

EXECUTIVE ORDER

- - - - -

FIGHTING OVERCRIMINALIZATION IN FEDERAL REGULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. The United States is drastically overregulated. The Code of Federal Regulations contains over 48,000 sections, stretching over 175,000 pages -- far more than any citizen can possibly read, let alone fully understand. Worse, many carry potential criminal penalties for violations. The situation has become so dire that no one -- likely including those charged with enforcing our criminal laws at the Department of Justice -- knows how many separate criminal offenses are contained in the Code of Federal Regulations, with at least one source estimating hundreds of thousands of such crimes. Many of these regulatory crimes are "strict liability" offenses, meaning that citizens need not have a guilty mental state to be convicted of a crime.

This status quo is absurd and unjust. It allows the executive branch to write the law, in addition to executing it. That situation can lend itself to abuse and weaponization by providing Government officials tools to target unwitting individuals. It privileges large corporations, which can afford to hire expensive legal teams to navigate complex regulatory schemes and fence out new market entrants, over average Americans.

The purpose of this order is to ease the regulatory burden on everyday Americans and ensure no American is transformed into a criminal for violating a regulation they have no reason to know exists.

Sec. 2. Policy. It is the policy of the United States that:

(a) Criminal enforcement of criminal regulatory offenses is disfavored.

(b) Prosecution of criminal regulatory offenses is 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.

(c) Strict liability offenses are "generally disfavored." *United States v. United States Gypsum, Co.*, 438 U.S. 422, 438 (1978). Where enforcement is appropriate, agencies should consider civil rather than criminal enforcement of strict liability regulatory offenses or, if appropriate and consistent with due process and the right to jury trial, see *Jarkesy v. Securities and Exchange Commission*, 603 U.S. 109 (2024), administrative enforcement.

(d) Agencies promulgating regulations potentially subject to criminal enforcement should explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to those offenses.

Sec. 3. Definitions. For purposes of this order:

(a) "Agency" has the meaning given to "Executive agency" in section 105 of title 5, United States Code;

(b) "Criminal regulatory offense" means a Federal regulation that is enforceable by a criminal penalty; and

(c) "Mens rea" means the state of mind that by law must be proven to convict a particular defendant of a particular crime.

Sec. 4. Report on Criminal Regulatory Offenses. (a)

Within 365 days of the date of this order, the head of each agency, in consultation with the Attorney General, shall provide to the Director of the Office of Management and Budget (OMB) a report containing:

- (i) a list of all criminal regulatory offenses enforceable by the agency or the Department of Justice; and
- (ii) for each criminal regulatory offense identified in subsection (a)(i) of this section, the range of potential criminal penalties for a violation and the applicable mens rea standard for the criminal regulatory offense.

(b) At the same time the head of each agency provides to the Director of OMB the report required by subsection (a) of this section, the agency head shall publicly post the report on its agency webpage.

(c) The head of each agency shall periodically, but not less than once a year, update the report described in subsection (a) of this section.

(d) Criminal enforcement of any criminal regulatory offense not identified in the report described in subsection (a) of this section is strongly discouraged. The head of each agency shall consider whether a criminal regulatory offense is included in an agency's public report when considering whether to make a criminal referral to the Department of Justice or, where applicable, to the agency's Inspector General. Further, the Attorney General shall consider whether a criminal regulatory offense is included in an agency's public report before initiating an investigation or initiating criminal proceedings for violating regulatory standards.

Sec. 5. Promoting Regulatory Transparency. (a) Following issuance of this order, all future notices of proposed rulemaking (NPRMs) and final rules published in the *Federal Register*, the violation of which may constitute criminal regulatory offenses, should include a statement identifying that the rule or proposed rule is a criminal regulatory offense and the authorizing statute. Agencies should draft this statement in consultation with the Department of Justice.

(b) The regulatory text of all NPRMs and final rules with criminal consequences published in the *Federal Register* after the date of this order should explicitly state a mens rea requirement for each element of a criminal regulatory offense, accompanied by citations to the relevant provisions of the authorizing statute.

(c) Strict liability criminal regulatory offenses are disfavored. Any proposed or final criminal regulatory offense that includes a strict liability mens rea for the offense shall be treated as a "significant regulatory action" and submitted to the Administrator of the Office of Information and Regulatory Affairs for the review applicable to significant regulatory actions under Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), or any successor process.

Sec. 6. Default Mens Rea for Criminal Regulatory Offenses.

(a) The head of each agency, in consultation with the Attorney General, shall examine the agency's statutory authorities and determine whether there is authority to adopt a background mens rea standard for criminal regulatory offenses that applies unless a specific regulation states an alternative mens rea.

(b) Within 30 days of the submission of the report described in section 4(a) of this order, the head of each agency, in consultation with the Attorney General, shall submit

a report to the Director of OMB summarizing the information submitted under section 4(a) of this order and assessing whether the applicable mens rea standards for criminal regulatory offenses enforced by the agency are appropriate. If consistent with the statutory authorities identified pursuant to the review described in subsection (a) of this section, the report should present a plan for changing the applicable mens rea standards and adopting a generally applicable background mens rea standard, and provide a justification for each criminal regulatory offense for which the agency proposes to deviate from its default mens rea standard.

Sec. 7. Agency Referrals for Potential Criminal Enforcement. Within 45 days of the date of this 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. Each agency's guidance should make clear that when the agency is deciding whether to refer alleged violations of criminal regulatory offenses to the Department of Justice, the agency should consider factors such as:

(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 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.

Sec. 8. Effect on Immigration Enforcement and National Security Functions. Nothing in this order shall apply to the enforcement of the 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.

Sec. 9. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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.

DONALD J. TRUMP

THE WHITE HOUSE,

May 9, 2025.