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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Directive-Type Memorandum (DTM) 09-015 - Policy and Procedures Applicable to DoD and United States Coast Guard (USCG) Civilian Personnel Subject to Uniform Code of Military Justice (UCMJ) Jurisdiction in Time of Declared War or a Contingency Operation

References: See Attachment 1

Purpose. This DTM:

- Clarifies when "covered civilian employees" are subject to military jurisdiction pursuant to section 552 of Public Law 109-364 (Reference (a)) and Article 2(a)(10) of sections 801 – 846 of title 10, United States Code (U.S.C.) (also known as "The Uniform Code of Military Justice" and hereafter referred to as "UCMJ") (Reference (b)).

- By authority granted by Secretary of Defense Memorandum (Reference (c)), establishes additional implementing guidance applicable to cases involving covered civilian employees.

- Is effective immediately; it shall be incorporated into the next revision of DoD Instruction 5525.11 (Reference (d)). DoD regulations and other guidance, the regulations and other guidance of the Military Departments (including the USCG publications, and other guidance of the Joint Chiefs of Staff shall incorporate this memorandum's guidance and its attachments.

Applicability. This DTM:

- 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 (DHS) 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 Department of Defense (hereafter collectively referred to as the "DoD Components").

- Applies to all DoD Component civilian employees and, in particular, those DoD Component civilian employees who constitute covered civilian employees, as defined in the Glossary.

- Does not provide guidance regarding the exercise of UCMJ jurisdiction over DoD Component civilian employees on any basis other for reasons other than Article 2(a)(10) of the UCMJ.

Definitions. See Glossary.

Policy. This DTM clarifies DoD policy and provides additional guidance with respect to covered civilian employees, consistent with References (a) through (c), the Manual for Courts-Martial (MCM) (Reference (e)), and chapter 75 of title 5, U.S.C. (Reference (f)).

- DoD Component civilian employees, at specified times and under specific circumstances, become covered civilian employees who are subject to military jurisdiction under Article 2(a)(10) of the UCMJ. Effective October 16, 2006, section 552 of Reference (a) amended Article 2(a)(10) of the UCMJ and extends UCMJ jurisdiction in time of declared war or a contingency operation over persons who serve with or accompany an armed force in the field. Reference (e) implements the UCMJ.

- Those specified times when DoD Component civilian employees are subject to Article 2(a)(10), UCMJ, jurisdiction are during time of declared war or a contingency operation, as defined in the Glossary.

- Those certain circumstances required for Article 2(a)(10), UCMJ, jurisdiction over DoD Component civilian employees are when the employees are serving with or accompanying the Armed Forces in the field, as those terms are defined in the Glossary. Only military contingency operations that constitute being in the field are considered qualifying contingency operations for the purpose of Article 2(a)(10), UCMJ, jurisdiction.

- Reference (c) established general policies and procedures applicable to DoD and USCG contractor personnel and civilian employees subject to Article 2(a)(10), UCMJ, jurisdiction. In so doing, the Secretary of Defense premised those policies and procedures on the unique nature of the Article 2(a)(10) extension of UCMJ jurisdiction over civilians and the Secretary's assessment that this jurisdiction will require sound

management over when, where, and by whom such jurisdiction is exercised.

- Consistent with the Secretary's policies and guidance in Reference (c), it is appropriate that additional guidance now be given that is tailored for DoD Component civilian employees.

    - Each of the offenses enacted within the UCMJ and listed as "Punitive Articles" within Part IV of Reference (e) is written in one of three ways and directed toward a specified population. Depending on the offense at issue and to whom the offense applies, as enacted, an act may constitute an offense if it is committed by: "any person"; "any member of the armed forces"; or "any person subject to this chapter" (meaning the UCMJ). In addition, the offense's specified terms or elements may further limit its applicability to misconduct committed by military personnel (e.g., commissioned officers, warrant officers, enlisted members). Consultation with staff judge advocates, or their designated representatives, is necessary to determine if a specific UCMJ offense applies to a covered civilian employee.

    - Other than a limitation resulting from the language of the particular UCMJ or "Punitive Article" regarding who may be punished for committing the offense, neither Reference (b) nor (e) renders a UCMJ offense inapplicable to a covered civilian employee.

- The guidance in Attachment 3 to Reference (c), and the definitions of terms in the Glossary of this DTM, provide additional considerations on when and whether to apply the Article 2(a)(10), UCMJ, provisions to DoD and USCG civilian employees who are serving with the Armed Forces during a declared war or a qualifying contingency operation.

- The exercise of UCMJ jurisdiction for crimes committed by covered civilian employees does not preclude appropriate adverse action that may normally be applicable under the provisions of Reference (f) or other applicable law or regulations.

- It is imperative when addressing a situation involving a covered civilian employee's misconduct that may be subject to Article 2(a)(10), UCMJ, jurisdiction that, to the extent practicable, combatant command theater commanders and their servicing staff judge advocates promptly notify and consult available combatant command civilian human resources

(HR) officials to assess possible options and applicable procedures of Reference (f) or other applicable law or regulations as an administrative action consideration under Rule for Courts-Martial 306(c) of Reference (e). Consulting HR officials affords the commander the opportunity to obtain information before the commander exercises his or her discretion in disposing of an offense in accordance with Rule for Courts-Martial 306(a) and (b) of Reference (e).

- Commanders, supervisors, staff judge advocates, and all others who are required to complete documentation associated with UCMJ actions as applied to covered civilian employees shall use existing forms and requirements for documenting UCMJ actions in accordance with Reference (e).

- As stated in Reference (c), only the commanders of geographic combatant commands and those commanders assigned or attached to the combatant command who possess general court-martial convening authority, may exercise Article 2(a) (10), UCMJ, court-martial jurisdiction over covered civilian employees. Such authority has been withheld from all other commanders and commanders who do not possess general court-martial convening authority in accordance with Reference (c). The power to convene courts-martial may not be delegated (Rule for Courts-Martial 504(b)(4) of Reference (e)).

- Only persons occupying positions designated in Article 22(a), UCMJ, and commanders designated by the Secretary concerned or empowered by the President may convene courts-martial in accordance with the Rule for Courts-Martial 504(b) of Reference (e). Civilian supervisors do not possess such authority and are precluded from exercising UCMJ authority.

- In accordance with Reference (c), within the Department of Defense, the Secretary of Defense has withheld authority to exercise Article 2(a)(10), UCMJ, jurisdiction as a court-martial convening authority over, and withheld authority to initiate nonjudicial punishment pursuant to Article 15, UCMJ against, a covered civilian employee:

    - When the alleged offense is committed, in whole or in part, within the United States, as defined in the Glossary;

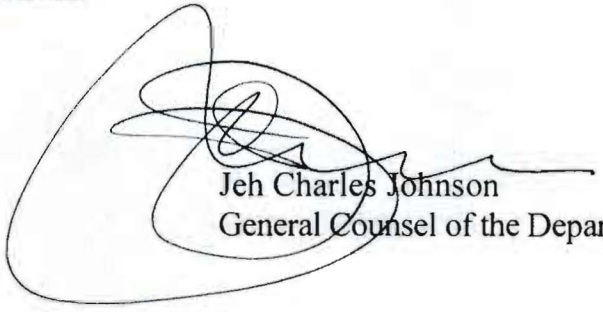
    - Who is not at all times during the alleged misconduct located outside the United States, as defined in the Glossary; or

- Who is, at the time court-martial charges are preferred pursuant to RCM 307 of Reference (e) or notice of proposed nonjudicial punishment proceedings pursuant to Article 15, UCMJ is given, located within the United States, as defined in the Glossary.

- Before combatant command theater commanders intending to exercise Article 2(a)(10), UCMJ, jurisdiction prefer UCMJ charges pursuant to RCM 307 of Reference (e) against a covered civilian employee, notice of the alleged offense shall be given to the Department of Justice (DoJ), in accordance with the procedures established by References (c) and (d). By agreement between the two departments, DoJ shall be afforded 14 days to determine whether Federal criminal jurisdiction will be exercised pursuant to sections3261-3267 of title 18, U.S.C. (also known at the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) (Reference (g)) or another Federal statute.

- Failure to provide any notifications required by this DTM (including, but not limited to, statements in position descriptions, vacancy announcements, or travel orders) that a person, group of people, or position may be subject to UCMJ jurisdiction shall not affect or preclude the exercise of UCMJ jurisdiction over any person.

Releasability. UNLIMITED. This DTM is approved for public release and is available on the Internet from the DoD Issuances Web Site at http://www.dtic.mil/whs/directives.



Jeh Charles Johnson
General Counsel of the Department of Defense

Attachments:
As stated

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ATTACHMENT 1

REFERENCES

(a) Section 552 of Public Law 109-364, "John Warner National Defense Authorization Act for Fiscal Year 2007," October 17, 2006
(b) Sections 101(a)(13), 101(a)(4), 801-946 of title 10, United States Code (also known as the "Uniform Code of Military Justice" (UCMJ))
(c) Secretary of Defense Memorandum, "UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations," March 10, 2008
(d) DoD Instruction 5525.11, "Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members, " March 3, 2005
(e) Manual for Courts-Martial, United States, 2008
(f) Chapter 75 of title 5, United States Code
(g) Sections 3261-3267 of title 18, United States Code (also known as the "Military Extraterritorial Jurisdiction Act of 2000" (MEJA))
(h) Sections 3371-3375 of title 5, United States Code (also known as the "Intergovernmental Personnel Act"

ATTACHMENT 2

RESPONSIBILITIES

1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC, DoD). The GC, DoD shall:

a. Transmit, as appropriate, to DoJ cases subject to Article 2(a)(10), UCMJ, jurisdiction that may also be subject to Federal criminal jurisdiction under Reference (g) or other Federal statutes.

b. Provide notice to the Combatant Commands of DoJ determinations of Federal criminal jurisdiction over such cases pursuant to Reference (g) and other Federal criminal statutes, as applicable, in accordance with the procedures of References (c) and (d).

c. Advise the Secretary of Defense regarding the withholding of Article 2(a)(10), UCMJ, authority pursuant to this DTM and References (c) and (e).

d. Incorporate policies and guidance provided in Reference (c) and this DTM into the next revision of Reference (d).

2. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

a. Establish and oversee the implementation of the policy and guidance for the exercise of UCMJ authority as it applies to DoD Component civilian employees.

b. Ensure that servicing DoD civilian HR officials are adequately trained on the requirements of this DTM and prepared to appropriately advise DoD Component civilian employees and management officials.

c. Establish policy to ensure that DoD Components document position descriptions and vacancy announcements when DoD Component civilian employees are in positions that they may potentially be deployed in support of a contingency operation and become covered civilian employees subject to UCMJ jurisdiction. Include this statement on the position descriptions and vacancy announcements: "This position may require deployment in support of a contingency operation where such deployment may subject the incumbent to Uniform Code of Military Justice jurisdiction."

d. Establish policy to ensure that, prior to departing on the deployment from the home station and upon arrival in the deployed location, DoD Component civilian employees who are subject to deployment as a covered civilian employee in support of a qualifying contingency operation are notified that they may be subject to UCMJ jurisdiction. At the time this DTM is issued, take immediate action to notify those deployed DoD Component civilian employees who are a covered civilian employees and who may be unaware that they are subject to Article 2(a)(10), UCMJ, jurisdiction.

e. Establish policy to ensure that DOD Components document travel orders of deploying DoD Component civilian employees when their deployment potentially subjects them to UCMJ jurisdiction as a covered civilian employee. Include this statement on the official travel orders: "Employee is required to deploy to, serve, or accompany an Armed Force in the field in support of a contingency operation, and may be subject to UCMJ jurisdiction while deployed. Employee is under the command of [insert appropriate Combatant Commander] for purpose of UCMJ jurisdiction while deployed."

f. Ensure that procedures enable DoD and USCG civilian HR officials to file in a covered civilian employee's official personnel file a record of any UCMJ action that is taken against the employee.

g. Ensure compliance with this DTM and incorporate, as applicable, its policy and guidance into DoD issuances applicable to DoD Component civilian employees.

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Ensure compliance with this DTM and incorporate, as applicable, its policy and guidance into DoD Component issuances that are applicable to DoD Component civilian employees.

b. Ensure documentation of position descriptions and vacancy announcements when DoD Component civilian employees are in positions that they may potentially be deployed in support of a contingency operation and become covered civilian employees subject to UCMJ jurisdiction. Include this statement on the position descriptions and vacancy announcements: "This position may require deployment in support of a contingency operation where such deployment may subject the incumbent to Uniform Code of Military Justice jurisdiction."

c. Provide notice of Article 2(a)(10), UCMJ, jurisdiction over covered civilian employees and provide any necessary training to DoD Component civilian employees, supervisors, and commanders regarding DoD policy and guidance, as provided in this DTM, Reference (c), and applicable provisions of the UCMJ and Reference (e).

d. Provide commanders, supervisors, and civilian HR officials training, by a judge advocate or DoD civilian attorney experienced in military justice and military law and who has a substantive knowledge of the UCMJ, regarding the UCMJ provisions applicable to covered civilian employees in accordance with References (b), (c) and (e).

e. Require civilian HR officials to ensure that DoD Component civilian employees who are subject to deployment as a covered civilian employee in support of DoD contingency operations receive training regarding the provisions of this DTM, the UCMJ, and References (c) and (e) that are applicable to covered civilian employees. Such training shall include the UCMJ offenses potentially applicable to covered civilian employees and those that are not, and the rights afforded covered civilian employees during UCMJ proceedings, including any associated apprehension, detention, or investigative activities.

f. Ensure travel orders of deploying DoD Component civilian employees document that their deployment potentially subjects them to UCMJ jurisdiction as a covered civilian employee. Include this statement on the official travel orders: "Employee is required to deploy to, serve, or accompany an Armed Force in the field in support of a contingency operation, and may be subject to UCMJ jurisdiction while deployed. Employee is under the command of [insert appropriate Combatant Commander] for purpose of UCMJ jurisdiction while deployed."

g. Provide commanders with information on possible adverse actions and procedures applicable to covered civilian employees, and other authorities and requirements applicable to disciplinary actions pursuant to Reference (f) or other applicable laws or regulations.

h. When deploying HR officials as resources to combatant command theater commanders, ensure the HR officials are trained and prepared to consult with combatant command theater commanders and their servicing staff judge advocates on possible options and applicable procedures of Reference (f) or other applicable laws or regulations as an administrative action for consideration under Rule for Courts-Martial 306(c) of Reference (e). Consulting HR officials affords the commander the opportunity to obtain information before the commander exercises his or her discretion in disposing of an offense in accordance with Rule for Courts-Martial 306(a) and (b) of Reference (e).

4. COMMANDERS OF THE GEOGRAPHIC COMBATANT COMMANDS. The Commanders of the Geographic Combatant Commands, in addition to the responsibilities in section 3 of this attachment, shall ensure that theater commanders and servicing staff judge advocates:

a. When addressing a situation involving a covered civilian employee's misconduct that may be subject to Article 2(a)(10), UCMJ, jurisdiction, to the extent practicable, promptly notify and consult available combatant command civilian HR officials to assess possible options and applicable procedures of Reference (f) or other applicable laws or regulations as an administrative action for consideration under Rule for Courts-Martial 306(c) of Reference (e). Consulting HR officials affords the commander the opportunity to obtain information before the commander exercises his or her discretion in disposing of an offense in accordance with Rule for Courts-Martial 306(a) and (b) of Reference (e).

b. If the covered civilian employee is also a member of a Reserve Component of the Armed Forces, or a member of the Army or Air National Guard of the United States, the convening authority initiating Article 2(a)(10), UCMJ, jurisdiction shall notify the member's reserve or National Guard commander for further action as may be appropriate.

5. COMMANDANT, UNITED STATES COAST GUARD. By agreement of the DHS and consistent with the applicability of References (c) and (d) to the United States Coast Guard, the Commandant, United States Coast Guard, shall, to the extent practicable, comply with this DTM and incorporate its provisions in applicable United States Coast Guard regulations.

GLOSSARY

DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this DTM.

Armed Forces. Defined in section 101(4) of Reference (b).

contingency operation. Defined in section 101(a)(13)(A) or 101(a)(13)(B) of Reference (b).

covered civilian employee. A DoD Component civilian employee who, pursuant to References (a) and (b), becomes subject to military UCMJ jurisdiction during a declared war or a qualifying contingency operation, when serving with or accompanying the Armed Forces in the field.

declared war. A term that has been judicially construed to mean a congressionally-declared war. (See Analysis to Rule 202, Appendix 21, "Analysis of Rules for Courts-Martial," of Reference (e).)

DoD Component civilian employee. DoD and USCG civilian employees (including the Coast Guard at all times, including when it is a Service in the DHS by agreement with that Department), including civilians paid with non-appropriated funds, direct and indirect hire foreign national employees, other U.S. Government personnel assigned or detailed under an Intergovernmental Personnel Act (Reference (h)) arrangement, and military technicians if working in their civilian capacity.

in the field. A term judicially construed to mean a military operation with a view toward engaging the enemy or a hostile force. It is not determined by the locality in which the Armed Force is found, but rather by the activity in which the Armed Force is engaged. (See Analysis to Rule 202, Appendix 21, "Analysis of Rules for Courts-Martial," of Reference (e).)

qualifying contingency operation. For the purposes of Article 2(a)(10), UCMJ, jurisdiction, a contingency operation, which by its purpose meets the Glossary definition of "in the field."

serving with or accompanying an Armed Force. Terms judicially construed, as explained in the Analysis to Rule 202, Appendix 21, of Reference (e), to mean a connection with or dependence upon the activities of the Armed Forces or its personnel. A person's presence must be more than merely incidental. A person may be "accompanying" an Armed Force although not directly employed by it or the Government. A person

"accompanying" an Armed Force may be "serving with" it as well, but the distinction is important because even though a civilian's contract with the Government ended before the commission of an offense, and hence the person is no longer "serving with" an Armed Force, jurisdiction may remain on the basis that the person is "accompanying" an Armed Force because of his or her continued connection with the military.

subject to this chapter. A general term used in the UCMJ and Reference (e) to refer to persons who are subject to UCMJ jurisdiction (Reference (b)).

United States. As defined in Reference (c), the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.