

Department or the Secretary of Homeland Security may approve, pursuant to 10 U.S.C. 1037, under the following circumstances:

(1) *Criminal cases.* Requests for the provision of counsel fees and payment of expenses in criminal cases may be approved in pre-trial, trial, appellate, and post-trial proceedings in any criminal case where:

(i) The sentence that is normally imposed includes confinement, whether or not such sentence is suspended;

(ii) Capital punishment might be imposed;

(iii) An appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused;

(iv) The case, although not within the criteria established in paragraphs (c)(1)(i) through (iii) of this section, is considered to have significant impact on U.S. interests, including upon the relations of the Armed Forces with the host country.

(2) *Civil cases.* Requests for provision of counsel fees and payment of expenses in civil cases may be granted in trial and appellate proceedings in civil cases where the case is considered to have a significant impact on the relations of the Armed Forces with the host country; or in cases brought against eligible non-military DoD personnel (and in exceptional cases, by such personnel) if the case is considered to involve any other U.S. interest.

(3) *Funding restrictions.* (i) No funds will be provided under this part in cases where the U.S. Government is—in actuality or in legal effect—the plaintiff or the defendant; all such cases shall be referred to the Department of Justice, Office of Foreign Litigation. No funds will be provided under this part in cases where the non-military DoD personnel member is a plaintiff without prior authorization of the Secretary of the Military Department concerned or the Secretary of Homeland Security. The provisions of this paragraph also are applicable to proceedings with civil aspects that are brought by eligible personnel as criminal cases in accordance with local law. Funds for the posting of bail or bond to secure the release of non-military DoD personnel from confinement will be

used as provided by applicable Armed Force regulations.

(ii) No funds will be provided under paragraph (c)(2) of this section to a plaintiff who, if successful, will receive an award, in whole or in part, from the United States.

(iii) As provided for in 10 U.S.C. 1037, a person on whose behalf a payment is made under this provision is not liable to reimburse the United States for that payment, unless he or she is responsible for the forfeiture of bail provided for him or her under this provision.

(d) *Treatment of dependents confined in foreign penal institutions.* In cooperation with the appropriate U.S. Chief of Mission and to the maximum extent possible, military commanders will ensure that dependents of DoD personnel receive the same treatment, rights, and support as would be extended to Armed Forces members when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions. Commanders will work with the appropriate U.S. Chief of Mission to make appropriate diplomatic contacts for the categories of dependents described in this section who are not U.S. nationals.

(e) *Information policy.* The general public and the Congress must be provided promptly with the maximum information concerning status of forces matters that are consistent with the national interest. Information will be coordinated and provided to the public and the Congress in accordance with established procedures, including those in DoD Directive 5122.05, “Assistant to the Secretary of Defense for Public Affairs (ATSD(PA))” (available at http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512205_dodd_2017.pdf?ver=2017-08-07-125832-023), 32 CFR part 286, 32 CFR part 310, and DoD Instruction 5400.04, “Provision of Information to Congress” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540004p.pdf>).

PART 152—REVIEW OF THE MANUAL FOR COURTS-MARTIAL

Sec.

152.1 Purpose.

152.2 Applicability.

152.3 Policy.

Office of the Secretary of Defense

§ 152.4

152.4 Responsibilities.

152.5 Implementation.

APPENDIX A TO PART 152—GUIDANCE TO THE
JOINT SERVICE COMMITTEE (JSC)

AUTHORITY: E.O. 12473; 10 U.S.C. 47.

SOURCE: 68 FR 36916, June 20, 2003, unless
otherwise noted.

§ 152.1 Purpose.

This part:

(a) Implements the requirement established by the President in Executive Order 12473 that the Manual for Courts-Martial (MCM), United States, 1984, and subsequent editions, be reviewed annually.

(b) Formalizes the Joint Service Committee (JSC) and defines the roles, responsibilities, and procedures of the JSC in reviewing and proposing changes to the MCM and proposing legislation to amend the Uniform Code of Military Justice (UCMJ) (10 U.S.C., Chapter 47).

(c) Provides for the designation of a Secretary of a Military Department to serve as the Executive Agent for the JSC.

§ 152.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter collectively referred to as “the DoD Components”).

§ 152.3 Policy.

To assist the President in fulfilling his responsibilities under the UCMJ, and to satisfy the requirements of Executive Order 12473, the Department of Defense shall review the Manual for Courts-Martial annually, and, as appropriate, propose legislation amending the UCMJ to ensure that the MCM and the UCMJ fulfill their fundamental purpose as a comprehensive body of military criminal law and procedure. The role of the JSC furthers these re-

sponsibilities. Under the direction of the General Counsel of the Department of Defense, the JSC is responsible for reviewing the MCM and proposing amendments to it and, as necessary, to the UCMJ.

§ 152.4 Responsibilities.

(a) The General Counsel to the Department of Defense shall:

(1) Administer this part, to include coordination on and approval of legislative proposals to amend the UCMJ, approval of the annual review of the MEM, and coordination of any proposed changes to the MCM under OMB Circular A-19.¹

(2) Designate the Secretary of a Military Department to serve as the joint Service provider for the JSC. The joint Service provider shall act on behalf of the JSC for maintaining the JSC’s files and historical records, and for publication of the updated editions of the MCM to be distributed throughout the Department of Defense, as appropriate.

(3) Invite the Secretary of Homeland Security to appoint representatives to the JSC.

(4) Invite the Chief Judge of the United States Court of Appeals for the Armed Forces to provide a staff member to serve as an advisor to the JSC.

(5) Invite the Chairman of the Joint Chiefs of Staff to provide a staff member from the Chairman’s Office of Legal Counsel to serve as an advisor to the JSC.

(6) Ensure that the Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the General Counsel, Department of Defense, shall serve as the General Counsel’s representative to the JSC in a non-voting capacity. In addition, the United States Court of Appeals for the Armed Forces (USCAAF) and the Legal Counsel to the Chairman of the Joint Chiefs of Staff shall be invited to provide a staff member to serve as an advisor to the JSC in a non-voting capacity.

(b) The Secretaries of the Military Departments shall ensure that the Judge Advocates General of the Military Departments and the Staff Judge Advocate to the Commandant of the

¹Available at <http://www.whitehouse.gov/omb/circulars/index.html>.

Marine Corps appoint representatives to the JSC.

(c) The JSC shall further the DoD policy established in section 3 of this part and perform additional studies or other duties related to the administration of military justice, as the General Counsel of the Department of Defense may direct. (See DoD Directive 5105.18, “DoD Committee Management Program”).² The membership of the JSC shall consist of one representative of each of the following, who shall comprise the JSC Voting Group:

(1) The Judge Advocate General of the Army.

(2) The Judge Advocate General of the Navy.

(3) The Judge Advocate General of the Air Force.

(4) The Staff Judge Advocate to the Commandant of the Marine Corps; and

(5) By agreement with the Department of Homeland Security, the Chief Counsel, United States Coast Guard.

(d) The JSC Working Group (WG) shall assist the JSC Voting Group in fulfilling its responsibilities under this part. The WG consists of non-voting representatives from each of the Services and may include the representatives from the USCAAF, and the Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

(e) The JSC chairmanship rotates biennially among the Services in the following order: The Army, the Air Force, the Marine Corps, the Navy, and the Coast Guard. Due to its size and manning constraints, a Coast Guard’s request not to be considered for JSC chairmanship shall be honored. The Military Service of the JSC Chairman shall provide an Executive Secretary for the JSC.

§ 152.5 Implementation.

The foregoing policies and procedures providing guidelines for implementation of this part, as well as those contained in the appendix, are intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and the United States Coast Guard by agreement of the Department of Homeland Security.

² Available at <http://www.dtic.mil/whs/directives>.

These guidelines are intended to improve the internal management of the Federal Government and are not intended to create any right, privilege, or benefit, substantive of procedural, to any person or enforceable at law by any party against the United States, its agencies, its officers, or any person.

APPENDIX A TO PART 152—GUIDANCE TO THE JOINT SERVICE COMMITTEE (JSCA)

(a) *Review the Manual for Courts-Martial.* (1) The Joint Service Committee (JSC) shall conduct an annual review of the Manual for Courts-Martial (MCM), in light of judicial and legislative developments in military and civilian practice, to ensure:

(i) The MCM implements the Uniform Code of Military Justice (UCMJ) and reflects current military practice and judicial precedent.

(ii) The rules and procedures of the MCM are uniform insofar as practicable.

(iii) The MCM applies, to the extent practicable, the principles of law and the rules of evidence generally recognized in the trial of criminal cases in United States district courts, but which are not contrary to or inconsistent with the UCMJ.

(iv) The MCM is workable throughout the worldwide jurisdiction of the UCMJ; and,

(v) The MCM is workable across the spectrum of circumstances in which courts-martial are conducted, including combat conditions.

(2) During this review, any JSC voting member may propose for the Voting Group’s consideration an amendment to the MCM. Proposed amendments to the MCM shall ordinarily be referred to the JSC Working Group (WG) for study. The WG assists the JSC in staffing various proposals, conducting studies of proposals and other military justice related topics at the JSC’s direction, and making reports to the JSC. Any proposed amendment to the MCM, if approved by a majority of the JSC voting members, becomes a part of the annual review.

(3) The JSC shall prepare a draft of the annual review of the MCM and forward it to the General Counsel of the Department of Defense, on or about December 31st. The General Counsel of the Department of Defense may submit the draft of the annual review to the Code Committee established by Article 146 of the UCMJ, with an invitation to submit comments.

(4) The draft of the annual review shall set forth any specific recommendations for changes to the MCM, including, if not adequately addressed in the accompanying discussion or analysis, a concise statement of the basis and purpose of any proposed change. If no changes are recommended, the

draft review shall so state. If the JSC recommends changes to the MCM, the draft review shall so state. If the JSC recommends changes to the MCM, the public notice procedures of paragraph (d)(3) of this appendix are applicable.

(b) *Changes to the Manual for Courts-Martial.* (1) By January 1st of each year, the JSC voting members shall ensure that a solicitation for proposed changes to the MCM is sent to appropriate agencies within their respective Services that includes, but is not limited to, the judiciary, the trial counsel and defense counsel organizations, and the judge advocate general schools.

(2) The FEDERAL REGISTER announcement of each year's annual review of proposed changes to the MCM shall also invite members of the public to submit any new proposals for JSC consideration during subsequent JSC annual reviews.

(3) When the JSC receives proposed changes to the MCM either by solicitation or FEDERAL REGISTER notice, the JSC shall determine whether the proposal should be considered under paragraph (a)(2) of this appendix by determining if one or more of the JSC voting member(s) intends to sponsor the proposed change. The JSC shall determine when such sponsored proposals should be considered under the annual review process, taking into account any other proposals under consideration and any other reviews or studies directed by the General Counsel of the Department of Defense.

(4) Changes to the MCM shall be proposed as part of the annual review conducted under paragraph (a) of this appendix. When earlier implementation is required, the JSC may send proposed changes to the General Counsel of the Department of Defense, for coordination under DoD Directive 5500.1.³

(c) *Proposals to Amend the Uniform Code of Military Justice.* The JSC may determine that the efficient administration of military justice within the Armed Services requires amendments to the UCMJ, or that a desired amendment to the MCM makes necessary an amendment to the UCMJ. In such cases, the JSC shall forward to the General Counsel of the Department of Defense, a legislative proposal to change the UCMJ. The General Counsel of the Department of Defense may direct that the JSC forward any such legislative proposal to the Code Committee for its consideration under Article 146, UCMJ.

(d) *Public Notice and Meeting.* (1) Proposals to amend the UCMJ are not governed by the procedures set out in this paragraph. (See DoD Directive 5105.18. This paragraph applies only to the JSC recommendations to amend the MCM.)

(2) It is DoD policy to encourage public participation in the JSC's review of the MCM. Notice that the Department of Defense, through the JSC, intends to propose changes to the MCM normally shall be published in the FEDERAL REGISTER before submission of such changes to the President. This notice is not required when the Secretary of Defense in his sole and unreviewable discretion proposes that the President issue the change without such notice on the basis that public notice procedures, as set forth in this part, are unnecessary or contrary to the sound administration of military justice, or a MCM change corresponding to legislation is expeditiously required to keep the MCM current and consistent with changes in applicable law.

(3) The Office of General Counsel of the Department of Defense shall facilitate publishing the FEDERAL REGISTER notice required under this paragraph.

(4) The notice under this paragraph shall consist of the publication of the full text of the proposed changes, including discussion and analysis, unless the General Counsel of the Department of Defense determines that such publication in full would unduly burden the FEDERAL REGISTER, the time and place where a copy of the proposed change may be examined, and the procedure for obtaining access to or a copy of the proposed change.

(5) A period of not fewer than 60 days after publication of notice normally shall be allowed for public comment, but a shorter period may be authorized when the General Counsel of the Department of Defense determines that a 60-day period is unnecessary or is contrary to the sound administration of military justice. The FEDERAL REGISTER notice shall normally indicate that public comments shall be submitted to the Executive Secretary of the JSC.

(6) The JSC shall provide notice in the FEDERAL REGISTER and hold a public meeting during the public comments period, where interested persons shall be given a reasonable opportunity to submit views on any of the proposed changes contained in the annual review. Public proposals and comments to the JSC should include a reference to the specific provision to be changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions might be insufficient to receive the consideration desired. The JSC shall seek to consider all views presented at the public meeting as well as any written comments submitted during the 60-day period when determining the final form of any proposed amendments to the MCM.

(E) *Internal Rules and Record-Keeping.* (1) In furthering DoD policy, studying issues, or performing other duties relating to the administration of military justice, the JSC

³Available at <http://www.dtic.mil/whs/directives>.

may establish internal rules governing its operation.

(2) The JSC shall create a file system and maintain appropriate JSC records.

PART 153—CRIMINAL JURISDICTION OVER CIVILIANS EMPLOYED BY OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES, CERTAIN SERVICE MEMBERS, AND FORMER SERVICE MEMBERS

Sec.

153.1 Purpose.

153.2 Applicability and scope.

153.3 Definitions.

153.4 Responsibilities.

153.5 Procedures.

APPENDIX A TO PART 153—GUIDELINES

APPENDIX B TO PART 153—ACKNOWLEDGEMENT OF LIMITED LEGAL REPRESENTATION (SAMPLE)

AUTHORITY: 10 U.S.C. 301.

SOURCE: 71 FR 8947, Feb. 22, 2006, unless otherwise noted.

§ 153.1 Purpose.

This part:

(a) Implements policies and procedures, and assigns responsibilities under the Military Extraterritorial Jurisdiction Act of 2000, as amended by section 1088 of the “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004 (hereinafter referred to as “the Act”) for exercising extraterritorial criminal jurisdiction over certain military personnel, former service members of the United States Armed Forces, and over civilians employed by or accompanying the Armed Forces outside the United States (U.S.).

(b) Implements section 3266 of the Act.

§ 153.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Ac-

tivities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as “the DoD Components”). The term “Military Services,” as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) *Coast Guard*. The Coast Guard ordinarily operates as a separate branch of the Armed Forces in the Department of Homeland Security (DHS). However, upon Presidential Directive, the Coast Guard operates as a Service within the Department of the Navy and becomes part of the Department of Defense. By agreement with the Secretary of the Department of Homeland Security, when the Coast Guard is operating as a separate Service within the DHS, this part shall apply to the Coast Guard to the extent permitted by the Act. Whether a provision of this Instruction applies to a Coast Guard case is determined by whether the Coast Guard is operating as a Service in the DHS or as a Service within the Department of the Navy.

(c) While some Federal criminal statutes are expressly or implicitly extraterritorial, many acts described therein are criminal only if they are committed within “the special maritime and territorial jurisdiction of the United States” or if they affect interstate or foreign commerce. Therefore, in most instances, Federal criminal jurisdiction ends at the nation’s borders. State criminal jurisdiction, likewise, normally ends at the boundaries of each State. Because of these limitations, acts committed by military personnel, former service members, and civilians employed by or accompanying the Armed Forces in foreign countries, which would be crimes if committed in the U.S., often do not violate either Federal or State criminal law. Similarly, civilians are generally not subject to prosecution under the Uniform Code of Military Justice (UCMJ), unless Congress had declared a “time of war” when the acts were committed. As a result, these acts are crimes, and therefore criminally punishable, only under the law of the foreign country in which they occurred. See section 2 of Report Accompanying the Act (Report to Accompany H.R. 3380, House of Representatives Report 106-778, July 20,