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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD-2017-OS-0032]

Proposed Amendments to the Manual for Courts-Martial, United States (2016 ed.)

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

ACTION: Notice of availability and notice of public meeting.

SUMMARY: The Department of Defense requests comments on proposed changes to the Manual for Courts-Martial, United States (2016 ed.) (MCM). The proposed changes include provisions implementing the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016), and concern the rules of procedure and evidence applicable in trials by court-martial, nonjudicial punishment proceedings, and the punitive articles of the Uniform Code of Military Justice. Also included is a proposed revision of Appendix 12A of the Manual for Courts-Martial concerning lesser included offenses. The approval authority for these changes is the President. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.01, "Preparing, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony," June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

The proposed changes also concern certain supplementary materials that accompany the rules of procedure, rules of evidence, and punitive articles. The Department of Defense, in conjunction with the Department of Homeland Security, publishes these supplementary materials

to accompany the Manual for Courts-Martial. The supplementary materials included in this notice consist of Discussions (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), Analyses, Appendix 2.1, and specific changes to Appendix 24. The approval authority for changes to the supplementary materials is the General Counsel, Department of Defense; changes to these items do not require Presidential approval.

DATES: Comments on the proposed changes must be received no later than [INSERT 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. A public meeting for comments will be held on August 3, 2017, from 10 a.m. until noon, in the United States Court of Appeals for the Armed Forces building, 450 E Street, NW, Washington, DC 20442-0001. Commentators will be heard in order of arrival and check-in, and will be limited to five minutes.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket ID 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 <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Alexandra Nica, JAGC, USN, Executive Secretary, JSC, (202) 685-7058, alexandra.nica@navy.mil.

SUPPLEMENTARY INFORMATION:

Due to the length of the proposed changes, they are being made available on the Internet rather than being printed in the Federal Register. The following items are available at

<http://www.regulations.gov>, Docket ID: DOD-2017-OS-0032:

1. A draft Executive Order.
2. Annex 1 to the draft Executive Order, which includes changes to the Manual for Courts-Martial that would take effect on the date the Executive Order is signed by the President. Also included in Annex 1 are supplemental materials that the Department of Defense, in consultation with the Department of Homeland Security, is considering issuing if the proposed Executive Order is signed.
3. Annex 2 to the draft Executive Order, which includes a complete reissuance of the Manual for Courts-Martial as revised by Annex 1. Annex 2 includes revisions to Parts I, II, III, IV, and V of the Manual for Courts-Martial, as well as an Appendix 12A concerning lesser included offenses. The complete reissuance of the Manual for Courts-Martial would take effect on a date designated by the President in the Executive Order. The draft Executive Order proposes an effective date of January 1, 2019. Annex 2 also includes supplementary materials, such as Discussions, Analyses, and an Appendix that the Department of Defense, in consultation with the Department of Homeland Security, is considering issuing if the proposed Executive Order is signed.

The Department of Defense also requests comments on a proposal by a Federal Advisory Committee, the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP). The

JPP's June 2017 report suggested that Rule for Courts-Martial 1103A as proposed by Annex 1 and Rule for Courts-Martial 1113 as proposed by Annex 2 be further revised to include the following: "Prior to a decision to permit examination of material described in this subparagraph, notice and an opportunity to be heard shall be given to any person whose records are about to be examined and to appellate counsel." The report making that recommendation is available at http://jpp.whs.mil/Public/docs/08-Panel_Reports/07_JPP_VictimsAppRights_Report_Final_20170602.pdf. The Department invites public comment on the JPP's proposal.

The full text of the Uniform Code of Military Justice as amended by Military Justice Act of 2016 is available electronically at <http://www.regulations.gov>, Docket ID: DOD-2017-OS-0032.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003.

The JSC invites members of the public to comment on the proposed changes; such comments should address specific recommended changes and provide supporting rationale.

This notice also sets forth the date, time, and location for a public meeting of the JSC to discuss the proposed changes.

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 or in equity by any party against the United States, its agencies, its officers, or any person.

Dated: July 5, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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