



DoD INSTRUCTION 5500.17

ROLE AND RESPONSIBILITIES OF THE JOINT SERVICE COMMITTEE ON MILITARY JUSTICE (JSC)

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Approved by:	William S. Castle, Acting General Counsel of the Department of Defense

Purpose: In accordance with DoD Directive 5145.01, this issuance:

- Implements the requirement established in Executive Order 12473 for the Manual for Courts-Martial (MCM) to be reviewed annually.
- Establishes the organizational structure of the JSC and defines the roles, responsibilities, and procedures of the JSC in reviewing and proposing changes to the MCM and its supplementary materials and proposing legislation to amend Chapter 47 of Title 10, United States Code, also known and referred to in this instruction as the Uniform Code of Military Justice (UCMJ).
- Provides authority to assign the responsibility for publishing the MCM and its supplementary materials to the Secretary of a Military Department.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY. To assist the President in fulfilling the responsibilities under the UCMJ and to satisfy the requirements of Executive Order 12473, the DoD reviews the MCM and its supplementary materials annually, and, as appropriate, proposes legislation amending the UCMJ to maintain the UCMJ and MCM as a comprehensive body of military criminal law and procedure.

SECTION 2: RESPONSIBILITIES

2.1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DOD). The GC DoD:

- a. Administers this issuance, including coordinating and approving legislative proposals to amend the UCMJ, approving the annual review of the MCM and its supplementary materials, and coordinating any proposed amendments to the MCM in accordance with Office of Management and Budget Circular A-19.
- b. Assigns responsibility for publishing and distributing updated editions of the MCM and its supplementary materials to the Secretary of a Military Department.
- c. Assigns responsibility for maintaining a periodically updated version of the MCM and the UCMJ in electronic format and making it available on the Internet to the Secretary of a Military Department.
- d. Invites 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 in a non-voting capacity.
- e. Invites 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 in a non-voting capacity.
- f. Invites the Judge Advocate General of the United States Coast Guard to appoint a representative to serve on the Joint Service Committee on Military Justice Voting Group (VG) and one or more representatives to serve on the Joint Service Committee on Military Justice Working Group (WG).
- g. Directs the Associate Deputy General Counsel (Military Justice and Personnel Policy), Office of the GC DoD, to serve as the GC DoD's advisor to the JSC in a non-voting capacity.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments direct their respective Judge Advocates General and, in the case of the Secretary of the Navy, the Staff Judge Advocate to the Commandant of the Marine Corps, to appoint a representative to serve on the VG and one or more representatives to serve on the WG.

SECTION 3: JSC STRUCTURE

3.1. JSC ORGANIZATION.

a. VG. The VG consists of one representative appointed by each of the Judge Advocates General of the Military Departments, the Staff Judge Advocate to the Commandant of the Marine Corps and, if the Judge Advocate General of the Coast Guard elects to appoint a representative, the Judge Advocate General of the Coast Guard.

b. WG. The WG assists the VG in fulfilling its responsibilities in accordance with this issuance. The WG is made up of one or more non-voting representatives from each of the Military Services. The non-voting advisors to the JSC may, at their discretion, also serve on the WG.

c. JSC Chairperson. The position of JSC Chairperson rotates every 2 years among the Military Services in the following order: the Army, the Air Force, the Coast Guard, the Marine Corps, and the Navy. The Military Service of the JSC Chairperson provides an Executive Secretary for the JSC.

d. JSC Subcommittees. JSC subcommittees are created by a subcommittee charter. Only the GC DoD or the GC DoD's designee may approve a subcommittee charter. The JSC may request that the GC DoD create a subcommittee. Unless its charter precludes it, a JSC subcommittee may include members who do not serve on either the VG or WG.

3.2. INTERNAL OPERATION.

a. Internal Rules. The JSC may establish internal rules governing its operation. Those rules may not be contrary to or inconsistent with this issuance.

b. Recordkeeping. The JSC will create an internal file system and maintain records designated by the JSC Chairperson for preservation.

SECTION 4: PROCEDURES FOR AMENDING THE MCM, ITS SUPPLEMENTARY MATERIALS, AND THE UCMJ

4.1. ANNUAL REVIEW OF THE MCM AND ITS SUPPLEMENTARY MATERIALS.

a. Purposes of the Annual Review. The JSC reviews the MCM and supplementary materials annually. This review covers judicial and legislative developments in military and civilian practice and will result in proposed amendments to the MCM and supplementary materials with the goal of ensuring the following:

(1) The MCM carries out the UCMJ and is consistent with the case law of the United States Court of Appeals for the Armed Forces as well as applicable case law of the United States Supreme Court.

(2) In accordance with Article 36(b) of the UCMJ, the rules and procedures prescribed by the MCM are uniform to the extent practicable.

(3) In accordance with Article 36(a) of the UCMJ, the MCM applies, to the extent the President deems practicable, the principles of law and the rules of evidence recognized in the trial of criminal cases in U.S. district courts which are not contrary to or inconsistent with the UCMJ.

(4) The MCM is workable in all places (see Article 5 of the UCMJ).

(5) The MCM is workable in every circumstance in which courts-martial are conducted, including combat conditions.

b. Voting Procedures for Proposing Amendments to the MCM, and Its Supplementary Materials, and the UCMJ.

(1) During the annual review, any VG member or non-voting JSC advisor may propose an amendment to the MCM or supplementary materials for the VG's consideration. Unless the proposed amendment is accepted or rejected without further study, it will be referred to the WG.

(2) The WG assists the JSC in considering various proposals, conducts studies of proposals and other military justice-related topics at the VG's direction, and reports its findings and recommendations to the VG.

(3) Generally, a proposed amendment to the MCM or supplementary materials that is approved by a majority of the VG will be included in the annual review. However, it may be appropriate for some proposed changes to be handled on a more expedited basis. Therefore, upon the concurrence of a majority of the VG members voting, the VG may propose:

(a) An Executive order amending the MCM that is not part of the annual review; or

(b) A Federal Register notice amending the supplementary materials that is not part of the annual review.

c. Contents of the Annual Review. The draft of the annual review sets forth specific recommendations for changes to the MCM and supplementary materials. The draft includes, if not adequately addressed in the accompanying discussion or analysis, a concise statement of the basis and purpose of any proposed change. If the JSC proposes no changes to the MCM or supplementary materials, the draft will say so. If the JSC recommends changes to the MCM or supplementary materials, the public notice procedures in Paragraph 4.4. of this issuance apply.

d. Forwarding the Annual Review. The JSC prepares a draft of the annual review of the MCM and supplementary materials and forwards it to the GC DoD through the Deputy General Counsel (Personnel and Health Policy) no later than December 31.

4.2. CHANGES TO THE MCM AND SUPPLEMENTARY MATERIALS.

a. Soliciting Changes from Within the Military Services. By January 31 of each year, the VG members will send a request for proposed changes to the MCM and supplementary materials to appropriate entities within their respective Military Services, including the judiciary; trial counsel, defense counsel, and victims' counsel organizations; and judge advocate training schools.

b. Soliciting Changes from the Public. The JSC will prepare a Federal Register notice of each year's annual review of proposed changes to the MCM and supplementary materials, inviting members of the public to submit any proposals for the JSC's consideration.

c. JSC Consideration of Changes Suggested in Response to Solicitations. When the JSC receives proposed changes to the MCM or supplementary materials in response to either solicitations within the Military Services or a Federal Register notice, the VG will determine by majority vote whether the proposed changes should be considered.

d. Changes Suggested by VG Members and Non-voting Advisors. VG members and non-voting advisors may propose changes to the MCM or supplementary materials as part of the annual review conducted under Paragraph 4.1.

e. Approval Authority. The approval authority for changes to the MCM is the President. The approval authority for changes to the supplementary materials is the GC DoD; changes to these items do not require Presidential approval.

f. Forwarding Proposed Changes to the MCM. Upon the concurrence of a majority of VG members voting, the JSC will submit a draft Executive order including any proposed changes to the MCM to the GC DoD through the Deputy General Counsel (Personnel and Health Policy). Any proposed changes to the MCM will be coordinated in accordance with DoD Directive 5500.01.

g. Forwarding Proposed Changes to the Supplementary Materials. When submitting a proposed Executive order to the Deputy General Counsel (Personnel and Health Policy), the JSC will also provide a proposed Federal Register notice including recommended changes to the supplementary materials. Such a proposed Federal Register notice will be adopted upon the concurrence of a majority of the VG members voting. The JSC may also, upon the concurrence

of a majority of VG members voting, propose changes to the supplementary materials without an accompanying proposed Executive order amending the MCM.

h. Reviewing the Draft Federal Register Notice Following Presidential Approval of a Corresponding Draft Executive Order. After the President signs an Executive order amending the MCM, the JSC will review the corresponding draft Federal Register notice proposing changes to the supplementary materials to determine whether it should be revised. The VG will recommend to GC DoD through the Deputy General Counsel (Personnel and Health Policy) whether the draft Federal Register notice should be issued without change or propose any appropriate revisions to the draft Federal Register notice.

4.3. PROPOSALS TO AMEND THE UCMJ. If the JSC, upon the concurrence of a majority of VG members voting, determines that the efficient administration of military justice requires amendments to the UCMJ or that a desired amendment to the MCM makes a corresponding UCMJ amendment appropriate, the JSC will forward a legislative proposal to amend the UCMJ to the GC DoD through the Deputy General Counsel (Personnel and Health Policy).

4.4. PUBLIC NOTICE AND MEETING. Proposals to amend the UCMJ are not governed by the procedures set out in this paragraph, which applies only to JSC recommendations to amend the MCM and supplementary materials.

a. Public Participation Encouraged. The DoD encourages the public to participate in the JSC's review of the MCM and supplementary materials. The JSC will normally publish a notice of proposed changes to the MCM and supplementary materials in the Federal Register. This notice is not required when the GC DoD determines that it would be appropriate for the DoD to recommend that the President change the MCM or for the DoD to change the supplementary materials without such notice because:

(1) Notice would be unnecessary or contrary to the sound administration of military justice; or

(2) A change to the MCM or to the supplementary materials corresponding to a statutory change or case law is expeditiously required to keep the MCM and supplementary materials current and consistent with the governing law.

b. Publication in the Federal Register. The Office of the GC DoD will facilitate publishing the Federal Register notices required under this section. In the case of Federal Register notices of proposed changes, the notice will consist of the full text of the proposed changes unless the GC DoD determines that publishing the full text would unduly burden the Federal Register. If the full text is not published, the full text will be made available to the general public on the Internet and the notice published in the Federal Register will provide the public with information necessary to access the document on the Internet.

c. Public Comment Period. A period of not fewer than 60 days will usually be allowed for public comment after a notice of proposed change is published. If the GC DoD determines that

this 60-day period is unnecessary or is contrary to the sound administration of military justice, the time period may be shortened or waived.

d. Public Meeting. The JSC will provide notice in the Federal Register and hold a public meeting during the public comment period, where interested people or organizations can submit views on any of the proposed changes contained in the annual review. Federal Register notices soliciting public comments to the JSC will indicate that proposals and comments should include a reference to the specific provision to be changed, a rationale for the proposed change, and detailed language to replace the current language. The JSC will 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 or supplementary materials.

GLOSSARY

G.1. ACRONYMS.

GC DoD	General Counsel of the Department of Defense
JSC	Joint Service Committee on Military Justice
MCM	Manual for Courts-Martial
UCMJ	Uniform Code of Military Justice
VG	Joint Service Committee on Military Justice Voting Group
WG	Joint Service Committee on Military Justice Working Group

G.2. DEFINITIONS. The following terms and their definitions are for the purpose of this issuance.

JSC. An interservice committee formed by and reporting to the GC DoD to conduct an annual review of the MCM; prepare proposed amendments to the MCM and, as appropriate, the UCMJ; and carry out other tasks related to the military justice system as assigned by the GC DoD.

MCM. The Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, Nonjudicial Punishment Procedures (Parts I–V), and Appendix 12A, minus any discussion sections. The MCM and changes to the MCM are issued by the President.

supplementary materials. The preface, table of contents, discussions, appendices, and index accompanying the MCM. The supplementary materials are issued by the DoD in conjunction with the Department of Homeland Security. Supplementary materials are advisory; they do not have the force of law.

REFERENCES

- DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),”
December 2, 2013, as amended
- DoD Directive 5500.01, “Preparing, Processing, and Coordinating Legislation, Executive
Orders, Proclamations, Views Letters, and Testimony,” June 15, 2007
- Executive Order 12473, “Manual for Courts-Martial, United States, 1984,” July 13, 1984
- Manual for Courts-Martial, United States (current edition)
- Office of Management and Budget Circular A-19, “Legislative Coordination and Clearance,”
September 20, 1979
- United States Code, Title 10, Chapter 47 (also known as “The Uniform Code of Military Justice
(UCMJ)”)