

March 1, 2022

Henry Kerner, Special Counsel
US Office of Special Counsel (OSC)
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Washington, DC

Via: email to frliaison@osc.gov; hkerner@osc.gov; sullman@osc.gov

Subject: Comments on OSC's federal register notice of proposed rules and their non-compliance with section 1097(m) of NDAA of 2018

Dear Special Counsel Kerner,

I submit these comments per the relevant Federal Register notice.¹

My two decades of public whistleblowing about four decades of continuing law-breaking at OSC played a role in the enactment of Section 1097(m) of the National Defense Authorization Act of 2018, Pub.L. 115-91, on December 12, 2017.

By it,

(1)

IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Special Counsel shall prescribe such regulations as may be necessary to perform—

(A)

the functions of the Special Counsel under sub-chapter II of chapter 12 of title 5, United States Code, including regulations that are necessary to carry out sections 1213, 1214, and 1215 of that title; and

(B)

any functions of the Special Counsel that are required because of the amendments made by this section.

(2)

PUBLICATION.—Any regulations prescribed under paragraph (1) shall be published in the Federal Register.

¹ See Federal Register Vol. 87, No. 21, Tuesday, February 1, 2022, pages 5409-5423. Perhaps because OSC knows these proposed regulations do not implement the requirements of the 1097(m) of the NDAA of 2018, OSC did not issue a press release when they were issued. The deadline to submit comments is 3/2/2022, I learned of them, despite filing a whistleblower disclosure about OSC's failure to timely issue them, on 2/28/2022. So, yes, I am taking a day of annual leave to prepare timely comments on them.

I have reviewed the proposed rules by which OSC apparently claims compliance with this statutory requirement (even if more than two years overdue, given December 12, 2017 is when the requirement was enacted).

Basically, I think they reflect what I have been publicly claiming for decades - OSC is a decades-long, law-breaking fraud of a federal law enforcement agency, possibly the most corrupt and corrupting federal agency in since the enactment of the Constitution.²

There is little, if anything, in the proposed regulations that demonstrate compliance with Section 1097(m) of the NDAA of 2018, i.e. "regulations that are necessary to carry out sections 1213, 1214, and 1215" of Title V of the US Code.³

Here is a (partial) list of requirements found in 5 U.S.C. §1213 that are unaddressed by the proposed regulations:

1213(b) - How does OSC determine "substantial likelihood" the regulation should elaborate on this crucial OSC duty and determination? What does it request of the agency head if it makes such a determination?

1213(e) - how does the Special Counsel use the comments of the whistleblower in making his "reasonable" determination about the agency head report?

1213(g)(1) - just who are "individuals" in this section? How does OSC respond to whistleblower disclosures of such individuals? How does it enforce agency head compliance? How does this section relate to the requirements of sections 1218 and 1219 for its Annual Reports and Public Records?

1213(g)(2) - how does OSC make this determination? How does it enforce agency compliance? How does this section related to the requirements of sections 1218 and 1219 for its Annual Reports and Public Records?

1213(h) - how does OSC protect the confidentiality of the whistleblower? What criteria does OSC use to determine it is necessary to reveal the identity of the whistleblower? Does OSC

² OSC is tiny, my claim is relative to its size - FTE-for-FTE, OSC is likely the most corrupt and corrupting federal agency in our history.

³ The proposed regulations do not even mention section 1097(m) as a reason they are being proposed. If nothing else, should not the proposed regulations include the statutory language of these sections of the law, so that OSC's compliance with the proposed regulations would be a method to demonstrate compliance with the statutes? What else can the words of the law, "including regulations that are necessary to carry out sections 1213, 1214, and 1215 of that title" mean?

engage the whistleblower in such a decision?

1213(j) - how does OSC ensure it has personnel with relevant security clearances and/or the required equipment to transmit and store such classified whistleblower disclosures? How do the requirements of this section related to the requirements of sections 1218 for OSC's Annual Reports?

Here is a (partial) list of requirements found in 5 U.S.C. §1214 that are unaddressed by the proposed regulations:

1214(a)(1)(A) - just how does OSC make and report - to the complainant, to the agency head, to the President, and to Congress in its Annual Reports - when it determines there is "reasonable grounds to believe" a PPP has occurred, exists or is to be taken?

1214(a)(1)(C) - what does OSC need to include in these periodic reports regarding its actions and the investigation status?

1214(a)(1)(D) - what does OSC need to include of its proposed findings of fact and legal conclusions?

1214(a)(2)(A) - what does OSC need to include about the relevant facts determined by OSC? What does OSC need to do to respond to the comments of the complainant? What reason could OSC have for terminating an investigation other than its determination there is are not "reasonable grounds to believe" the alleged PPP occurred, exists or is to be taken, if not because the complainant withdrew the complaint because of a settlement or other reason?

1214(a)(4) - how does OSC seek this consent? How can the complainant request OSC continue to investigate if they file an appeal with MSPB before OSC has terminated its investigation?

1214(a)(5) - how does OSC implement this authority - to investigate if a pattern of PPPs in a given agency or agency workplace - without any specific complainant from any specific person?

1214(b)(1)(E) - how does OSC ensure agency heads perform this duty?

1214(b)(2)(A) - how does OSC negotiate and document such an extension?

1214(b)(2)(B) - how does OSC implement this duty? How does OSC determine "corrective action is required"? How does OSC make this report MSPB, the involved agency and OPM? When might OSC also make this report to the President? How do these reporting requirements get connected to sections 1218 and 1219 about OSC Annual Reports and Public Records?

1214(b)(2)(C) - how does OSC make a "reasonable time" determination?

1214(b)(2)(D) - how does OSC make this report to MSPB?

1214(d) - how does OSC make this determination and report to the Department of Justice, the involved agency, OPM and OMB? How does it coordinate with the Department of Justice if OSC makes a positive PPP determination? How does this requirement get reported or documented in OSC's Annual Reports and/or public records per 1218 or 1219?

1214(e) - how does OSC implement this requirement?

1214 "termination statement" - how does OSC implement this requirement, including informing the complainant of the existence of this requirement?

Here is a (partial) list of requirements found in 5 U.S.C. §1215 that are unaddressed by the proposed regulations:

1215(a)(1)(C) - how does OSC make this determination about failure to comply with an MSPB order?

1215(c) - how does this requirement get implemented? How does such a determination and report get captured in OSC's Annual Report or public records per 1218 or 1219?

Conclusion:

Mr. Kerner, I have previously expressed my opinion of your moral courage - inadequate for your position of special trust to protect foolhardy federal agency employees as I, who put duty to protect the public health, safety, security and welfare in our agency employment ahead of our professional standing and economic security.

Consistent with my opinion of your inadequate moral courage for your position, you have refused to even inform me of the agency inspector general (IG) with which OSC has implemented the MOU required by 5 U.S.C. §1212(ii) - so that I could bring my - undisputed by you or anyone else - claims of decades of OSC's continuing law-breaking to their attention.

Respectfully,

_____/s/_____

Joseph (Joe) Carson, PE, license no. 106350, Tennessee Engineering Board
Knoxville, TN

PS I invite you - or anyone - to file a misconduct complaint against me with my professional engineer (PE) licensing authority in Tennessee if you or anyone at OSC can summon the moral courage to claim my public statements, reports and testimony of decades of OSC law-breaking and their harm to public health, safety, and welfare are less than "truthful and objective."