

Week Ending Friday, April 19, 2002

**Executive Order 13262—
Amendments to the Manual for
Courts-Martial, United States**

April 11, 2002

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473, as amended, it is hereby ordered as follows:

Section 1. Thirty days after the date of this Executive Order, the provisions of Federal Rule of Evidence 415, adopted September 13, 1994, will no longer be applicable to the Military Rules of Evidence. This evidentiary rule became applicable to courts-martial on January 6, 1996, pursuant to Military Rule of Evidence 1102.

Sec. 2. The last subparagraph of paragraph 4, of Part I, of the Manual for Courts-Martial, United States, is amended as follows:

“The Manual shall be identified as “Manual for Courts-Martial, United States (2002 edition).” Any amendments to the Manual made by Executive Order shall be identified as “2002” Amendments to the Manual for Courts-Martial, United States”; “2002” being the year the Executive Order was signed. If two or more Executive Orders amending the Manual are signed during the same year, then the second and any subsequent Executive Orders will be identified by placing a small case letter of the alphabet after the last digit of the year beginning with “a” for the second Executive Order and continuing in alphabetic order for subsequent Executive Orders.”

Sec. 3. Part II of the Manual for Courts-Martial, United States, is amended as follows:

a. R.C.M. 201(f)(2)(B) is amended to read as follows:

“(i) Upon a finding of guilty, special courts-martial may adjudge, under limitations prescribed by this Manual, any punishment authorized under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than 1 year.

“(ii) A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged by a special court-martial unless:

“(a) Counsel qualified under Article 27(b) is detailed to represent the accused; and

“(b) A military judge is detailed to the trial, except in a case in which a military judge could not be detailed because of physical conditions or military exigencies. Physical conditions or military exigencies, as the terms are here used, may exist under rare circumstances, such as on an isolated ship on the high seas or in a unit in an inaccessible area, provided compelling reasons exist why the trial must be held at that time and at that place. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to detail a military judge. If a military judge cannot be detailed because of physical conditions or military exigencies, a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may be adjudged provided the other conditions have been met. In that event, however, the convening authority shall, prior to trial, make a written statement explaining why a military judge could not be obtained. This statement shall be appended to the record of trial and shall set forth in detail the reasons why a military judge could not be detailed, and why the trial had to be held at that time and place.”

b. R.C.M. 701(b)(4) is amended to read as follows:

“(4) 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, that are within the possession, custody, or control of the defense that the defense intends to introduce as evidence in the defense case-in-chief at trial or that were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness’ testimony.”

c. R.C.M. 806 is amended by adding at the end the following new subsection (d):

“(d) Protective orders. The military judge may, upon request of any party or sua sponte, issue an appropriate protective order, in writing, to prevent parties and witnesses from making extrajudicial statements that present a substantial likelihood of material prejudice to a fair trial by impartial members. For purposes of this subsection, “military judge” does not include the president of a special court-martial without a military judge.”

d. R.C.M. 1001(b)(3)(A) is amended to read as follows:

“(A) In general. The trial counsel may introduce evidence of military or civilian convictions of the accused. For purposes of this rule, there is a “conviction” in a court-martial case when a sentence has been adjudged. In a civilian case, a “conviction” includes any disposition following an initial judicial determination or assumption of guilt, such as when guilt has been established by guilty plea, trial, or plea of *nolo contendere*, regardless of the subsequent disposition, sentencing procedure, or final judgment. However, a “civilian conviction” does not include a diversion from the judicial process without a finding or admission of guilt; expunged convictions; juvenile adjudications; minor traffic violations; foreign convictions; tribal court convictions; or convictions reversed, vacated, invalidated or pardoned because of errors of law or because of subsequently discovered evidence exonerating the accused.”

e. R.C.M. 1003(b)(3) is amended to read as follows:

“(3) 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;”

f. R.C.M. 1003(b)(7) is amended to read as follows:

“(7) Confinement. The place of confinement shall not be designated by the court-martial. When confinement for life is authorized, it may be with or without eligibility for parole. A court-martial shall not adjudge a sentence to solitary confinement or to confinement without hard labor;”

g. R.C.M. 1004(e) is amended to read as follows:

“(e) Other penalties. Except for a violation of Article 106, when death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life, with or without eligibility for parole, and may be adjudged in lieu of the death penalty, subject to limitations specifically prescribed in this Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not a part of it.”

h. R.C.M. 1006(d)(4)(B) is amended to read as follows:

“(B) Confinement for life, with or without eligibility for parole, or more than 10 years. A sentence that includes confinement for life, with or without eligibility for parole, or more than 10 years may be adjudged only if at least three-fourths of the members present vote for that sentence.”

i. R.C.M. 1009(e)(3)(B)(ii) is amended to read as follows:

“(ii) In the case of a sentence which includes confinement for life, with or without eligibility for parole, or more than 10 years, more than one-fourth of the members vote to reconsider; or”.

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

“(i) Any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than six months or other punishments that may be adjudged by a special court-martial; or”.

k. R.C.M. 1103(c) is amended to read as follows:

“(c) Special courts-martial.

“(1) Involving a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months. The requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(D), and (b)(3) of this rule shall apply in a special court-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged.

“(2) All other special courts-martial. If the special court-martial resulted in findings of guilty but a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)–(F) and (I)–(M) of this rule shall apply.”.

l. R.C.M. 1103(f)(1) is amended to read as follows:

“(1) Approve only so much of the sentence that could be adjudged by a special court-martial, except that a bad-conduct discharge, confinement for more than six months, or forfeiture of two-thirds pay per month for more than six months, may not be approved; or”.

m. R.C.M. 1104(a)(2)(A) is amended to read as follows:

“(A) Authentication by the military judge. In special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged and in general courts-martial, except as provided in subsection (a)(2)(B) of this rule, the military judge present at the end of the proceedings

shall authenticate the record of trial, or that portion over which the military judge presided. If more than one military judge presided over the proceedings, each military judge shall authenticate the record of the proceedings over which that military judge presided, except as provided in subsection (a)(2)(B) of this rule. The record of trial of special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged shall be authenticated in accordance with regulations of the Secretary concerned.”

n. R.C.M. 1104(e) is amended to read as follows:

“(e) Forwarding. After every court-martial, including a rehearing and new and other trials, the authenticated record shall be forwarded to the convening authority for initial review and action, provided that in case of a special court-martial in which a bad-conduct discharge or confinement for one year was adjudged or a general court-martial, the convening authority shall refer the record to the staff judge advocate or legal officer for recommendation under R.C.M. 1106 before the convening authority takes action.”.

o. R.C.M. 1106(a) is amended to read as follows:

“(a) In general. Before the convening authority takes action under R.C.M. 1107 on a record of trial by general court-martial or a record of trial by special court-martial that includes a sentence to a bad-conduct discharge or confinement for one year, that convening authority’s staff judge advocate or legal officer shall, except as provided in subsection (c) of this rule, forward to the convening authority a recommendation under this rule.”.

p. R.C.M. 1107(d)(4) is amended to read as follows:

“(4) Limitations on sentence based on record of trial. If the record of trial does not meet the requirements of R.C.M. 1103(b)(2)(B) or (c)(1), the convening authority may not approve a sentence in excess of that which may be adjudged by a special court-martial, or one that includes a bad-conduct discharge, confinement for more than six months, forfeiture of pay exceeding two-

thirds pay per month, or any forfeiture of pay for more than six months.”.

q. R.C.M. 1107(d) is amended by adding at the end the following new paragraph:

“(5) 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 when, if approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial.”.

r. R.C.M. 1109(e) and (e)(1) are amended to read as follows:

“(e) Vacation of a suspended special court-martial sentence wherein a bad-conduct discharge or confinement for one year was not adjudged.

“(1) In general. Before vacating the suspension of a special court-martial punishment that does not include a bad-conduct discharge or confinement for one year, the special court-martial convening authority for the command in which the probationer is serving or assigned shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension.”.

s. R.C.M. 1109(f) and (f)(1) are amended to read as follows:

“(f) Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge or confinement for one year.

“(1) The procedure for the vacation of a suspended approved bad-conduct discharge or of any suspended portion of an approved sentence to confinement for one year, shall follow that set forth in subsection (d) of this rule.”.

t. R.C.M. 1110(a) is amended to read as follows:

“(a) In general. After any general court-martial, except one in which the approved sentence includes death, and after any special court-martial in which the approved sentence includes a bad-conduct discharge or confinement for one year, the accused may waive or withdraw appellate review.”.

u. R.C.M. 1111(b) is amended to read as follows:

“(1) Cases including an approved bad-conduct discharge or confinement for one year.

If the approved sentence of a special court-martial includes a bad-conduct discharge or confinement for one year, the record shall be disposed of as provided in subsection (a) of this rule.

“(2) Other cases. The record of trial by a special court-martial in which the approved sentence does not include a bad-conduct discharge or confinement for one year shall be forwarded directly to a judge advocate for review under R.C.M. 1112. Four copies of the order promulgating the result of trial shall be forwarded with the record of trial, unless otherwise prescribed by regulations of the Secretary concerned.”.

v. R.C.M. 1112(a)(2) is amended to read as follows:

“(2) Each special court-martial in which the accused has waived or withdrawn appellate review under R.C.M. 1110 or in which the approved sentence does not include a bad-conduct discharge or confinement for one year; and”.

w. R.C.M. 1305(d)(2) is amended to read as follows:

“(2) Forwarding to the convening authority. The original and one copy of the record of trial shall be forwarded to the convening authority after compliance with subsection (d)(1) of this rule.”.

Sec. 4. Part III of the Manual for Courts-Martial, United States, is amended in Mil. R. Evid. 615 by striking the period at the end of the rule and adding “, or (4) a person authorized by statute to be present at courts-martial, or (5) any victim of an offense from the trial of an accused for that offense because such victim may testify or present any information in relation to the sentence or that offense during the presentencing proceedings.”.

Sec. 5. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

a. All “Sample specification(s)” subparagraphs in the Punitive Articles (Part IV, M.C.M.) are amended by striking “_____ 19 _____” and inserting “_____ 20 _____”.

b. Paragraph 27e(1)(a) is amended to read as follows:

“(a) of a value of \$500.00 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.”.

c. Paragraph 27e(1)(b) is amended to read as follows:

“(b) of a value of more than \$500.00 or any firearm or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.”.

d. Paragraph 27f(3) is amended to read as follows:

“(3) Dealing in captured or abandoned property. In that _____ (personal jurisdiction data), did, (at/on board - location), on or about _____²⁰ _____, (buy) (sell) (trade) (deal in) (dispose of) (_____) certain (captured) (abandoned) property, to wit: _____, (a firearm) (an explosive), of a value of (about) \$ _____, thereby (receiving) (expecting) a (profit) (benefit) (advantage) to (himself/herself) (_____, his/her accomplice) (_____, his/her brother) (_____).”.

e. Strike paragraph 31c(6).

f. Paragraph 43e(1), is amended to read as follows:

“(1) Article 118(1) or (4)—death. Mandatory minimum—imprisonment for life with eligibility for parole.”.

g. Paragraph 45e(3) is amended to read as follows:

“(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.”.

h. Paragraph 46c(1)(h) is amended by adding at the end the following new clause:

“(vi) Credit, Debit, and Electronic Transactions. Wrongfully engaging in a credit, debit, or electronic transaction to obtain goods or money is an obtaining-type larceny by false pretense. Such use to obtain goods is usually a larceny of those goods from the merchant offering them. Such use to obtain money or a negotiable instrument (e.g., withdrawing cash from an automated teller or a cash advance from a bank) is usually a larceny of money from the entity presenting the money or a negotiable instrument. For the purpose of this section, the term ‘credit, debit, or electronic transaction’ includes the use of an instrument or device, whether known as a credit card, debit card, automated teller machine (ATM) card or by any other

name, including access devices such as code, account number, electronic serial number or personal identification number, issued for the use in obtaining money, goods, or anything else of value.”.

i. Paragraph 51e(1) is amended to read as follows:

“(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.”.

j. Paragraph 51e(3) is amended to read as follows:

“(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.”.

k. Paragraph 62c is amended to read as follows:

“c. Explanation.

“(1) Nature of offense. Adultery is clearly unacceptable conduct, and it reflects adversely on the service record of the military member.

“(2) Conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. To constitute an offense under the UCMJ, the adulterous conduct must either be directly prejudicial to good order and discipline or service discrediting. Adulterous conduct that is directly prejudicial includes conduct that has an obvious, and measurably divisive effect on unit or organization discipline, morale, or cohesion, or is clearly detrimental to the authority or stature of or respect toward a servicemember. Adultery may also be service discrediting, even though the conduct is only indirectly or remotely prejudicial to good order and discipline. Discredit means to injure the reputation of the armed forces and includes adulterous conduct that has a tendency, because of its open or notorious nature, to bring the service into disrepute, make it subject to public ridicule, or lower it in public esteem. While adulterous conduct that is private and discreet in nature may not be service discrediting by this standard, under the circumstances, it may be determined to be

conduct prejudicial to good order and discipline. Commanders should consider all relevant circumstances, including but not limited to the following factors, when determining whether adulterous acts are prejudicial to good order and discipline or are of a nature to bring discredit upon the armed forces:

“(a) The accused’s marital status, military rank, grade, or position;

“(b) The co-actor’s marital status, military rank, grade, and position, or relationship to the armed forces;

“(c) The military status of the accused’s spouse or the spouse of co-actor, or their relationship to the armed forces;

“(d) The impact, if any, of the adulterous relationship on the ability of the accused, the co-actor, or the spouse of either to perform their duties in support of the armed forces;

“(e) The misuse, if any, of government time and resources to facilitate the commission of the conduct;

“(f) Whether the conduct persisted despite counseling or orders to desist; the flagrancy of the conduct, such as whether any notoriety ensued; and whether the adulterous act was accompanied by other violations of the UCMJ;

“(g) The negative impact of the conduct on the units or organizations of the accused, the co-actor or the spouse of either of them, such as a detrimental effect on unit or organization morale, teamwork, and efficiency;

“(h) Whether the accused or co-actor was legally separated; and

“(i) Whether the adulterous misconduct involves an ongoing or recent relationship or is remote in time.

“(3) Marriage. A marriage exists until it is dissolved in accordance with the laws of a competent state or foreign jurisdiction.

“(4) Mistake of fact. A defense of mistake of fact exists if the accused had an honest and reasonable belief either that the accused and the co-actor were both unmarried, or that they were lawfully married to each other. If this defense is raised by the evidence, then the burden of proof is upon the United States to establish that the accused’s belief was unreasonable or not honest.”

1. Paragraph 92e is amended to read as follows:

“e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole.”

m. Paragraphs 32e, 33e, 46c(1)(g)(iii), 46e, 49e, 52e, 58e, 78e and 106e are amended by striking “\$100.00” each place it appears and inserting “\$500.00”.

Sec. 6. These amendments shall take effect on May 15, 2002.

a. The amendments made to Rules for Courts-Martial 806(d) and 1001(b)(3)(A) shall only apply in cases in which arraignment has been completed on or after May 15, 2002.

b. The amendments made to Rules for Courts-Martial 1003(b)(7), 1004(e), 1006(d)(4)(B), and 1009(e)(3)(B)(ii) shall only apply to offenses committed after November 18, 1997. In cases not involving these amendments, the maximum punishment for an offense committed prior to May 15, 2002, shall not exceed the applicable maximum in effect at the time of the commission of such offense. Provided further, that for offenses committed prior to May 15, 2002, for which a sentence is adjudged on or after May 15, 2002, if the maximum punishment authorized in this Manual is less than that previously authorized, the lesser maximum authorized punishment shall apply.

c. The amendment made to Military Rules of Evidence 615 shall apply only in cases in which arraignment has been completed on or after May 15, 2002.

d. Nothing in these amendments shall be construed to make punishable any act done or omitted prior to May 15, 2002, that was not punishable when done or omitted.

e. Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to May 15, 2002, 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.

George W. Bush

The White House,
April 11, 2002.

[Filed with the Office of the Federal Register, 8:45 a.m., April 16, 2002]

NOTE: This Executive order was released by the Office of the Press Secretary on April 12, and it was published with its attached annex in the *Federal Register* on April 17. This item was not received in time for publication in the appropriate issue.

Proclamation 7540—Pan American Day and Pan American Week, 2002

April 12, 2002

By the President of the United States of America

A Proclamation

Pan America comprises a set of regional relationships that connects the nations of the Western Hemisphere in an increasingly interdependent network of commercial and cultural communities. Every nation in Pan America, with one notable exception, is committed to promoting freedom, democracy, and the rule of law. Over the past year, the Pan American nations have become increasingly united in purpose, seeking to ensure the preservation of the freedoms inherent in democracy, to promote good governance, to enhance economic development across the hemisphere, to protect human rights, and to combat terrorism, transnational crime, and narcotics trafficking. Continued progress in achieving these goals will greatly improve the future of the Americas.

As a testament to the enduring spirit of cooperation that binds us together as citizens of North, Central, and South America, the Pan American nations have built a common front against the threat of terrorism. Meeting in consultation on September 19, 2001, the Organization of American States (OAS) Permanent Council invoked the Rio Treaty, declaring that the terrorist attacks of September 11, were attacks against all of the Americas. Later that same month, the OAS Foreign

Ministers called for measures to strengthen hemispheric cooperation and adopted binding commitments, demonstrating that this hemisphere is prepared to guard the freedoms that form the foundation of democracy.

This firm response to the terrorist acts followed another milestone for the region, namely, the adoption of the Inter-American Democratic Charter. In approving this document by acclamation, the nations of the Western Hemisphere established democracy as the birthright of every person in the Americas. The words of this charter affirm that governments cannot be democracies in name only, but must build upon the guiding principles of our time and struggle to ensure the preservation of essential civil liberties.

Pan America's unprecedented spirit of cooperation bodes well for the 2004 Summit of the Americas, when we will have the opportunity to review our progress and renew commitments to enhancing hemispheric relationships. Communication, trade, travel, and advances in technology have all combined to produce unprecedented levels of integration and interdependence in the Western Hemisphere. And our continued efforts toward a Free Trade Area of the Americas exemplify our commitment to building a legal framework that opens the way to self-sustaining and wide-ranging prosperity. The free exchange of ideas and goods brings a unique vitality to our region, and serves as a catalyst for continuing economic development at the local and national levels.

This past year provided sobering evidence that our freedoms are not free. We must continue to work together as a unified community to support and defend all peoples that are denied their rights and privileges by governments that fail to respect the essential elements of democracy and human rights. In countering the threats of tyranny, poverty, and lawlessness, our collective goal must be to further the partnership we share as standard bearers of a bold vision. By working together to promote democracy, free trade, economic prosperity, effective governance, and human rights, we will keep the new Pan American spirit of freedom and cooperation alive and well for generations to come.

Now, Therefore, I, George W. Bush,
President of the United States of America,