

equivalents used by the United States in implementing the ATC.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

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DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Department of Defense; Joint Service Committee on Military Justice (JSC).

ACTION: Notice of Public Response to Proposed Amendments to the Manual for Courts-Martial, United States (2005 ed.) (MCM).

SUMMARY: The JSC is forwarding final proposed amendments to the MCM to the Department of Defense. The proposed changes constitute the 2007 annual review required by the MCM and DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters Testimony," June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2007, the JSC published a notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comments on these proposals. The public meeting was held on October 24, 2007. No member of the public attended the meeting and no written comments were received. In response to a request from the House of Representatives to review procedures applicable to Article 32 proceedings, the proposed amendments republished below include a new Section 1(b) addressing Rule for Courts-Martial (R.C.M.) 405(h)(3).

Proposed Amendments After Period for Public Comment

The proposed recommended amendments to the Manual for Courts-Martial to be forwarded through the DoD for action by Executive Order of the President of the United States are as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 103 is amended by adding the following new subparagraph (20) and re-designating the current subparagraph (20) as subparagraph (21):

"(20) 'Writing' includes printing and typewriting and reproductions of visual symbols by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation."

(b) R.C.M. 405(h)(3) is amended to read as follows:

"(3) *Access by spectators.* Access by spectators to all or part of the proceedings may be restricted or foreclosed in the discretion of the commander who directed the investigation or the investigating officer. Article 32 investigations are public hearings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open investigation, the hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Commanders or investigating officers must conclude that no lesser methods short of closing the Article 32 can be used to protect the overriding interest in the case. Commanders or investigating officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a commander or investigating officer believes closing the Article 32 investigation is necessary, the commander or investigating officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the Article 32 investigating officer's report. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting."

(c) R.C.M. 1103(b)(2)(B) is amended to read as follows:

"(B) *Verbatim transcript required.* Except as otherwise provided in

subsection (j) of this rule, the record of trial shall include a verbatim transcript of all sessions except sessions closed for deliberations and voting when:"

(d) R.C.M. 1103(e) is amended to read as follows:

"(e) *Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings; termination after findings.*

Notwithstanding subsections (b), (c), and (d) of this rule, if proceedings resulted in an acquittal of all charges and specifications, in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings, or if the proceedings were terminated after findings by approval of an administrative discharge in lieu of court-martial, the record may consist of the original charge sheet, a copy of the convening order and amending orders (if any), and sufficient information to establish jurisdiction over the accused and the offenses (if not shown on the charge sheet). The convening authority or higher authority may prescribe additional requirements."

(e) R.C.M. 1103(g)(1)(A) is amended to read as follows:

"(A) *In general.* In general and special courts-martial which require a verbatim transcript under subsections (b) or (c) of this rule and are subject to a review by a Court of Criminal Appeals under Article 66, the trial counsel shall cause to be prepared an original record of trial."

(f) R.C.M. 1103(j)(2) is amended to read as follows:

"(2) *Preparation of written record.* When the court-martial, or any part of it, is recorded by videotape, audiotape, or similar material under subsection (j)(1) of this rule, a written, as defined in R.C.M. 103, transcript or summary as required in subsection (b)(2)(A), (b)(2)(B), (b)(2)(C), or (c) of this rule, as appropriate, shall be prepared in accordance with this rule and R.C.M. 1104 before the record is forwarded under R.C.M. 1104(e), unless military exigencies prevent transcription."

(g) R.C.M. 1104(a)(1) is amended to read as follows:

"(1) *In general.* A record is authenticated by the signature of a person specified in this rule who thereby declares that the record accurately reports the proceedings. An electronic record of trial may be authenticated with the electronic signature of the military judge or other authorized person. Service of an authenticated electronic copy of the

record of trial with a means to review the record of trial satisfies the requirement of service under R.C.M. 1105(c) and 1305(d). No person may be required to authenticate a record of trial if that person is not satisfied that it accurately reports the proceedings.”

(h) R.C.M. 1106(d) is amended to read as follows:

“(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) *Form.* The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) *Required contents.* The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any, any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence, and the staff judge advocate’s concise recommendation.”

(i) R.C.M. 1111 is amended by inserting the following sentence at the end of the rule:

“Forwarding of an authenticated electronic copy of the record of trial satisfies the requirements under this rule.”

(j) R.C.M. 1113 is amended by adding the following new subparagraph (d) and re-designating the current subparagraph (d) as subparagraph (e):

“(d) *Self-executing punishments.*

Under regulations prescribed by the Secretary concerned, a dishonorable or bad conduct discharge that has been approved by an appropriate convening authority may be self-executing after final judgment at such time as:

(1) The accused has received a sentence of no confinement or has completed all confinement;

(2) The accused has been placed on excess or appellate leave; and,

(3) The appropriate official has certified that the accused’s case is final. Upon completion of the certification, the official shall forward the certification to the accused’s personnel office for preparation of a final discharge order and certificate.”

(k) R.C.M. 1114(a) is amended by inserting the following as subsection (a)(4):

“(4) *Self-executing final orders.* An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. The original action by a convening authority approving a discharge and certification by the appropriate official that the case is final may be forwarded to the accused’s personnel office for preparation of a discharge order and certificate.”

(l) R.C.M. 1305(b) is amended by changing the first sentence to read as follows:

“(b) *Contents.* The summary court-martial shall prepare a written record of trial, which shall include:”

(m) R.C.M. 1305(c) is amended to read as follows:

“(c) *Authentication.* The summary court-martial shall authenticate the record by signing the record of trial. An electronic record of trial may be authenticated with the electronic signature of the summary court-martial.”

(n) R.C.M. 1305(d)(1)(A) is amended to read as follows:

“(A) *Service.* The summary court-martial shall cause a copy of the record of trial to be served on the accused as soon as it is authenticated. Service of an authenticated electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service under this rule.”

(o) R.C.M. 1306(b)(3) is amended to read as follows:

“(3) *Signature.* The action on the record of trial shall be signed by the convening authority. The action on an electronic record of trial may be signed with the electronic signature of the convening authority.”

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 14, Article 90, Assaulting or willfully disobeying superior commissioned officer, paragraph c.(2)(g) is amended to read as follows:

“c.(2)(g) *Time for compliance.* When an order requires immediate compliance, an accused’s declared intent not to obey and the failure to make any move to comply constitutes disobedience. Immediate compliance is required for any order which does not explicitly or implicitly indicate that delayed compliance is authorized or directed. If an order requires performance in the future, an accused’s present statement of intention to disobey the order does not constitute disobedience of that order, although carrying out that intention may.”

(b) Paragraph 44, Article 119, Manslaughter, paragraph b. is amended to read as follows:

“b. *Elements.*

(1) Voluntary manslaughter.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused had the intent to kill or inflict great bodily harm upon the person killed.

Note: Add the following if applicable.

(e) That the person killed was a child under the age of 16 years.

(2) Involuntary manslaughter.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, robbery, or aggravated arson.

Note: Add the following if applicable.

(e) That the person killed was a child under the age of 16 years.”

(c) Paragraph 44, Article 119, Manslaughter, paragraph c.(1)(c) is added following paragraph c.(1)(b):

“(c) *When committed upon a child under 16 years of age.* The maximum punishment is increased when voluntary manslaughter is committed upon a child under 16 years of age. The accused’s knowledge that the child was under 16 years of age at the time of the offense is not required for the increased maximum punishment.”

(d) Paragraph 44, Article 119, Manslaughter, paragraph c.(2)(c) is added following paragraph c.(2)(b):

“(c) *When committed upon a child under 16 years of age.* The maximum punishment is increased when involuntary manslaughter is committed upon a child under 16 years of age. The accused’s knowledge that the child was under 16 years of age at the time of the offense is not required for the increased maximum punishment.”

(e) Paragraph 44, Article 119, Manslaughter, paragraph e.(3) is added following paragraph e.(2):

“(3) *Voluntary manslaughter of a child under 16 years of age.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.”

(f) Paragraph 44, Article 119, Manslaughter, paragraph e.(4) is added following paragraph e.(3):

“(4) *Involuntary manslaughter of a child under 16 years of age.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.”

(g) Paragraph 44, Article 119, Manslaughter, paragraph f. is amended to read as follows:

“f. *Sample specifications.*

(1) *Voluntary manslaughter.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____, willfully and unlawfully kill _____, (a child under 16 years of age) by _____ him/her (in) (on) the _____ with a _____.

(2) *Involuntary manslaughter.*

In that _____ (personal jurisdiction data), did, (at/on board location) (subject matter jurisdiction data, if required), on or about _____, (by culpable negligence) (while (perpetrating) (attempting to perpetrate) an offense directly affecting the person of _____, to wit: (maiming) (a battery) (_____)) unlawfully kill _____ (a child under 16 years of age) by _____ him/her (in) (on) the _____ with a _____.”

Section. 3. These amendments shall take effect on [30 days after signature].

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to [30 days after signature] that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to [30 days after signature], and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Dated: December 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

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DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD-2007-OS-0132]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 16, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279-8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676-6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 11, 2006, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, ‘Federal Agency Responsibilities for Maintaining Records About Individuals,’ dated December 12, 2000, 65 FR 239.

Dated: December 11, 2007.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

T7040

SYSTEM NAME:

Work Year and Personnel Cost Reporting.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Mechanicsburg—Bldg. 308, Naval Support Activity (NSA),

5450 Carlisle Pike, Mechanicsburg, PA 17050-2411.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense Navy civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual’s name, Social Security Numbers (SSN), work year and personnel cost data for U.S. Navy civilian employees.

Authority for maintenance of the system: 5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14-R, Vol. 4; 31 U.S.C. Sections 3511 and 3513; and E.O. 9397 (SSN).

PURPOSE(S):

This system will be the financial system of record and the single source for consolidated financial information for the Navy civilian employees. It will support the core financial requirements for the Work Year and Personnel Cost Reporting (WYPC).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ‘Blanket Routine Uses’ published at the beginning of the DoD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in files folders and electronic storage media.

RETRIEVABILITY:

Individual’s name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access.