DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice.

ACTION: Notice of Proposed Amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1995 ed.) [MCM]. The Secretary of Defense requested that the Department of Defense (DoD) General Counsel task the Joint Service Committee (JSC) on Military Justice to review the applicable sections of the MCM related to adultery and to recommend clarifying guidance if necessary. The JSC was directed to examine the treatment of adultery in the MCM and to consider under what circumstances adultery is prejudicial to good order and discipline or is of a nature to bring discredit upon the armed forces—a prerequisite to adultery being an offense under the Uniform Code of Military Justice. The JSC was also directed to determine whether the MCM provisions are adequate to ensure fair and relatively consistent treatment of servicemembers. A Senior Review Panel of Department of Defense civilian attorneys and judge advocates was established to evaluate the recommendations of the JSC. After soliciting input from field commanders and receiving comments from interested organizations and parties outside the Department of Defense, the JSC and Senior Review Panel recommended additional guidance to the MCM provisions on adultery. This guidance further defines when adulterous conduct is prejudicial to good order and discipline or is of a nature to bring discredit upon the armed forces and provides a list of factors to assist commanders in making such determinations.

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.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. 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 by any party against the United States, its agencies, its officers, or any persons.

DATES: Comments on the proposed changes must be received no later than October 28, 1998, for consideration by the JSC.

ADDRESSES: Comments on the proposed changes should be sent to 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.

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.

The full text of the affected section of the Manual for Courts-Martial follows:

Section IV.

Paragraph 62. Article 134 (Adultery)

a. Text See Paragraph 60.

b. Elements.

(1) That the accused wrongfully had sexual intercourse with a certain person;

(2) That, at the time, the accused or the other person was married to someone else; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

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 immediate, 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 which lowers 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 married 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.

d. *Lesser included offense.* Article 80-attempts. Adultery is not a lesser included offense of rape.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

Add the following subparagraph to the analysis of Article 134 (Adultery) found at appendix 23, page A23–16 of the MCM.

''c. *Explanation.*

(1) Subparagraph (2) is based on *United States.* v. *Snyder,* 4 C.M.R. 15 (1952); *United States* v. *Ruiz,* 46 M.J. 503 (A.F.Ct.Crim.App. 1997); *United States* v. *Green,* 39 M.J. 606 (A.C.M.R. 1994); *United States* v. *Collier,* 36 M.J. 501 (A.F.C.M.R. 1992); *United States* v. *Perez,* 33 M.J. 1050 (A.C.M.R. 1991); *United States* v. *Linnear,* 16 M.J. 628 (A.F.C.M.R. 1983); Part IV, paragraph 60c(2)(a) of MCM. Subparagraph (3) is based on *United States* v. *Poole,* 39 M.J. 819 (A.C.M.R. 1994). Subparagraph (4) is based on *United States* v. *Fogarty,* 35 M.J. 885 (A.C.M.R. 1992); Military Judges' Benchbook, DA PAM 27–9, paragraph 3–62–1 and 5–11–2 (30 Sep. 1996). See R.C.M. 916(j) and (I)(1) for a general discussion of mistake of fact and ignorance, which cannot be based on a negligent failure to discover the true facts.

(2) When determining whether adulterous acts constitute the offense of adultery under Article 134, commanders should consider the listed factors. Each commander has discretion to dispose of offenses by members of the command. As with any alleged offense, however, under R.C.M. 306(b) commanders should dispose of an allegation of adultery at the lowest appropriate level. As the R.C.M. 306(b) discussion states, many factors must be taken into consideration and balanced, including, to the extent practicable, the nature of the offense, any mitigating or extenuating circumstances, the character and military service of the military member, any recommendations made by subordinate commanders, the interests of justice, military exigencies, and the effect of the decision on the military member and the command. The goal should be a disposition that is warranted, appropriate, and fair. In the case of officers, also consult the explanation to paragraph 59 in deciding how to dispose of an allegation of adultery.

Dated: August 7, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21807 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, August 24, 1998.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21805 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 1, 1998; September 8, 1998; September 15, 1998; and September 22, 1998, September 29, 1998 at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21804 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Defense Finance and Accounting Service, DFAS–HQ–H, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.