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SERVICE DATE – JUNE 20, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 783

GUIDANCE ON REFERRALS FOR POTENTIAL CRIMINAL ENFORCEMENT

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (Board) hereby gives notice of its plans to address criminally liable regulatory offenses under the recent executive order on Fighting Overcriminalization in Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Scott Zimmerman at (202) 245-0386. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: On May 9, 2025, the President issued Executive Order (E.O.) 14294, Fighting Overcriminalization in Federal Regulations. 90 FR 20,363 (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, the Board advises the public that by May 9, 2026, the Board, 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 the Board or the Department of Justice (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.

This notice also announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when the Board is deciding whether to refer alleged violations of

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).

criminal regulatory offenses to DOJ, officers and employees of the Board 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.

The Board's regulations contain very few references to potential criminal referrals. In general, Board regulations that permit criminal enforcement pertain to situations where an individual knowingly or willfully provides false information to the Board, thereby violating federal statutes that prohibit and criminalize perjury and other knowing or willful misrepresentations and omissions made to the government.

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.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs (OIRA) has designated this policy guidance as non-major, as defined by 5 U.S.C. 804(2). Executive Order 12866, as modified by Executive Order 14215, provides that OIRA will review all significant rules. OIRA has determined that this policy guidance is not significant.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c)(6).

Decided: June 17, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.