

CODE 20

SIDEBAR

PROPOSED CHANGES TO THE MANUAL FOR COURTS-MARTIAL AS AMENDED BY MJA 2016

On June 27, 2018, the notice entitled “Manual for Courts-Martial; Proposed Amendments” was published in the federal register. The notice, the proposed Executive Order, and all other supporting documents, can be accessed at www.regulations.gov by searching by Docket ID number DOD-2018-OS-0039. Additionally, these documents are all available for download at jsc.defense.gov.

If you are submitting a comment in a personal capacity, or opt to submit your name and rank along with your personal comments on the www.regulations.gov website, please include the following disclaimer in your comment: "The views expressed are my own and do not reflect the official policy or position of the United States Navy, Department of the Navy, Department of Defense, or the U.S. Government." Using this disclaimer will ensure that it is accepted as a public comment. If you are interested in submitting comments in an official or organizational capacity, please email your comments to LT Alexandra Nica (alexandra.nica@navy.mil). You may, although you are not required to, use the template available in the “Contact” section on the JSC website. The public comment period will close on August 27, 2018. A public hearing is scheduled for July 11, 2018 at 1:30pm at the Court of Appeals for the Armed Forces.

The proposed amendments to the Manual for Courts-Martial (MCM) include a number of provisions making changes to military rules of procedure and evidence, as well as to several punitive articles of the Uniform Code of Military Justice (UCMJ). These amendments add to the complete revision of the MCM prescribed by Executive Order 13825 which will take effect on January 1, 2019.

Summary of Changes:

Rules for Courts-Martial (R.C.M.) changes:

- (a) R.C.M. 705 is amended to explicitly authorize a plea agreement to contain a specified sentence or part of a sentence that is to be imposed by a court-martial, subject to Service regulations.
- (b) R.C.M. 916 provisions on self-defense are amended to reflect the change in Article 128 of the UCMJ with respect to aggravated assault.
- (c) R.C.M. 920 is amended to preclude the military judge from issuing an instruction on lesser included offenses when both parties waive the instruction.
- (d) R.C.M. 1208 is amended to explicitly state the effective date of a sentence that has been set aside or disapproved.

Military Rules of Evidence Changes: Changes are made to the Military Rules of Evidence governing search authorizations to reflect new authorities for warrants for wire and electronic communications as well as the distinction between a military magistrate designated under Article 26a of the UCMJ and other competent search authorities designated by DoD or Service regulations.

Punitive Articles: Minor amendments clarifying definitions were made to Article 93a (Prohibited activities with military recruit or trainee by person in position of special trust), Article 123 (Offenses concerning Government computers), and Article 132 (Retaliation).

Please read these amendments in conjunction with EO 13825 and submit your comments as soon as possible.

Questions. Please direct any questions regarding this Sidebar to LT Alexandra Nica, JAGC, USN, at alexandra.nica@navy.mil or (202) 685-7058.

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