



DoD DIRECTIVE 5145.01

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

Originating Component: Office of the Performance Improvement Officer and Director of Administration and Management

Effective: January 17, 2025

Releasability: Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

Reissues and Cancels: DoD Directive 5145.01, "General Counsel of the Department of Defense (GC DoD)," December 2, 2013, as amended

Approved by: Kathleen H. Hicks, Deputy Secretary of Defense

Purpose: This issuance updates the responsibilities and functions, relationships, and authorities of the General Counsel of the Department of Defense (GC DoD) pursuant to the authority vested in the Secretary of Defense by Sections 113 and 140 of Title 10, United States Code (U.S.C.).

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SECTION 1: GENERAL ISSUANCE INFORMATION

APPLICABILITY.

This issuance applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense (DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

SECTION 2: RESPONSIBILITIES AND FUNCTIONS

The GC DoD is the chief legal officer of the DoD and the Principal Staff Assistant (PSA) and advisor to the Secretary of Defense for all legal matters and legal services performed within or involving the DoD Components. In the exercise of assigned responsibilities, the GC DoD:

a. Provides legal advice to OSD organizations and, as appropriate, other DoD Components. As the chief legal officer of the DoD, pursuant to Section 140 of Title 10, U.S.C., provides the determinative opinion on all legal guidance within the DoD. This does not apply to advice, counsel, legal opinions, and other legal services to the Inspector General of the Department of Defense and the Office of Inspector General of the Department of Defense.

b. Establishes the DoD's determinative legal position on matters involving the DoD, including on specific legal problems affecting more than one DoD Component, and resolves disagreements among the DoD Components on legal issues.

c. Provides counsel on any novel or significant questions of law or legal issues of first impression.

d. Serves as the primary interlocutor for OSD with legal counsel at other Federal departments and agencies.

e. Ensures that policies and programs that are assigned to the GC DoD are designed and managed to improve standards of performance, ethics, economy, and efficiency and that the Office of the GC DoD and the Offices of the General Counsel for the Defense Agencies and DoD Field Activities under the authority, direction, and control of the GC DoD are responsive to the requirements of their organizational customers, both internal and external to the DoD.

f. Oversees, as appropriate, legal services performed within the DoD, including determining DoD attorneys' adherence to appropriate professional responsibility standards. This does not include oversight of attorneys within the Office of General Counsel to the Inspector General of the Department of Defense pursuant to Chapter 4 of Title 5, U.S.C. (also known as the "Inspector General Act of 1978," as amended).

g. Establishes the qualifications for DoD civilian attorneys in accordance with DoD Instruction (DoDI) 1442.02.

h. Advises the Secretary of Defense and, as appropriate, other senior U.S. Government officials, on all military justice matters requiring the attention of the Secretary of Defense; oversees the annual review of the Manual for Courts-Martial, United States by the Joint Service Committee on Military Justice; and the proposal of amendments to the Manual for Courts-Martial pursuant to Executive Order (E.O.) 12473.

i. Establishes policy for and oversees the Standards of Conduct Program within the DoD in accordance with DoD Directive (DoDD) 5500.07 and serves as both the Designated Agency Ethics Official (DAEO) for OSD and all DoD Components and organizations that are not

designated as separate DAEO agencies in accordance with DoDD 5500.07 and the principal DoD DAEO consistent with Section 2638.104 of Title 5, Code of Federal Regulations (CFR).

j. Makes determinations on the exclusion of any DoD employee or group of DoD employees in OSD from any or all reporting requirements of the confidential financial disclosure reporting system pursuant to Section 2634.905 of Title 5, CFR.

k. Provides legal guidance to DoD personnel on law and DoD policies related to prohibited partisan political activities.

l. Serves, in accordance with DoDI 5105.04, as the DoD sponsor for advisory committees as the Secretary of Defense, the Deputy Secretary of Defense, or the Performance Improvement Officer and Director of Administration and Management determine.

m. Serves as the DoD lead for and provides overall legal guidance on matters involving the Office of Special Counsel in accordance with DoDD 5500.19.

n. Provides guidance on significant legal issues under international law, including those presented by military operations requiring Secretary of Defense approval.

o. Oversees the international agreements and arrangements activities of the DoD, including by:

(1) Establishing policies, procedures, and guidance applicable to international agreements and arrangements.

(2) When appropriate as the GC DoD determines, participating in negotiations, and serving as lead counsel for, international agreements and arrangements on behalf of the DoD, including the DoD Components.

(3) Overseeing the legal reviews that the DoD Components perform with respect to the negotiation and conclusion of international agreements or arrangements, as applicable.

(4) Providing the DoD's legal opinion on novel or significant international or domestic law issues regarding international agreements and arrangements.

(5) Serving as the DoD's primary liaison with the Department of State's Office of the Legal Adviser for all international agreements and arrangements activities of the DoD, including matters concerning Chapter 11 of Part 720 of the Foreign Affairs Manual, also known as the "Circular 175 Procedure," and facilitating discussions with other Federal departments and agencies regarding the international agreements and arrangements activities of the DoD.

(6) Serving as the DoD's Chief International Agreements Officer, in accordance with the January 26, 2024 Deputy Secretary of Defense Memorandum, including by overseeing the DoD and OSD Components' compliance with Section 112b of Title 1, U.S.C. (also known as the "Case-Zablocki Act"), and designating Assistant Chief International Agreements Officers, as appropriate.

(7) Maintaining the central repository for all international agreements coordinated, negotiated, or concluded by DoD personnel.

p. Reviews for legal sufficiency deployment and execute orders that the Joint Staff prepares for Secretary of Defense approval.

q. Provides guidance on significant legal issues regarding non-lethal weapons and autonomy in weapon systems, in accordance with DoDDs 3000.03E and 3000.09, including coordinating on the review of the legality of weapon systems submitted in accordance with DoDD 3000.09.

r. Exercises primary staff responsibility for the DoD Law of War Program and performs other tasks related to the law of war in accordance with DoDD 2311.01.

s. Provides coordination on significant legal issues involving intelligence, intelligence-related, or operational activities with the Office of the Director of National Intelligence and other members of the Intelligence Community.

t. Performs functions relating to the DoD security program, including oversight of DoD personnel security programs, in accordance with DoDI 5145.03, as the Secretary of Defense or Deputy Secretary of Defense may assign.

u. Administers the defense industrial personnel security clearance review program, including the adjudication of contractor personnel security eligibility, in accordance with DoDD 5220.6.

v. Establishes legal guidance, provides legal advice, and exercises legal oversight for DoD special access programs (SAPs). Communicates with agencies of the Executive Branch and Congress on SAPs in accordance with DoDD 5205.07.

w. Oversees the review and adjudication of indemnification actions of transferees of closing defense property pursuant to Section 330 of Public Law 102-484 (also known as the “National Defense Authorization Act for Fiscal Year 1993,” as amended) and Chapter 175 of Title 32, CFR.

x. Provides program management assistance and legal advice related to the DoD legislative program and coordinates formal DoD positions on proposed, pending, and enrolled legislation, as well as E.O.s, with DoD Components and the Office of Management and Budget (OMB), in accordance with DoDD 5500.01 and OMB Circular No. A-19, including by:

(1) Providing the determinative opinion that a particular activity or event is reportable to Congress as a matter of law.

(2) Providing legal advice and assistance to the Assistant Secretary of Defense for Legislative Affairs in developing the DoD Legislative Program for each session of a Congress, including moderating the meetings of the Legislative Review Panel.

(3) Determining whether DoD-proposed legislation has federalism implications or imposes unfunded mandates.

y. Coordinates with affected offices of primary responsibility on the development of, and provides legal advice on, DoD positions on E.O.s and Presidential proclamations.

z. Analyzes the legal impact on the DoD of antitrust law as it relates to the Defense Industrial Base, including mergers and acquisitions involving major defense suppliers, and coordinates contacts between DoD personnel and the government agencies responsible for antitrust, including mergers and acquisitions, in accordance with DoDD 5000.62.

aa. Provides legal advice to the DoD Components on compliance with requests pursuant to Section 552 of Title 5, U.S.C. (also known as the “Freedom of Information Act”) as appropriate and DoD implementing policy in accordance with DoDD 5400.07.

ab. Leads and coordinates both significant DoD litigation matters involving the Department of Justice (DOJ) and on all requests seeking advice from DOJ Office of Legal Counsel, consistent with DoDI 5030.07, and serves as the primary DoD representative to DOJ on all legal policy matters.

ac. Establishes policy and prescribes procedures for the release of official information in litigation and for the presentation of witness testimony by DoD personnel during litigation, consistent with *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

ad. Processes and submits requests of DoD officials and employees for representation by DOJ or private counsel in civil, criminal, and congressional proceedings in which such officials or employees are sued, subpoenaed, or charged in their individual capacities in accordance with DoDI 1030.03.

ae. Establishes policy and provides oversight of DoD personnel’s claims for indemnification, settlement payments, and reimbursement of attorneys’ expenses related to personal liability in accordance with DoDI 1030.03.

af. Serves as the DoD Dispute Resolution Specialist pursuant to Section 3(b) of the Administrative Dispute Resolution Act (Public Law 101-552; 5 U.S.C. 571 note), as amended.

ag. Oversees and manages the DoD alternative dispute resolution program pursuant to Public Law 104-320, also known as the “Administrative Dispute Resolution Act of 1996.”

ah. Periodically assesses the DoD Executive Agent assignments under the cognizance of the GC DoD for continued need, currency, and effectiveness and efficiency in satisfying end-user requirements in accordance with DoDD 5101.01.

ai. Uses existing systems, facilities, and services of the DoD and other Federal departments and agencies, when possible, to avoid duplication and achieve maximum efficiency and economy.

aj. Develops, establishes, and maintains an active and continuing Records Management Program pursuant to Section 3102 of Title 44, U.S.C. and DoDI 5015.02.

ak. Makes determinations and notifies the Commissioner for Patents that publication or disclosure of an invention by the publication of an application or by the granting of a patent therefore would be detrimental to the national security and assign responsibilities pursuant Section 181 of Title 35, U.S.C. relating to patent secrecy orders.

al. Establishes DoD policy and assign responsibilities regarding the use of copyrighted sound and video recordings within the DoD.

am. Performs such other duties as the Secretary of Defense may prescribe.

SECTION 3: RELATIONSHIPS

3.1. GC DoD.

In performing assigned responsibilities and functions, the GC DoD:

- a. Reports directly to the Secretary of Defense.
- b. Serves as the Director, Defense Legal Services Agency.
- c. Exercises authority, direction, and control over:
 - (1) The Defense Legal Services Agency.
 - (2) Such subordinate officials and organizations as may be assigned by the Secretary of Defense.
 - (3) Such other positions and organizations as may be established by the GC DoD, consistent with applicable law, using resources provided by the Secretary of Defense.
- d. Coordinates and exchanges information with other OSD officials; the DoD Component heads; and Federal, State, local, tribal, or territorial officials having collateral or related functions.

3.2. PSAS AND DoD COMPONENT HEADS.

The PSAs and DoD Component heads coordinate with the GC DoD on all matters under their purview related to the responsibilities, functions, and authorities assigned to the GC DoD in this issuance. This coordination with the GC DoD includes seeking guidance prior to engaging legal counsel within non-DoD Federal departments and agencies and, through the respective legal office responsible for advising DoD Components, seeking counsel on any novel or significant questions of law or legal matters of first impression.

SECTION 4: AUTHORITIES

Pursuant to the authority vested in the Secretary of Defense, and subject to the Secretary's authority, direction, and control, and in accordance with DoD policies and issuances, the GC DoD is hereby delegated authority to exercise, within assigned responsibilities and functions, all authority of the Secretary of Defense derived from statute, E.O., or interagency agreement, except where specifically limited by statute or E.O. to the Secretary of Defense. The GC DoD is specifically delegated authority to:

a. Establish DoD policy through DoDIs, directive-type memorandums (DTMs), and rules published in the Federal Register, within the authorities and responsibilities assigned in this issuance and in accordance with DoDI 5025.01 or Administrative Instruction 102.

(1) In those documents, assign responsibilities related to the authorities and responsibilities in this issuance to other PSAs and DoD Component heads. Assignment of responsibilities in DoD issuances or rules published in the Federal Register to the Military Departments must be made through the Secretaries of those Military Departments. DoD issuances or rules published in the Federal Register assigning responsibilities to the Combatant Commands must be coordinated with the Chairman of the Joint Chiefs of Staff.

(2) DoDIs and DTMs must be fully coordinated in accordance with DoDI 5025.01. Rules published in the Federal Register must be fully coordinated with affected OSD and DoD Component heads and be consistent with Administrative Instruction 102.

(3) This authority may not be re-delegated.

b. Approve DoDIs, DoD manuals, and DTMs in areas of assigned responsibilities and functions that implement policy already established by a DoDD, DoDI, DTM, or policy memorandum issued by the Secretary of Defense or Deputy Secretary of Defense.

(1) In these documents, assign responsibilities related to the authorities and responsibilities in this issuance to other PSAs and the DoD Component heads. Assignment of responsibilities in these DoD issuances to the Military Departments must be made through the Secretaries of those Military Departments. DoD issuances assigning responsibilities to the Combatant Commands must be coordinated with the Chairman of the Joint Chiefs of Staff.

(2) Such documents must be fully coordinated in accordance with DoDI 5025.01.

(3) This authority may be further delegated only to subordinate officials as specified in DoDI 5025.01.

c. Approve Federal Register publication of significant guidance documents as defined in Section 339 of Title 32, CFR, and as the OMB determines. This authority may not be re-delegated.

d. Approve the Federal Register publication of documents other than rules and significant guidance documents (e.g., notices, orders, and non-significant guidance documents) as defined by Section 339 of Title 32, CFR, and as the OMB determines in accordance with Administrative

Instruction 102. Unless otherwise restricted by law, this authority may be further delegated only in writing to subordinate officials at or above the level of a general officer/flag officer, Senior Executive Service member, or equivalent.

e. Communicate directly with other PSAs and the DoD Component heads, as necessary, to carry out assigned responsibilities and functions, including transmitting requests for advice and assistance. Communications to the Military Departments must be transmitted through the Secretaries of the Military Departments, Military Department General Counsels, or as otherwise provided in law or directed by the Secretary of Defense in other DoD issuances. Communications to the Combatant Commanders must be in accordance with DoDD 5100.01.

f. Communicate with other government officials, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned responsibilities and functions. Communications with representatives and members of the Legislative Branch must be conducted in coordination with the Office of the Assistant Secretary of Defense for Legislative Affairs, except for communications with the Defense Appropriations Committees, which must be coordinated with the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD.

g. Communicate with agencies of the Executive Branch and Congress on SAPs. For all SAP matters, the GC DoD must conduct communications with agencies of the Executive Branch and Congress consistent with DoDD 5205.07.

h. Obtain reports and information, in accordance with DoDI 8910.01, as necessary to carry out assigned responsibilities and functions.

i. Establish arrangements for DoD participation in non-DoD governmental programs for which the GC DoD is assigned primary DoD responsibility.

j. Enter into support agreements, in accordance with DoDI 4000.19; the February 13, 2020 Deputy Secretary of Defense Memorandum; and other types of memorandums of agreement or memorandums of understanding as required for the effective performance of responsibilities and functions assigned to the GC DoD.

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

l. Issue advance decisions on any request to the Comptroller General on a payment the Secretary of Defense will make or a voucher presented to a certifying official for certification pursuant to Section 3529(b)(2)(B) of Title 31, U.S.C.

m. 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 DoD arising pursuant to:

(1) Sections 1089(f), 2575, 2771, 7712, and 9712 of Title 10, U.S.C.

- (2) Chapter 163 of Title 10, U.S.C.
- (3) Section 420 of Title 24, U.S.C.
- (4) Sections 1346(b) and 2671-2680 of Title 28, U.S.C.
- (5) Sections 3701, 3702, 3711, and 3721 of Title 31, U.S.C.
- (6) Sections 714 and 715 of Title 32, U.S.C.
- (7) Sections 2651-2653 of Title 42, U.S.C.

(8) The North Atlantic Treaty Organization Status of Forces Agreement and similar status of forces agreements.

n. Administer oaths of office to personnel within the DoD, including, without limitation, the authority to administer oaths pursuant to Section 2903 of Title 5, U.S.C. These authorities may be re-delegated only:

- (1) On a case-by-case basis.
- (2) With Secretary of Defense or Deputy Secretary of Defense approval.

o. Exercise the authority of the Secretary of Defense to accept service of process for the OSD pursuant to Part 257 of Title 32, CFR.

GLOSSARY

ACRONYM	MEANING
CFR	Code of Federal Regulations
DAEO	Designated Agency Ethics Official
DoDD	DoD Directive
DoDI	DoD Instruction
DOJ	Department of Justice
DTM	Directive-Type Memorandum
E.O.	Executive Order
GC DoD	General Counsel of the Department of Defense
OMB	Office of Management and Budget
PSA	Principal Staff Assistant
SAP	Special Access Program
U.S.C.	United States Code

REFERENCES

- Administrative Instruction 102, “Office of the Secretary of Defense (OSD) Federal Register (FR) System,” November 6, 2006, as amended
- Code of Federal Regulations, Title 5
- Code of Federal Regulations, Title 32
- Deputy Secretary of Defense Memorandum, “Case Act Compliance and Designation of the Department of Defense Chief International Agreements Officer,” January 26, 2024
- Deputy Secretary of Defense Memorandum, “Delegation of Authority for OSD Component Heads to Enter into Support Agreements,” February 13, 2020
- DoD Directive 2311.01, “DoD Law of War Program,” July 2, 2020
- DoD Directive 3000.03E, “DoD Executive Agent for Non-Lethal Weapons (NLW), and NLW Policy,” April 25, 2013, as amended
- DoD Directive 3000.09, “Autonomy in Weapon Systems,” January 25, 2023
- DoD Directive 5000.62, “Review of Mergers, Acquisitions, Joint Ventures, Investments, and Strategic Alliances of Major Defense Suppliers on National Security and Public Interest,” February 27, 2017
- DoD Directive 5100.01, “Functions of the Department of Defense and Its Major Components,” December 21, 2010, as amended
- DoD Directive 5101.01, “DoD Executive Agent,” February 7, 2022
- DoD Directive 5205.07, “Special Access Program Policy,” September 12, 2024
- DoD Directive 5220.6, “Defense Industrial Personnel Security Clearance Review Program,” January 2, 1992, as amended
- DoD Directive 5400.07, “DoD Freedom of Information Act (FOIA) Program,” April 5, 2019
- DoD Directive 5500.01, “Preparing, Processing, and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony,” June 15, 2007
- DoD Directive 5500.07, “Ethics and Standards of Conduct,” May 15, 2024
- DoD Directive 5500.19, “Cooperation with the United States Office of Special Counsel (OSC),” May 24, 2004
- DoD Instruction 1030.03, “Protections for DoD Personnel Against Personal Liability for Performing Their Official Duties,” January 2, 2024
- DoD Instruction 1442.02, “Personnel Actions Involving Civilian Attorneys,” September 30, 2010, as amended
- DoD Instruction 4000.19, “Support Agreements,” December 16, 2020
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoD Instruction 5025.01, “DoD Issuances Program,” August 1, 2016, as amended
- DoD Instruction 5105.04, “Department of Defense Federal Advisory Committee Management Program,” August 6, 2007
- DoD Instruction 5145.03, “Oversight of the DoD Personnel Security Programs,” January 10, 2013, as amended

DoD Instruction 8910.01, “DoD Implementation of the Paperwork Reduction Act,”
December 5, 2022

Executive Order 12473, “Manual for Courts-Martial, United States, 1984,” April 13, 1984

Foreign Affairs Manual, Chapter 11, Part 720 (also known as the “Circular 175 Procedure”),
current edition

Manual for Courts-Martial, United States, current edition

North Atlantic Treaty Organization Status of Forces Agreement, June 19, 1951, as amended

Office of Management and Budget Circular No. A-19, “Legislative Coordination and
Clearance,” September 20, 1979

Public Law 101-552, “Administrative Dispute Resolution Act,” November 15, 1990, as amended

Public Law 102-484, Section 330, “National Defense Authorization Act for Fiscal Year 1993,”
October 23, 1992, as amended

United States Code, Title 1, Section 112b (also known as the “Case-Zablocki Act”)

United States Code, Title 5

United States Code, Title 10

United States Code, Title 24, Section 420

United States Code, Title 28

United States Code, Title 31

United States Code, Title 32

United States Code, Title 35, Section 181

United States Code, Title 42

United States Code, Title 44, Section 3102

United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951)