



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

May 1, 2025

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-24-000141

Dear Mr. President:

I am forwarding to you the reports transmitted to the U.S. Office of Special Counsel (OSC) by the Department of Justice (DOJ) in response to the Special Counsel's referral of a disclosure of wrongdoing at the U.S. Marshal Service (USMS), Management Support Division, Arlington, Virginia. The whistleblower, [REDACTED], consented to the release of his name and commented on the reports. OSC has reviewed the disclosure, agency reports, and whistleblower's comments, and in accordance with 5 U.S.C. § 1213(e), I have determined that the reports contain the information required by statute and the findings appear reasonable.¹ The following is a summary of the allegations, the agency's findings, and the whistleblower's comments in response.

[REDACTED] alleged that the agency failed to implement a Hearing Conservation Program (HCP) that complied with the Occupational Safety and Health Administration (OSHA) regulations, see 29 C.F.R. § 1910.95 (2025) (occupational noise exposure), and the DOJ *Occupational Safety and Health Program*, DOJ Order 1779.2B. [REDACTED] also alleged that he brought the noncompliance to leadership's attention, but the deficiency remained. The reports substantiated that the agency had not followed its HCP as written but did not substantiate that the agency failed to set up an OSHA-compliant HCP. In response to the findings, the agency took corrective action.

¹ OSC referred the allegations to Attorney General Merrick B. Garland for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The USMS Office of Professional Responsibility, Internal Affairs investigated the allegation. Former Associate Deputy Attorney General Bradley Weinsheimer reviewed and signed the agency report pursuant to delegated authority.

The reports stated that as of 2012 the agency established an OSHA-compliant HCP that was overinclusive because it required all operational employees to receive annual audiograms based on their job classification—not on their noise exposure. However, the reports stated that the agency failed to follow the HCP because it had not provided all operational employees annual audiograms. Additionally, the reports concluded that an HCP requiring annual audiograms for employees based on their job classification was “overly prescriptive” given a 2018 OSHA interpretation letter.

According to the reports, the 2018 OSHA interpretation letter advised that if employees are required to wear personal protective equipment (PPE) on firearms ranges that attenuates the noise level to below the threshold requiring the annual audiograms, an annual audiogram is not needed. Relying on OSHA’s interpretation letter, the investigation concluded that because USMS employees must wear double PPE, including earmuffs and foam or molded ear plugs, on firearm ranges that reduces the noise experienced during firearms training to below the actionable level, the agency’s HCP does not need to include annual audiograms. Given this determination, the agency revised its HCP accordingly.

In response to concerns OSC expressed about the agency relying on the 2018 OSHA interpretation letter, the reports stated that while the interpretation letter concerned the Department of Veterans Affairs’ annual firearms training, neither the differing agencies nor the frequency of firearms training made the letter’s premise inapplicable to the USMS. The reports explained that actionable noise levels are determined by standard, not by agency, and the guidance in the 2018 OSHA interpretation letter focused on the ability to reduce the noise level to below the actionable level.

The reports also stated that, pursuant to a 2022 Noise Exposure Assessment, conducted at the Federal Law Enforcement Training Center (FLETC), the 8-hour Time Weighted Average (8hr TWA) for noise exposure exceeded 85 decibels, the trigger for the annual audiograms under OSHA, but when employees used the mandatory PPE, the estimated noise exposure was below the 8hr TWA.² The reports affirmed the USMS understanding that so long as PPE effectively reduces the noise levels below the OSHA actionable threshold, annual audiograms are not required. Additionally, the reports noted that the agency conducts biennial audiograms of all operational employees as part of its Periodic Medical Examination (PME) program to determine if employees meet the fitness for duty standards for law enforcement officers and to identify any significant change or standard threshold shift in employees’ hearing.³ Given the reports’ findings and because the USMS monitors employee hearing through its PME program, USMS modified its HCP to be consistent with the 2018 OSHA interpretation letter.

² The report stated that the range conditions, environment, and types of firearms and PPE used in this testing at FLETC, were equivalent to that which is used by the USMS in nationwide training.

³ Here, the USMS obtains a baseline audiogram from each operational employee when they are hired, then conducts hearing tests as part of the PME every two years for comparison purposes.

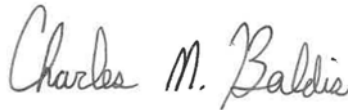
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The whistleblower disputed the agency's findings as to the unsubstantiated allegation. The whistleblower also disagreed with the agency's analysis of the relevant OSHA rules and the 2018 OSHA interpretation letter as well as the conclusions the reports reached regarding the requirements of an HCP.

I thank the whistleblower for bringing this important issue to OSC. In accordance with 5 U.S.C. § 1213(e) I have determined that the reports contain the information required by statute and the findings appear reasonable. I expect the agency to continue to monitor its employees' hearing as indicated and in compliance with federal requirements.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency reports, and whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on the Judiciary. I have also filed redacted copies of these documents and the redacted referral letter in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in cursive script that reads "Charles M. Baldis".

Charles N. Baldis
*Senior Counsel and Designee
of Acting Special Counsel Jamieson Greer*

Enclosures