the tenth business day, if cause exists to further investigate a possibly disqualifying juvenile record; (B) the required collection (and any purge/retention) of residential address information submitted by an FFL so the FBI may comply with the expanded background checks of such persons; and (C) the process for conducting the expanded background checks to determine if certain entities where such persons reside (the state criminal history repository or juvenile justice information system, the state custodian of mental health adjudication records; and local law enforcement) have records establishing "cause" that such persons have possibly disqualifying juvenile records under 18 U.S.C. 922(d).

The NDNA mandates that, when the FBI denies a firearm transfer during a NICS transaction, the Attorney General is to report various information about that denial to local law enforcement authorities in the state or tribe where a firearm was sought for transfer and, if different, the local law enforcement authorities of the state or tribe where the person resides. “Local law enforcement authority” is defined by the NDNA at 18 U.S.C. 921(a). Regulatory amendments (RIN 1110-AA36) will be drafted outlining the process for submitting, and the contents of, such denial notifications, including language similar to the BSCA, addressing the required collection (and purge/retention) of a prospective transferee’s residential address so the FBI may contact the proper local law enforcement authorities should the transaction be denied. Regulatory proposals based on the NDNA will also address denial notifications being sent to prosecution authorities in the jurisdiction where the firearm was sought and circumstances where authorities need to be updated that a person who was the subject of a denial notification has subsequently been determined to not be prohibited. Regulatory proposals from the NDNA will also address the Attorney General’s new, annual report to Congress concerning denial notifications, and related statistics, from the previous year.

National Security Division (NSD)

On December 13, 2021, the Department published a National Security Division (NSD) Advance Notice of Proposed Rulemaking (ANPRM) (86 FR 70787) soliciting comments about potential changes or additions to the Foreign Agents Registration Act (FARA) regulations. Having carefully considered those comments, the Department plans to issue new regulations to provide additional guidance in key areas and revise, clarify, and modernize existing provisions. Among other changes, the Department anticipates that the proposed rule will address the bona fide trade or commerce exemption, the exemption for activities not serving predominantly a foreign interests, the legal practice exemption, and the informational materials provision. The

proposed regulations would also modernize how registrants and potential registrants interact with the Department.

NSD also plans to publish a proposed rule to implement the February 2024 Executive Order 14117 on “Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government Data by Countries of Concern.” This Executive Order delegates authority to the Attorney General under the International Emergency Economic Powers Act (IEEPA) to establish, implement, and administer, in consultation with other interagency partners, a targeted new regulatory program to address the national-security risks posed by access to Americans’ bulk sensitive personal data and U.S. Government-related data by countries of concern and persons subject to their ownership, control, or jurisdiction.