

[FR Doc. 00-31242 Filed 12-7-00; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Manual for Courts-Martial; Proposed Amendments

**AGENCY:** Joint Service Committee on Military Justice (JSC).

**ACTION:** Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States, (2000 ed.).

**SUMMARY:** The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States, (2000 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2000 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

**ADDRESSES:** Comments and materials received from the public are available for inspection or copying at the U.S. Air Force, Air Force Legal Services Agency, Military Justice Division, Room 202, 112 Luke Avenue, Bolling Air Force Base, Washington, DC 20332-8000, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332-8000, (202) 767-1539; FAX (202) 404-8755.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 15, 2000, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial, (MCM) United States, (2000 ed.). On June 15, 2000, the JSC also published a Notice of Public Meeting to receive comment on its 2000 draft annual review of the Manual for Courts-Martial. On June 28, 2000, the public meeting was held. Three individuals attended and one individual provided oral comment. The JSC also received one letter commenting on the proposed amendments.

##### Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the proposed changes: (1) Add references to Military Rule of Evidence 513, *Psychotherapist-patient privilege*, in Rule for Courts-Martial (R.C.M.) 701, *Discovery*; (2) clarify the analysis accompanying R.C.M. 707, *Speedy trial*, in light of current case law; and (3) clarify R.C.M. 1003 and R.C.M. 1107, governing the authority of a court-martial to adjudge and the convening authority to approve, the combination of both a fine and forfeitures at summary and special courts-martial.

##### Discussion of Comments and Changes

No substantive comment was received on the proposed amendments except for an expressed desire for a fuller rationale accompanying future changes. The JSC has considered the oral and written comment provided and is satisfied that the proposed amendments are appropriate to implement. However, the JSC has reexamined the analysis accompanying R.C.M. 707 and has modified it to more fully explain why the amendment was made. The JSC will forward the public comment and the proposed amendments, as modified, to the Department of Defense.

The oral and written comment, from the same individual, also discussed the new provision of the JSC's standard operating procedures requiring the JSC to invite members of the public to submit proposals as well as the form of that invitation in the May 15, 2000 Federal Register Notice of Proposed Amendments. The invitation provided that "proposals should include reference to the specific provision you wish changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language." The invitation also said that "[i]ncomplete submissions will not be considered." The writer said that this last sentence would have a chilling effect on the submission of proposals. The writer also said that individuals or organizations may well perceive problems in the current MCM but may not have the time or expertise to prepare the type of submission required by the JSC. The writer believed that ideas for change should not be discouraged and that the burden should fall to the JSC, rather than to the public, to not only consider ideas for change but in addition take it upon itself to prepare full proposals to implement any ideas for change submitted which are deemed meritorious. The writer also believed

that the invitation to the public should be clarified to note that proposals from the public which are not submitted within the public comment period will still be considered, but may not be able to be included in the next Annual Review. The writer recommended that the JSC's procedures be amended to implement the suggestions and that the rules pertaining to public participation in the MCM rulemaking process be included in appropriate DOD Directives published in the Code of Federal Regulations and in the MCM. The JSC has considered these comments and have decided to change the text of the invitation in next year's notice. To best serve the JSC in understanding the nature of the proposals, yet not chill their submission, the invitation will be changed to read "incomplete proposals may not be considered" as opposed to "will not be considered." The JSC will also receive public proposals at any time but proposals received outside the public comment period may not be received in time to be considered in the next Annual Review. The JSC has concluded that it is not necessary to incorporate the new rules inviting public proposals into DoD Directive 5500.17, Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice or the MCM. The DoD Directive will be published in the MCM in future editions.

##### Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Courts-Martial are as follows:

*Amend the Discussion following R.C.M. 701(a)(2)(B) to read as follows:*

"For specific rules concerning mental examinations of the accused or third party patients, see R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513."

*Amend R.C.M. 701(b)(4) to read as follows:*

"*Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were

prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

*Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:*

"2000 Amendment: Subsection (b)(4) was amended to also take into consideration the protections afforded by the new psychotherapist-patient privilege under Mil. R. Evid. 513."

*Amend the analysis accompanying R.C.M. 707(a) by inserting the following paragraph after the second full paragraph:*

"2000 Analysis Amendment: Burton and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States v. Tibbs*, 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993). In *Kossman*, the Court reinstated the "reasonable diligence" standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ."

*Amend R.C.M. 1003(b)(3) to read as follows:*

"Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

*Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:*

"Where the sentence adjudged at a special court-martial includes a fine, see R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence."

*Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):*

"2000 Amendment: The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. See generally, *United States v. Tualla*, 52 M.J. 228 (2000)."

*Add R.C.M. 1107(d)(5) as follows:*

"Limitations on sentence of a special court-martial where a fine has been adjudged. A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial."

*Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):*

"2000 Amendment: Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. See generally, *United States v. Tualla*, 52 M.J. 228, 231-32 (2000)."

Dated: November 30, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board; Meeting

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board will meet in closed session on March 7-8, 2001; May 16-17, 2001; and October 24-25, 2001, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and

policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. § 552b(c)(1)(1994), and that accordingly these meetings will be closed to the public.

Dated: November 30, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The system of records identified as DHA 05, Military Deployment Issues Files, is being altered to add two routine uses.

**DATES:** The changes will be effective on January 8, 2001 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Records Management Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Bosworth at (703) 601-4725.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense 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 November 30, 2000, 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