

DEPARTMENT OF DEFENSE**Office of the Secretary****U.S. Court of Appeals for the Armed Forces Proposed Rule Change**

ACTION: Notice of proposed change to the rules of practice and procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed new Rule 30A of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

Proposed New Rule 30a—Fact Finding

(a) General. The court will normally not consider any facts outside of the record established at the trial and the Court of Criminal Appeals.

(b) Judicial notice. In an appropriate case, the Court may take judicial notice of an indisputable adjudicative fact.

(c) Remand for fact finding. If an issue concerning an unresolved material fact may affect the Court's resolution of the case, a party may request, or the Court may *sua sponte* order, a remand of the case or the record to the Court of Criminal Appeals. If the record is remanded, the court retains jurisdiction over the case. If the case is remanded, the Court does not retain jurisdiction, and a new petition for grant of review or certificate for review will be necessary if a party seeks review of the proceedings conducted on remand.

(d) Stipulation by the parties. If an issue concerning an unresolved material fact may affect the Court's resolution of the case, the parties may stipulate to a factual matter, subject to the court's approval.

(e) Other means. Where it is impracticable to remand a case to the Court of Criminal Appeals, the Court may order other means to develop relevant facts, including the appointment of a special master to hold hearings, if necessary, and to make such recommendations to the Court as are deemed appropriate.

DATES: Comments on the proposed change must be received by December 8, 1998.

ADDRESSES: Forward written comments to Thomas F. Granahan, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442-0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, telephone (202) 761-1448(x600).

SUPPLEMENTARY INFORMATION: The Rules Advisory Committee Comment on the

proposed new Rule 30A is included as an attachment to this notice.

Rules Advisory Committee Comment on Proposed Rule 30A

Proposed Rule 30A codifies the Court's practice concerning additional fact finding, and provides a counterpart to Federal Rule of Appellate Procedure 48, which concerns appointment of special masters. While requests to establish additional facts are disfavored, the Court has on occasion accepted affidavits, appointed special masters, accepted stipulations of fact, and directed that evidentiary hearings be held. Subsection (b) codifies the Court's discussion of judicial notice in *United States v. Williams*, 17 MJ 207 (CMA 1984). Subsection (c) recognizes that the Court may sometimes remand a case for the lower court's reconsideration in light of a contested issue of fact's determination, or it may sometimes choose to remand for the limited purpose of determining a contested fact while retaining jurisdiction over the case. Subsection (c) enables the Court to decide on a case-by-case basis whether the lower court will exercise complete jurisdiction upon remand. *Cf.* D.C. Cir. R. 41(b). The Committee envisions that stipulations made under subsection (d) will be presented to the Court via a motion to attach a stipulation to the record made pursuant to Rule 30. Subsection (e) recognizes that, where necessary, the Court may order alternative means of determining facts, including the appointment of special masters.

Dated: October 2, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF ENERGY**Energy Information Administration****Agency Information Collection Under Review by the Office of Management and Budget**

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub.

L. 104-13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed on or before November 9, 1998. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI-70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426-1103, FAX (202) 426-1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. RW-859, "Nuclear Fuel Data Form"
2. Office of Civilian Radioactive Waste Management, OMB No. 1901-0287, Revision of a Currently Approved Collection; Mandatory.
3. Form RW-859 collects data to be used by the Office of Civilian Radioactive Waste to define, develop, and operate its storage that requires