



FEDERAL TRADE COMMISSION

[File No. P072104]

Notice on Agency Referrals for Criminal Regulatory Offenses

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (“Commission” or “FTC”) is providing guidance on the factors it will consider when deciding whether to refer alleged violations of criminal regulatory offenses to the U.S. Department of Justice (“DOJ”) for prosecution.

FOR FURTHER INFORMATION CONTACT: Michelle Grajales (202) 326-3172, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 400 7th St. SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Executive Order 14294, Fighting Overcriminalization of Federal Regulations, directed each agency to “publish guidance in the *Federal Register* describing its plan to address criminally liable regulatory offenses” within forty-five days (June 23, 2025). 90 FR 20363 (May 9, 2025). The Executive Order defined a criminal regulatory offense as “a Federal regulation that is enforceable by a criminal penalty.” *Id.* Criminal penalties are most appropriate for “persons who know or can be presumed to know what is prohibited or required by the regulation and willingly choose not to comply, thereby causing or risking substantial public harm. Prosecutions of criminal regulatory offenses should focus on matters where a putative defendant is alleged to have known his conduct was unlawful.” *Id.*

The Commission has promulgated a small number of regulations, such as the Wool, Fur, and Textile Rules, where the authorizing statute provides for a criminal penalty in certain circumstances. *See, e.g.*, 16 CFR parts 300, 301, and 303; 15 U.S.C. 68h; 15 U.S.C. 69i; 15

U.S.C. 70i. Although the Commission has referred violations of these regulations to DOJ for prosecution in the past, the Commission has not referred a regulatory violation for criminal prosecution in decades. *See, e.g.*, Annual Report of the Federal Trade Commission 101 (Sept. 30, 1996) (stating that Diamond Rug and Carpet Mills, Inc. “falsely labeled the fiber content and weight of its carpets,” pled guilty to criminal violations of the Textile Act, and was fined \$100,000); Annual Report of the Federal Trade Commission 81-82 (June 30, 1966) (stating that a corporation was “fined \$4000 on one count [and] [p]laced on probation as to 17 counts, with imposition of sentence suspended,” for misbranding wool products).

In the future, the Commission will consider several factors when deciding whether to refer an alleged violation of a regulation to DOJ for criminal prosecution, including:

- (a) the harm or risk of harm, pecuniary or otherwise, caused by the alleged offense;
- (b) the potential gain to the putative defendant that could result from the alleged offense;
- (c) whether the putative defendant held specialized knowledge, expertise, or was licensed in an industry related to the rule or regulation at issue; and
- (d) 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.

See 90 FR at 20364-65.

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.

The Office of Management and Budget has not designated this action a significant regulatory action under section 3(f) of Executive Order 12866. 58 FR 51735 (Sept. 30, 1993).

Because this action is not significant under Executive Order 12866, it is not a regulatory action under Executive Order 14192. 90 FR 9065 (Jan. 31, 2025).

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this action as not a “major rule,” as defined by 5 U.S.C. 804(2).

By direction of the Commission.

April J. Tabor,

Secretary.

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