



DEPARTMENT OF AGRICULTURE

Guidance on Referrals for Potential Criminal Enforcement

AGENCY: Office of the General Counsel, Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice describes USDA’s plans to address criminally liable regulatory offenses under the recent executive order on Fighting Overcriminalization in Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Poe, Office of the General Counsel, USDA, 1400 Independence Avenue SW., Washington, DC 20250-1400, (202) 769-8247.

SUPPLEMENTARY INFORMATION: On May 9, 2025, the President issued Executive Order (“E.O.”) 14294, Fighting Overcriminalization in Federal Regulations. 90 FR 20363 (published May 14, 2025). Section 7 of E.O. 14294 provides that within 45 days of the order, and in consultation with the Attorney General, each agency should publish guidance in the *Federal Register* describing its plan to address criminally liable regulatory offenses.

Consistent with that requirement, USDA advises the public that by May 9, 2026, the Department, in consultation with the Attorney General, will provide to the Director of the Office of Management and Budget (“OMB”) a report containing: (1) a list of all criminal regulatory offenses¹ enforceable by USDA or the Department of Justice (“DOJ”); and (2) for each such criminal regulatory offense, the range of potential criminal penalties for a violation and the applicable mens rea standard² for the criminal regulatory offense.

¹ “Criminal regulatory offense” means a Federal regulation that is enforceable by a criminal penalty. E.O. 14294, section 3(b).

² “Mens rea” means the state of mind that by law must be proven to convict a particular defendant of a particular crime. E.O. 14294, section 3(c).

This notice also announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when USDA is deciding whether to refer alleged violations of criminal regulatory offenses to DOJ, officers and employees of USDA should consider, among other factors:

- The harm or risk of harm, pecuniary or otherwise, caused by the alleged offense;
- The potential gain to the putative defendant that could result from the offense;
- whether the putative defendant held specialized knowledge, expertise, or was licensed in an industry related to the rule or regulation at issue; and
- Evidence, if any is available, of the putative defendant's general awareness of the unlawfulness of his conduct as well as his knowledge or lack thereof of the regulation at issue.

Consistent with E.O. 14294 and the general policy set forth above, the following actions shall be undertaken:

- a. Within 90 days of publication of this notice, each agency shall review its regulations and submit to the Office of the General Counsel a list of all criminal regulatory offenses enforceable by the agency or the DOJ and describe the applicable statutory authorities, the range of potential criminal penalties for a violation, and the applicable mens rea standard for the criminal regulatory offense;
- b. Within 120 days of publication of this notice, each agency shall review its directives and other internal guidance documents and submit to the Office of the General Counsel a list of directives and guidance documents that may not be consistent with E.O. 14294 and the general policy set forth above;
- c. Within 180 days of publication of this notice, the Office of the General Counsel shall make recommendations to the Secretary on actions to further the intent of E.O. 14294 and the general policy set forth above.

This general policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Ralph A. Linden,
Acting General Counsel,
Office of the General Counsel.

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