



Department of Defense

DIRECTIVE

NUMBER 5145.01

May 2, 2001

Incorporating Change 2, June 26, 2009

DA&M

SUBJECT: General Counsel of the Department of Defense

- References:
- (a) Title 10, United States Code
 - (b) DoD Directive 5145.1, subject as above, December 15, 1989 (hereby canceled)
 - (c) DoD 5500.7-R, "Joint Ethics Regulation," August 1993
 - (d) DoD Directive 5145.3, "Surveillance of the DoD Security Programs," October 19, 1962
 - (e) through (vp), see Enclosure 1

1. REISSUANCE AND PURPOSE

Pursuant to the authorities provided in Reference (a), this Directive reissues Reference (b) in order to update the responsibilities, functions, relationships, and authorities of the General Counsel of the Department of Defense (GC, DoD) and to incorporate appropriate Deputy Secretary of Defense delegations of decision authorities, and supersedes Deputy Secretary of Defense memorandums (References (o) *through (q) and (p)*) and *Secretary of Defense memorandum (Reference (r))*.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, 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 Department of Defense (hereafter referred to collectively as "the DoD Components").

3. RESPONSIBILITIES AND FUNCTIONS

The General Counsel, Department of Defense (GC, DoD), is the chief legal officer of the Department of Defense and shall:

- 3.1. Provide advice to the Secretary and Deputy Secretary of Defense regarding all legal matters and services performed within, or involving, the Department of Defense.

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3.2. Provide legal advice to Office of the Secretary of Defense (OSD) organizations and, as appropriate, other DoD Components.

3.3. Oversee, as appropriate, legal services performed within the Department of Defense, including determining the adherence by attorneys in the Department of Defense to appropriate professional responsibility standards, *except within the Office of the General Counsel to the Inspector General of the Department of Defense, consistent with the Inspector General Act of 1978 (Appendix 3 of title 5, United States Code (U.S.C.) (Reference (s)), as amended by section 907 of Public Law 110-417 (Reference (t))*.

3.4. Coordinate on appeals from denials of requests under the Freedom of Information Act, as appropriate.

3.5. Establish policy for and oversee the Standards of Conduct Program within the Department of Defense.

3.6. Serve as the Designated Agency Ethics Official (DAEO) for OSD and all DoD organizations that are not defined as separate Agencies in DoD 5500.7-R (Reference (c)), and designate an alternate DAEO and Deputy DAEOs, as appropriate.

3.7. Provide advice on standards of conduct involving personnel of OSD and, as appropriate, other DoD Components.

3.8. Develop and manage the DoD Legislative Program and coordinate DoD positions on legislation and Executive orders.

3.9. Provide for the coordination of significant legal issues before the Department of Justice, including litigation involving the Department of Defense and other matters in which the Department of Defense has an interest.

3.10. Establish DoD policy on general legal issues, determine the DoD position on specific legal problems, and resolve disagreements within the Department of Defense on such matters.

3.11. Perform such functions relating to the DoD security program (including surveillance over DoD personnel security programs in accordance with DoD Directive 5145.3 and DoD Directive 5205.07 (References (d) and (e)) as the Secretary or Deputy Secretary of Defense may assign.

3.12. Act as lead counsel for the Department in all international negotiations conducted by the OSD Components and coordinate on all proposed international agreements prior to their tender to prospective parties by the OSD Components, prior to the initiation of negotiations, and prior to final conclusion of proposed international agreements; oversee legal reviews performed by the DoD Components with respect to the negotiation and conclusion of international agreements in accordance with DoD Directive 5530.3 (Reference (f)).

3.13. Maintain the central repository for all international agreements coordinated, negotiated, or concluded by DoD personnel.

3.14. Provide for guidance in, and coordination of, significant legal issues in international law, including those presented by military operations requiring the approval of the Secretary of Defense, the conduct of the DoD Law of War Program (Reference (g)), and the review of the legality of weapons (Reference (h)).

3.15. Perform the legal analysis and coordination of the impact on the Department of Defense of mergers and acquisitions involving major defense suppliers, and coordinate contacts between DoD personnel and the Government Agency responsible for the antitrust aspects related to such mergers and acquisitions, in accordance with DoD Directive 5000.62, (Reference (i)); and review other agreements between competitors or potential competitors involving major defense suppliers, that may have an adverse impact on competition, and coordinate contacts between DoD personnel and the Government Agency responsible for the antitrust aspects related to such arrangements and agreements, in accordance with (Reference (i)).

3.16. Determine whether legislation proposed by the Department of Defense or any DoD Component has federalism implications and/or imposes unfunded mandates.

3.17. Advise the Secretary and, as appropriate, other senior Government officials, on all military justice matters requiring the attention of the Secretary of Defense and provide oversight of the annual review of the Manual for Courts-Martial by the Joint Service Committee on Military Justice in accordance with DoD Directive 5500.17 (Reference (j)).

3.18. Provide overall legal guidance on matters concerning the Office of Special Counsel in accordance with DoD Directive 5500.19 (Reference (k)).

3.19. Coordinate on deployment orders.

3.20. Serve as the Director, Defense Legal Services Agency (DLSA).

3.21. Serve as the DoD Regulatory Policy Officer, in accordance with Executive Order 12866 (Reference (u)), consistent with Deputy Secretary of Defense memorandum (Reference (v)). The daily operation of the DoD Regulatory Program will remain under the Director of Administration and Management.

3.2~~1~~2. Perform such other duties as the Secretary or Deputy Secretary of Defense may prescribe.

4. RELATIONSHIPS

4.1. In the performance of the above responsibilities and functions, the GC, DoD, shall:

4.1.1. Exercise direction, authority, and control over the Office of the General Counsel, DoD, and the DLSA, consistent with DoD Directive 5145.4 (Reference (1)), and over other such subordinate officials and organizations as may be assigned.

4.1.2. Coordinate actions and exchange information with other OSD officials, the Heads of DoD Components, and other Federal officials having collateral or related functions.

4.1.3. Serve as the representative of the Secretary of Defense to the Department of Justice on all appropriate matters.

4.1.4. Use existing facilities and services of the Department of Defense, or other Federal Agencies, to avoid duplication and, whenever practicable, to achieve maximum efficiency and economy.

4.2. Other OSD officials and the Heads of the DoD Components shall coordinate with the GC, DoD, on matters related to the responsibilities and functions in section 3., above.

5. AUTHORITIES

The GC, DoD, is delegated authority to:

5.1. *Promulgate, in DoD Instructions, DoD policy within the authorities and responsibilities assigned herein, including authority to identify collateral responsibilities of OSD officials and the Heads of the DoD Components. Such Instructions shall be fully coordinated in accordance with DoD Instruction 5025.01 (Reference (m)). This authority may not be redelegated. Further, in areas of assigned responsibilities and functions, the GC, DoD, has authority to issue other Issue DoD Instructions, DoD Manuals Publications, and one-time dDirective-tType mMemorandaums, consistent with DoD 5025.01 (Reference (m)), that implement policies approved by the Secretary of Defense in the functions assigned to the GC, DoD. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to the Combatant Commands shall be issued through the Chairman of the Joint Chiefs of Staff.*

5.2. Obtain reports *and* information, ~~advice, and assistance~~ from other DoD Components, consistent with the policies and criteria of DoD ~~Directive-Instruction~~ 8910.01 (Reference (n)), as necessary.

5.3. Communicate directly with the Heads of the DoD Components. Communications to the Commanders of the Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.


5.4. Communicate with other Federal Departments and Agencies, representatives of the Legislative Branch, State and local government officials, and members of the public, as

appropriate, in carrying out assigned functions.5.5. Exercise the specific delegations of authority in Enclosure 2.

6. *RELEASABILITY. UNLIMITED. This Directive is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.*

67. EFFECTIVE DATE

This Directive is effective immediately.



Paul Wolfowitz
Deputy Secretary of Defense

Enclosures - 2

E1. References, continued

E2. Delegations of Authority

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 5205.07, "Special Access Program (SAP) Policy," January 5, 2006
- (f) DoD Directive 5530.3, "International Agreements," June 11, 1987
- (g) DoD Directive 2311.01E, "DoD Law of War Program," May 9, 2006
- (h) DoD Directive 5000.01, "The Defense Acquisition System," May 12, 2003
- (i) DoD Directive 5000.62, "Impact of Mergers or Acquisitions of Major DoD Suppliers on DoD Programs," October 21, 1996
- (j) DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003
- (k) DoD Directive 5500.19, "Cooperation with the United States Office of Special Counsel (OSC)," May 24, 2004
- (l) DoD Directive 5145.4, "Defense Legal Services Agency," December 15, 1989
- (m) DoD *Instruction* 5025.01-~~M~~, "DoD Directives *Program*," ~~March 5, 2003~~ *October 28, 2007*
- (n) DoD *Instruction* 8910.01, "*Information Collection and Reporting*," ~~June 11, 1993~~ *March 6, 2007*
- (o) Deputy Secretary of Defense memorandum, "Delegation of Authorities and Responsibilities Under Section 330 of the National Defense Authorization Act for Fiscal Year 1993, as Amended," October 13, 2004 (hereby canceled)
- (p) Deputy Secretary of Defense memorandum, "General Counsel-Related DoD Issuances," September 28, 2006 (hereby canceled)
- (q) *Deputy Secretary of Defense memorandum, "Designation as DoD Regulatory Policy Officer," December 14, 2007 (hereby canceled)*
- (r) *Secretary of Defense memorandum, "Delegation of Authority," October 19, 2001 (hereby canceled)*
- (s) *Title 5, United States Code*
- (t) *Public Law 110-417, "Duncan Hunter National Defense Authorization Act for Fiscal Year 2009," October 14, 2008*
- (u) *Executive Order 12866, "Regulatory Planning and Review," September 30, 1993*
- (v) *Deputy Secretary of Defense memorandum, "Designation as Department of Defense (DoD) Regulatory Policy Officer (RPO) and Delegation of Authority to Approve Regulations," March 23, 2009*

E2. ENCLOSURE 2

DELEGATIONS OF AUTHORITY

E2.1.1. Pursuant to the authority vested in the Secretary of Defense, and subject to the authority, direction, and control of the Secretary of Defense, the GC, DoD, is hereby delegated authority to:

E2.1.1.1. Grant or deny applications for waiver of indebtedness arising from the erroneous payment of pay (including salary) and allowances (including travel and transportation allowances) pursuant to 10 U.S.C. 2774(a)(1), 5 U.S.C. 5584(a)(1), and 32 U.S.C. 716(a)(1).

E2.1.1.2. Issue advance decisions pursuant to 31 U.S.C. 3529.

E2.1.1.3. Exercise the authority of the Secretary of Defense to adjudicate, settle, assign duties for handling, or otherwise resolve claims, or other matters incident to such claims, against or involving the United States or the Department of Defense arising under the following statutes:

E2.1.1.3.1. Sections 1089(f), 2575, 2771, 4712, and 9712 of 10 U.S.C.

E2.1.1.3.2. Chapter 163 of 10 U.S.C.

E2.1.1.3.3. 24 U.S.C. 420.

E2.1.1.3.4. Sections 1346(b), 2671-2680 of 28 U.S.C.

E2.1.1.3.5. Sections 3701, 3702, 3711, and 3721 of 31 U.S.C.

E2.1.1.3.6. 32 U.S.C. 714.

E2.1.1.3.7. 32 U.S.C. 715.

E2.1.1.3.8. Sections 2651-2653 of 42 U.S.C.

E2.1.1.3.9. NATO Status of Forces Agreement (4 U.S.T. 1972, T.I.A.S. 2846) and Similar Status of Forces Agreements.

E2.1.1.4. Serve as the DoD Dispute Resolution Specialist in accordance with the Administrative Dispute Resolution Act, Pub. L. 101-552 (5 U.S.C. 571 note), as amended by the Administrative Dispute Resolution Act of 1996, Pub. L. 104-320.

E2.1.1.5. Oversee and manage the DoD alternative dispute resolution program in accordance with the Administrative Dispute Resolution Act, Pub. L. 101-552, as amended.

E2.1.1.6. Exclude any DoD employee or group of DoD employees in OSD from any or all of the reporting requirements of the confidential financial disclosure reporting system pursuant to 5 CFR 2634.905.

E2.1.1.7. Exercise authorities of the Secretary of Defense referred to in paragraph E2.1.1.3. to the extent they are applicable with respect to DoD non-appropriated fund activities, the Armed Forces Retirement Home or personnel of the Department of Defense.

E2.1.1.8. Render advance decisions under 37 U.S.C. 554, that the Secretary of Defense is authorized to render.

E2.1.1.9. Exercise authorities of the Secretary of Defense under applicable law with respect to the establishment of qualifications for civilian attorneys of the Department of Defense.

E2.1.1.10. Establish DoD policy and assign responsibilities regarding the use of copyrighted sound and video recordings within the Department of Defense.

E2.1.1.11. Exercise authorities of the Secretary of Defense and assign responsibilities under sections 181, 182, and 184 of 35 U.S.C. concerning certain inventions and patents.

E2.1.1.12. Exercise authorities and responsibilities vested in the Secretary of Defense under section 330 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, as amended, relating to indemnification of transferees of closing defense property. These authorities and responsibilities may be re-delegated in writing to a level not below that of Deputy General Counsel of the Department of Defense.

E2.1.1.13. Administer oaths of office to personnel within the Department of Defense, including without limitation, the authority to administer oaths, pursuant to section 2903 of title 5, U.S.C.

E2.1.1.14. Exercise the authority of the Secretary of Defense to accept service of process for the Department of Defense.

E2.1.2. The GC, DoD, may re-delegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above, or as otherwise provided by law or regulation.

E2.1.3. These delegations of authority are effective immediately.