



ENVIRONMENTAL PROTECTION AGENCY

[FRL 12865-01-OECA]

Guidance on Referrals for Potential Criminal Enforcement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice describes the Environmental Protection Agency (EPA or Agency) plans to address regulatory offenses that give rise to criminal liability under the recent executive order on Fighting Overcriminalization in Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Michael R. Fisher, Office of Criminal Enforcement and Forensics and Training, Office of Enforcement and Compliance Assurance, Mail Code 2232A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-1063; e-mail: fisher.mike@epa.gov.

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, EPA advises the public that by May 9, 2026, the Agency, in consultation with the Attorney General, 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 Agency or the Department of Justice (“DOJ”); and (2) for each such

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

criminal regulatory offense, the range of potential criminal penalties for a violation and the applicable mens rea standard² for the criminal regulatory offense.

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

EPA has historically considered each of these factors as a matter of formal policy³ and in practice, not only in referring alleged violations of criminal regulatory offenses to DOJ, but also in deciding whether to open a formal investigation in the first place.

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.

Henry Barnet,

Director,

Office of Criminal Enforcement, Forensics and Training.

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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 "The Exercise of Investigative Discretion" (1994) (<https://www.epa.gov/sites/default/files/documents/exercise.pdf>)