



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Guidance on DOT Referrals for Potential Criminal Enforcement

AGENCY: Office of the Secretary, U.S. Department of Transportation (“DOT”).

ACTION: Notice.

SUMMARY: This notice describes DOT’s plans to address regulatory offenses with criminal liability pursuant to the recent executive order on Fighting Overcriminalization in Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Charles E. Enloe, Assistant General Counsel for Litigation and Enforcement, Charles.Enloe@dot.gov, (202) 366-9269.

SUPPLEMENTARY INFORMATION:

On May 9, 2025, the President issued Executive Order (“E.O.”) 14294, Fighting Overcriminalization in Federal Regulations. 90 FR 20363 (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 regulatory offenses with criminal liability.

Consistent with that requirement, DOT advises the public that DOT, in consultation with the Attorney General, will provide to the Director of the Office of Management and Budget (“OMB”) and post on the DOT website a report containing: (1) a list of all criminal regulatory offenses¹ enforceable by DOT or the Department of Justice (“DOJ”); and (2) for each such criminal regulatory offense, the range of potential

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

criminal penalties for a violation and the applicable mens rea standard² for the criminal regulatory offense. DOT will update the report periodically as required by the E.O.

This notice also announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when DOT is deciding whether to refer alleged violations of criminal regulatory offenses to DOJ, officers and employees of DOT 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.

DOT adheres to DOT Order 8000.8A (Nov. 20, 2020), which provides procedures for referrals for criminal investigation and coordination with the DOT Office of the Inspector General and DOJ.³ DOT also adheres to the Acting General Counsel's Memorandum, titled "Procedural Requirements for DOT Enforcement Actions" (March 11, 2025), which clarifies the procedural requirements governing enforcement actions initiated by DOT, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court.⁴

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

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).

³ <https://www.transportation.gov/sites/dot.gov/files/docs/dotorders/CROrder%208000.8A%20final%20signed.pdf>.

⁴ <https://www.transportation.gov/administrations/office-general-counsel/general-counsel%E2%80%99s-enforcement-memorandum>.

States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Gregory D. Cote,

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