Exposed: Overcriminalization at the Department of Agriculture

In the spirit of Executive Order 14294—"Fighting Overcriminalization in Federal Regulations"—Department of Agriculture (USDA) regulations were reviewed with a three-phased process. First, each regulation under USDA's jurisdiction was reviewed to determine whether there are criminal penalties associated. Second, it was determined whether the regulation had a *mens rea* (aka culpable mental state) or if it is a strict-liability crime. Third, the authorizing statute was reviewed to determine whether Congress actually delegated to USDA the authority to pass the criminal regulation in question.

While many of the criminal regulations passed each test, some did not.

Additionally, no policy judgments are made herein. Council to Modernize Governance (CMG) does not support or oppose the listed regulations or their respective policy merits. Rather, CMG merely represents regulations that it believes may be unauthorized and/or are implicated by Executive Order 14294.

The potentially problematic regulations are as follows:

1. No *Mens Rea.*

These regulations do not have a culpable mental state. While the purpose of the regulations may or may not be good policy, their effect—as written—means that someone may unknowingly violate criminal laws.

2. No Delegation.

This regulation is promulgated without statutory authority over the subject matter that the enactment seeks to regulate.

APPENDIX

1. No *Mens Rea*.

- 7 C.F.R. § 500.15—This regulation establishes imprisonment for up to thirty days for violations of *any* subpart regulation but lacks a *mens rea*. Activities made criminal by this part of the regulations include things like leash laws for pets, "sleeping," "spitting," etc.
- 7 C.F.R. § 501.16—This regulation establishes imprisonment for up to thirty days for violations of *any* subpart regulation but lacks a *mens rea*. Activities made criminal by this part of the regulations include things like bringing an animal onto the meat research center, blocking an entrance to the facility, taking a photograph without permission, etc.
- 7 C.F.R. § 502.16—This regulation establishes imprisonment for up to thirty days for violations of *any* subpart regulation but lacks a *mens rea*. Activities made criminal by this part of the regulations include fishing, leash laws, "improper language," "sleeping," etc.
- 7 C.F.R. § 503.16—This regulation establishes imprisonment for up to thirty days for violations of *any* subpart regulation but lacks a *mens rea*. Activities made criminal by this part of the regulations include "improper language," "sleeping," fishing, leash laws, etc.

2. No Delegation.

- 9 C.F.R. § 559.3—This is about fish processing. The enabling statutes cover only meat originating from land animals and consistently exclude fish and aquatic animals.