



DEPARTMENT OF HOMELAND SECURITY

Guidance on Referrals for Potential Criminal Regulatory Enforcement

ACTION: Notice.

SUMMARY: On May 9, 2025, President Trump issued Executive Order (E.O.) 14294 on *Fighting Overcriminalization in Federal Regulations* to address the use of criminal enforcement of criminal regulatory offenses. The E.O. establishes that enforcement of criminal regulatory offenses (particularly those that are strict liability offenses) is disfavored by the Federal government. This notice describes the Department of Homeland Security's (DHS) plan to address enforcement of criminal regulatory offenses.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joseph N. Mazzara, Office of the General Counsel, Department of Homeland Security, 202-447-4318.

SUPPLEMENTARY INFORMATION:

On May 9, 2025, the President issued E.O. 14294, *Fighting Overcriminalization in Federal Regulations*.¹ The E.O. sets forth a number of requirements related to enforcement of criminal regulatory offenses. One such requirement is that each agency must publish guidance describing the agency's plan to address enforcement of criminally liable regulatory offenses by June 23, 2025.²

The E.O. does not apply to the enforcement of immigration laws or regulations promulgated to implement such laws nor shall it apply to the enforcement of laws or regulations related to national security or defense.³ To the extent that DHS takes any criminal enforcement

¹ 90 FR 20363 (May 14, 2025).

² See sec. 7 of E.O. 14294 (requiring issuance of the guidance 45 days from issuance of the EO).

³ See sec. 8 of E.O. 14294.

actions not within one of those exemptions, DHS will apply the policy in this notice to such actions.

This notice announces a general criminal enforcement policy. When DHS is deciding whether to refer alleged violations of criminal regulatory offenses of DHS regulations to the Department of Justice (DOJ), officers and employees of the Department will consider, to the extent consistent with law, the following 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;
- 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;⁴ and
- Other factors as appropriate.

This general policy was developed following consultation with the Attorney General. This guidance 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.

This notice also announces DHS's plan for its forthcoming report required by section 4 of E.O. 14294. Section 4 requires that DHS post on its agency's public website and submit a report, created in consultation with the Attorney General, to the Director of the Office of Management and Budget (OMB) containing: (1) a list of all criminal regulatory offenses⁵ enforceable by DHS or DOJ; and (2) for each such criminal regulatory offense, the range of

⁴ See sec. 7 of E.O. 14294.

⁵ *Criminal regulatory offense* means a Federal regulation that is enforceable by a criminal penalty. Sec. 3(b) of E.O. 14294.

potential criminal penalties for a violation and the applicable *mens rea* standard⁶ for the criminal regulatory offense. DHS is reviewing its regulations to compile a list of the criminal regulatory offenses covered by the reporting requirement and will submit the report to OMB by the May 9, 2026, deadline.

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⁶ *Mens rea* means the state of mind that by law must be proven to convict a particular defendant of a particular crime. Sec. 3(c) of E.O. 14294.