



The Special Counsel's Report: What Do Current DOJ Regulations Require?

Cynthia Brown

Legislative Attorney

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In light of [media reports](#) that Special Counsel Robert S. Mueller III is close to concluding his investigation of Russian interference in the 2016 election, the extent to which the findings and conclusions of the Special Counsel's investigation will be released to Congress and the public after being submitted to the Attorney General has attracted attention. The [reporting requirements](#) applicable to the Special Counsel's investigation indicate a significant degree of deference to the Special Counsel regarding the content of his report to the Attorney General. Governing Department of Justice (DOJ) regulations also give significant deference to the Attorney General regarding release of information related to the report, although the regulations mandate that he report certain information to Congress at the conclusion of the Special Counsel's investigation. Some Members of Congress have [proposed legislation](#) to ensure that certain information related to the Special Counsel's investigation is made available to Congress and the public.

This Sidebar examines the current legal obligations of the Special Counsel and Attorney General to report information relating to the investigation to Congress and the public. It also provides historical examples of reports issued for other such investigations. A [companion Sidebar](#) addresses potential legal issues that may arise if Congress seeks to compel release of information about the investigation, including issues involving executive privilege and the publication of grand jury information.

Reporting Requirements Under the Current Special Counsel Regulations

Under the current legal framework, there is no statute providing for Special Counsel investigations or specifying information arising from such investigations that must be disclosed to Congress or the public. Instead, DOJ [regulations](#), promulgated in 1999, [govern the conduct and process](#) of the Special Counsel's

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investigation. Those regulations reference two relevant reporting requirements: reporting requirements of the Special Counsel to the Attorney General (28 C.F.R. § 600.8; “Section 600.8”) and reporting requirements of the Attorney General to Congress and the public (28 C.F.R. § 600.9; “Section 600.9”).

Required Report by the Special Counsel to the Attorney General

Section 600.8 requires that the Special Counsel report to the Attorney General “at the conclusion of [his] work,” without providing an express timeline for the report’s submission. The regulations briefly identify the parameters of the reporting requirement, stating that the Special Counsel must “provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.” This is the only reference to a “report” by the Special Counsel in the regulations.

DOJ addressed the limited nature of the Special Counsel’s reporting requirement in comments it issued when releasing the regulations in 1999. Those comments characterized the Special Counsel’s report as “a summary final report” that would be handled similarly to any other “internal documents relating to any federal criminal investigation.” In its comments, DOJ contrasted the public release of final reports under the predecessor investigation authority for Independent Counsels with the typical, non-public process for closing other criminal investigations. (For a discussion of the history of the Independent Counsel model and its comparison to the current Special Counsel regulations, see this previous posting and CRS Report.) According to DOJ, publishing a final report “provides an incentive to overinvestigate, in order to avoid potential public criticism for not having turned over every stone, and creates potential harm to individual privacy interests.” Acknowledging the countervailing interest in establishing a written record “both for historical purposes and to enhance accountability—particularly a federal official who has functioned with substantial independence and little supervision,” DOJ expressly noted that the Attorney General’s reporting requirements would address the public interest “in being informed of and understanding the reasons for the actions of the Special Counsel.”

In sum, the regulations provide a general requirement that the Special Counsel must issue a report to the Attorney General at the conclusion of the investigation, but the regulations’ silence regarding the content of the report appears to give significant deference to the Special Counsel about the details included in his report to the Attorney General.

Required Reports by the Attorney General to Congress

Separately, Section 600.9(a) requires the Attorney General to share information with Congress on a Special Counsel investigation in three instances. Specifically, the Attorney General must notify the Chairs and Ranking Members of the House and Senate Judiciary Committees “with an explanation for each action” in three circumstances:

- (1) [u]pon appointing a Special Counsel;
- (2) [u]pon removing any Special Counsel; and
- (3) [u]pon conclusion of the Special Counsels [sic] investigation, including, to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.

At the time of promulgation, DOJ explained that it required sharing information with the Judiciary Committees “[t]o help ensure congressional and public confidence in the integrity of the process.” According to DOJ’s comments, the Attorney General’s reports to Congress “will be brief notifications, with an outline of the actions and the reasons for them.”

Current Options for Public Release of Information about the Special Counsel Investigation

Neither of the reporting requirements in Section 600.8 nor Section 600.9 contemplate a mandatory public release of any information shared either between the Special Counsel and the Attorney General or between DOJ and congressional committees regarding findings made in the Special Counsel's investigation. However, [Section 600.9\(c\)](#) authorizes the Attorney General to determine whether “the public release of *these reports* would be in the public interest, to the extent that release would comply with applicable legal restrictions” (emphasis added). The reference to “these reports” in section 600.9(c) raises a question as to which reports may be made public. It seems likely that the “reports” contemplated for potential public release under Section 600.9 include those instances in which the Attorney General must notify the Chairs and Ranking Members of the Judiciary Committees of particular actions and related explanations (i.e., appointment or removal of the Special Counsel, and conclusion of the Special Counsel's investigation).

Aside from requiring “an explanation” of the respective actions, the regulations do not specify what information the reports would contain. The most specific direction requires the Attorney General's report at the conclusion of the investigation to include “to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.” That instruction does not indicate expressly whether such information is the only content that the Attorney General would include. [Standard canons of construction](#) recognize that when legal text offers an example of what would be included, there is a presumption that the example is not intended to be exclusive of other possibilities. Ultimately, however, the regulations afford significant discretion to the Attorney General as to whether to include more information.

In light of its placement in a separate section of the regulations and the accompanying [explanatory notes](#) offered by DOJ at the time of promulgation, DOJ seems not to have intended for the Special Counsel's confidential report to the Attorney General under [Section 600.8](#) to be publicly released by the Special Counsel. On the other hand, in light of the discretion afforded to the Attorney General in [Section 600.9](#), it seems that, if deemed appropriate, the Attorney General could share a partial or complete version of the report he receives from the Special Counsel with the congressional committees as part of his own concluding report, and also subsequently release his report to the public. But that decision likely would be informed by Section 600.9's [acknowledgment](#) that existing law may limit what information may be shared. For example, some of the [legal issues](#) raised concerning [potential limits](#) to public release or release to Congress include [executive privilege](#) and the [publication of grand jury information](#). These considerations could lead the Attorney General to limit the release of the report either entirely or redact particular information that would pose conflicts with these issues.

Historical Context and Selected Examples

Following other [government investigations](#) of national significance, reports issued at the investigation's conclusion have varied. The Special Counsel regulations discussed above do not specify the degree of detail to be included in the Special Counsel's report. A [review of examples](#) of past independent investigations' reports illustrates the [significantly different](#) types of reports that may result.

For example, Special Prosecutor Leon Jaworski (through the investigating grand jury), appointed at DOJ's discretion prior to the enactment of the [predecessor statutory investigation authority](#), issued a relatively brief [report](#) known as the “Road Map” to Congress following his investigation into the Watergate affair. That report included a two-page summary of 53 statements and supporting

documentation of the grand jury's findings. Although the report originally was filed under seal in 1974, it became available to the public in October 2018 pursuant to a [court order](#).

In contrast, Independent Counsel Kenneth Starr, appointed under the [predecessor statutory authority](#) that lapsed in 1999, issued a much longer [report](#), including a 453-page document and supporting appendices, detailing the findings of the Independent Counsel investigation of President Bill Clinton. Starr [issued](#) the report to Congress with court permission to disclose grand jury information and Congress [voted](#) to release the [report publicly](#) in 1998, less than one year before Congress allowed the statutory authority to lapse and DOJ adopted the current special counsel regulations. Commentators have [cited](#) its detail and scope as informing DOJ's [approach](#) in limiting the release of the Special Counsel's report.

Finally, as an example of a Special Counsel investigation conducted under the current regulations, the Special Counsel investigating the government's role in the confrontation at the Branch Davidian complex in Waco, Texas issued an [interim report](#) and a final report in the course of the investigation, which are both publicly available. The [interim report](#) included three pages of introductory comments by the Special Counsel, followed by 149 pages providing "an overview of the findings to date," which identified the issues investigated and the conclusions reached, described the investigation's methodology, and provided a statement of facts. The Special Counsel later issued a final report affirming its earlier report, which included over 200 pages of information about the Special Counsel's factual findings, conclusions, and methodology.

As noted earlier, the regulations do not refer to any report from the Special Counsel other than the concluding report. The authority for the interim report for the Branch Davidian complex investigation apparently [derived from the DOJ order](#) initiating the investigation, which permitted "such interim reports as he deems appropriate." (The [order initiating the current Special Counsel investigation](#) does not include such language.)