



DEPARTMENT OF DEFENSE

Office of the Secretary

Guidance on Referrals for Potential Criminal Enforcement

AGENCY: Office of General Counsel, Department of Defense (DoD).

ACTION: Guidance document.

SUMMARY: This guidance document describes DoD's plans to address criminally liable regulatory offenses under the recent executive order (E.O.) on Fighting Overcriminalization in Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Dziecichowicz, Associate Deputy General Counsel, Office of the General Counsel (Legal Counsel), Department of Defense, Office of the Secretary, Pentagon, Room 3B688, Arlington, VA 22202, 571-256-0695.

SUPPLEMENTARY INFORMATION:

On May 9, 2025, the President issued E.O. 14294, "Fighting Overcriminalization in Federal Regulations," which published in the Federal Register on May 14, 2025 (90 FR 20363-20365) and is available at <https://www.govinfo.gov/content/pkg/FR-2025-05-14/pdf/2025-08681.pdf>. 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.

The E.O. does not apply to the enforcement of immigration laws or regulations promulgated to implement such laws, nor does it apply to the enforcement of laws or regulations related to national security or defense. To the extent that DoD takes any criminal enforcement actions not within one of those exemptions, DoD will apply the policy in this guidance document to such actions.

That policy, subject to appropriate exceptions and to the extent consistent with law, states that when DoD is deciding whether to refer alleged violations of criminal regulatory offenses to

the Department of Justice (DOJ), officers and employees of the DoD 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.

Further, 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.

Consistent with the E.O., DoD also 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 a report containing: (1) a list of all criminal regulatory offenses¹ enforceable by the DoD or the 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.

Dated: July 11, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025-13267 Filed: 7/15/2025 8:45 am; Publication Date: 7/16/2025]

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).