



DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2023-OS-0083]

Joint Rules of Appellate Procedure for Courts of Criminal Appeals; Proposed Changes

AGENCY: Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP)

Committee, Department of Defense.

ACTION: Notice of availability; changes to the JRAP.

SUMMARY: This notice announces proposed changes to the JRAP, which prescribe uniform rules of procedure for Courts of Criminal Appeals. Although these rules of practice and procedure fall within the Administrative Procedure Act’s exemptions for notice and comment, the Department, as a matter of policy, has decided to make these changes available for public review and comment before they are implemented. The proposed changes are a refinement of the JRAP effective January 1, 2019 and implement statutory changes expanding the jurisdiction of Courts of Criminal Appeals and creating special trial counsel. The approval authorities for these changes are the Judge Advocates General of the Army, Navy, Air Force, and Coast Guard.

DATES: Comments on the proposed changes must be received no later than [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The changes to the JRAP are available for review on Regulations.gov in docket DoD-2023-OS-0083. You may submit comments, identified by docket number and title by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

• Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at [https:// www.regulations.gov](https://www.regulations.gov) as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Christopher Robin Jaramillo, (202) 685-7695, christopher.r.jaramillo@uscg.mil.

SUPPLEMENTARY INFORMATION:

The National Defense Authorization Act (NDAA) for Fiscal Year 2022 included several significant amendments to the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 801 *et seq.*

Regarding military appellate practice the NDAA:

- Added 10 U.S.C. 824a, creating the Office of the Special Trial Counsel, with exclusive authority over certain victim-centric offenses, known as “covered offenses.”
- Amended of 10 U.S.C. 866 to expand the jurisdiction of the Courts of Criminal Appeals to all courts-martial resulting in a guilty verdict.

The Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP) Committee convened and suggested numerous changes to the JRAP, both to reflect these changes to the UCMJ and to clarify several issues that have been raised by practitioners since the previous version of the JRAP became effective on January 1, 2019.

Beyond incorporating the role of the Office of the Special Trial Counsel in appellate procedure, some of the more significant changes to the JRAP include:

- Changes to Rule 5 to reflect the Courts’ expanded jurisdiction.

- Changes to Rule 6 to reflect what the record on appeal will be for the new types of appeals.
- Changes to Rule 16 to clarify procedures for waiver or withdrawal of appellate review.
- Changes to Rule 18:
 - To expand on what is required for *pro se* filings; and
 - To create procedures for new types of appeals under the Courts' expanded jurisdiction.
- Changes to Rule 23 to clarify when the Court will consider factual material not otherwise in the record.
- Changes to Rule 31 to clarify what is required for a Motion for Reconsideration.

Public Participation and Request for Comments

Public participation is essential to effective governance and all comments and material received during the comment period will be considered. Your comment can help shape the outcome of the changes to the JRAP. If you submit a comment, please include the docket number for this document, indicate the specific section of this JRAP to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. You may submit comments through the Federal Docket Management Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type DoD-2023-OS-0083 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing Material in Docket

To view the JRAP mentioned in this notice of availability as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related

Material” in the Document Type column. Public comments will also be placed in the online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the notice of availability, you should see a “Subscribe” option for email alerts. This option will notify you when comments are posted, or the final JRAP is published. All comments received will be reviewed, but only comments that address the topic of the changes to the JRAP will be posted. Off-topic, inappropriate, or duplicate comments may not be posted.

Personal Information

Comments posted to <https://www.regulations.gov> may include any personal information you have provided. As a matter of practice, DoD’s Regulatory Directorate does not post personal information to the Regulations.gov public website. DoD’s Regulatory Directorate will pass submitter personal information to the government points-of-contact for this action so they may follow-up on comments for more clarity or additional information. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

Dated: October 3, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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