



DEPARTMENT OF JUSTICE

Guidance on Referrals for Potential Criminal Enforcement

ACTION: Notice.

SUMMARY: This notice describes the Department of Justice’s plans to address criminally liable regulatory offenses under Executive Order 14294 on Fighting Overcriminalization in Federal Regulations.

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, the Department of Justice (the “Department”) advises the public that by May 9, 2026, the Department 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 the Department; 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, sec. 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, sec. 3(c).

This notice also announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when the Department is deciding whether to prosecute alleged violations of criminal regulatory offenses, the Department will 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.

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.

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