establishing a reasonable basis to believe or suspect that the firm is uncreditworthy. While the information provided by petitioners does raise certain doubts as to Leclerc's ability to attract such financing, the financial information regarding Leclerc is incomplete. Therefore, at this time, the Department does not have a reasonable basis to believe or suspect that Leclerc is uncreditworthy.

Critical Circumstances

The petition contains an allegation that there is a reasonable basis to believe that critical circumstances exist with respect to imports of subject merchandise.

Section 703(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) The alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) There have been massive imports of the subject merchandise over a relatively short period of time.

The petition contains information that satisfies these criteria. First, in accordance with section 771(5)(A)(B) of the Act, petitioners have alleged that several programs are export subsidies and, therefore, inconsistent with the Subsidies Agreement. With respect to the second statutory criterion, whether imports of the subject merchandise have been massive over a relatively short period of time, petitioners note that there has been significant import growth in recent years.

Based on the above, we find a reasonable basis to believe or suspect that critical circumstances exist and will investigate this matter further.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to representatives of GOC. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by April 21, 1996, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Canada of LHF. Any ITC determination which is negative will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits. If the ITC determines that an industry in the United States is being materially injured, or is threatened with material injury, the Department will issue its preliminary determination in this investigation on May 31, 1996.

This notice is published pursuant to 702(c)(2) of the Act.

Dated: March 27, 1996.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–8218 Filed 4–3–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 032296C]

Gulf of Mexico Fishery Management Council; Public Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public workshop on fish traps used in Federal waters.

DATES: The public workshop will be held on April 24, 1996 from 2:00 p.m. to 6:00 p.m.

ADDRESSES: This workshop will be held at the Board of County Commissions Conference Room (behind the courthouse) on Old Aaron Road, Crawfordville, FL. Persons may obtain a copy of Draft Reef Fish Amendment 14 from the Gulf Council.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Personnel from NMFS will present scientific information on the trap fishery from a vessel observer study NMFS completed during 1994 and 1995. Council staff will present the issues contained in Draft Reef Fish Amendment 14. These issues include limiting participation in the fish trap fishery by instituting a license limitation system and a proposal to prohibit use of fish traps south of 24.9° north lat. (i.e. off Dry Tortugas). This is the second such workshop, the first being held March 11, 1996 in Duck Key, FL.

The Councils' Reef Fish Management Committee, which will be in attendance, will decide whether additional modifications should be made to the draft amendment after hearing public discussion. That action will occur at the Council meeting in Houston, TX to be held May 13–17, 1996.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 17, 1996.

Dated: March 29, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–8225 Filed 4–3–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States (1995 Edition). The proposed changes are the 1996 draft annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, ''Review of the Manual for Courts-Martial,'' January 23, 1985.

The majority of the proposed changes to the MCM implement amendments to the Uniform Code of Military Justice (UCMJ), made pursuant to the Military Justice Amendments of 1995, Pub. L. No. 104–106, 110 Stat. 461 (1996). Among other things, these changes to the MCM would implement recent statutory amendments that: (1) make flight from apprehension a punishable offense; (2) make the offense of carnal knowledge gender neutral and recognize the defense of a mistake of fact as to age under certain conditions; (3) change the effective date for forfeitures of pay and allowances and reductions in grade by sentence of court-martial; (4) provide for forfeiture of pay and allowances during confinement; (5) authorize deferment of confinement during the pendency of

certain appeals; (6) authorize Article 32 pretrial investigating officers to investigate uncharged offenses under certain circumstances and conditions; (7) provide that post-trial matters be submitted by the accused in writing to the convening authority; (8) provide for the commitment of the accused to a treatment facility by reason of lack of mental capacity or mental responsibility; and (9) authorize the United States to appeal rulings relating to the disclosure of classified information. The proposed changes to the MCM would also: (1) place contempt proceeding within the control and discretion of the military judge, vice court members; (2) increase the maximum authorized sentence for assaults committed with an unloaded firearm; and (3) provide that newly discovered evidence is not a basis for a petition for a new trial of the facts when the accused has pled guilty.

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, ''Review of the Manual for Courts-Martial'', January 23, 1985. 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 a party against the United States, its agencies, its officers, or any person.

The Proposed Changes Follow in Their Entirety

The Discussion following R.C.M. 103 is amended by adding the following two sections:

(14) The term classified information (A) means any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 2014(y) of title 42, United States Code.

(15) The term ''national security'' means the national defense and foreign relations of the United States.

The analysis accompanying R.C.M. 103 is amended by inserting the following at the end thereof:

1996 Amendment: The definitions of ''classified information'' in (14) and ''national security'' in (15) are identical to those used in the Classified Information Procedures Act (18 U.S.C. § 1). They were added in connection with the change to Article 62(a)(1) (Appeals Relating to Disclosure of Classified Information). See R.C.M. 908 (Appeals by the United States) and M.R.E. 505 (Classified Information).

R.C.M. 405(e) is amended to read as follows:

(e) Scope of investigation. The investigating officer shall inquire into the truth and form of the charges, and such other matters as may be necessary to make a recommendation as to the disposition of the charges. If evidence adduced during the investigation indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of such offense and make a recommendation as to its disposition, without the accused first having been charged with the offense. The accused's rights under subsection (f) are the same with regard to the investigation of both charged and uncharged offenses.

The Discussion following R.C.M. 405(e) is amended by adding the following paragraph at the end of the Discussion:

In investigating uncharged misconduct identified during the pretrial investigation, the investigating officer will inform the accused of the general nature of each uncharged offense investigated, and otherwise afford the accused the same opportunity for representation, cross examination, and presentation afforded during the investigation of any charged offense.

The analysis accompanying R.C.M. 405 is amended by inserting the following at the end thereof:

1996 Amendment: This change is based on the amendments to Article 32 enacted by Congress in the DoD Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996). It authorizes the Article 32 investigating officer to investigate uncharged offenses when, during the course of the Article 32 investigation, the evidence indicates that the accused may have committed such offenses. Permitting the investigating officer to investigate uncharged offenses and recommend an appropriate disposition benefits both the government and the accused. It promotes judicial economy while still affording the accused the same rights the accused would have in the investigation of preferred charges.

The Discussion following R.C.M. 703(e)(2)(G) is amended by adding the following sentence at the end of the second paragraph:

Failing to comply with such a subpoena is a felony offense, and may result in a fine or imprisonment, or both, at the discretion of the district court.

The analysis accompanying R.C.M. 703 is amended by inserting the following at the end thereof:

1996 Amendment: Congress amended Article 47 in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996), to remove limitations on the punishment that a federal district court may impose for a civilian witness' refusal to honor a subpoena to appear or testify before a court-martial. Previously, the maximum sentence for a recalcitrant witness was ''a fine of not more than $500.00, or imprisonment for not more than six months, or both.'' The law now leaves the amount of confinement or fine to the discretion of the federal district court.

R.C.M. 706(c)(2)(D) is amended to read as follows:

(D) Is the accused presently suffering from a mental disease of defect rendering the accused unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense of the case?

The analysis accompanying R.C.M. 706 is amended by inserting the following at the end thereof:

1996 Amendment: Subsection (c)(2)(D) was amended to reflect the standard for incompetency set forth in Article 76b.

R.C.M. 707(b)(3) is amended by adding subsection (E) which reads as follows:

(E) Commitment of the incompetent accused. If the accused is committed to the custody of the Attorney General for hospitalization as provided in R.C.M. 909(f), all periods of such commitment shall be excluded when determining whether the period in subsection (a) of this rule has run. If, at the end of the period of commitment, the accused is returned to the custody of the general court-martial convening authority, a new 120-day time period under this rule shall begin on the date of such return to custody.

R.C.M. 707(c) is amended to read as follows:

(c) Excludable delay. All periods of time during which appellate courts have issued stays in the proceedings, the accused is hospitalized due to incompetency or otherwise in the custody of the Attorney General, shall be excluded when determining whether the period in subsection (a) of this rule has run. All other pretrial delays approved by a military judge or the

convening authority shall be similarly excluded.

The Discussion following R.C.M. 707(c) is created as follows:

Periods during which the accused is hospitalized due to incompetency or otherwise in the custody of the Attorney General are excluded when determining speedy trial under this rule.

The analysis accompanying R.C.M. 707(c) is amended by inserting the following at the end thereof:

1996 Amendment: In creating Article 76b, UCMJ, Congress mandated the commitment of an incompetent accused to the custody of the Attorney General. As an accused is not under military control during any such period of custody, the entire time period is excludable delay under the 120-day speedy trial rule.

R.C.M. 809(b)(1) is amended by deleting:

''In such cases, the regular proceedings shall be suspended while the contempt is disposed of.''

R.C.M. 809(c) is amended to read as follows:

(c) Procedure. The military judge shall in all cases determine whether to punish for contempt, and, if so, what the punishment shall be. The military judge shall also determine when during the court-martial the contempt proceedings shall be conducted; however, if the court-martial is composed of members, the military judge shall conduct the contempt proceedings outside the members' presence. The military judge may punish summarily under subsection (b)(1) only if the military judge recites the facts for the record and states that they were directly witnessed by the military judge in the actual presence of the court-martial. Otherwise, the provisions of subsection (b)(2) shall apply.

The analysis accompanying R.C.M. 809 is amended by adding the following at the end thereof:

1996 Amendment: R.C.M. 809 was amended to modernize military contempt procedures, as recommended in United States v. Burnett, 27 M.J. 99, 106 (C.M.A. 1988). Thus, the amendment simplifies the contempt procedure in trials by courts-martial by vesting contempt power in the military judge and eliminating the members' involvement in the process. The amendment also provides that the court-martial proceedings need not be suspended while the contempt proceedings are conducted. The proceedings will be conducted by the military judge in all cases, outside of the members' presence. The military judge also exercises discretion as to the timing of the proceedings and, therefore, may assure that the court-martial is not otherwise unnecessarily disrupted or the accused prejudiced by the contempt proceedings. See Sacher v. United States, 343 U.S. 1, 10, 72 S. Ct. 451, 455, 96 L. Ed. 717, 724 (1952). The amendment also brings court-martial contempt procedures into line with the procedure applicable in other courts.

R.C.M. 908(a) is amended to read as follows:

(a) In general. In a trial by a court-martial over which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling that terminates the proceedings with respect to a charge or specification, or excludes evidence that is substantial proof of a fact material in the proceedings, or directs the disclosure of classified information, or that imposes sanctions for nondisclosure of classified information. The United States may also appeal a refusal by the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information or to enforce such an order that has previously been issued by the appropriate authority. However, the United States may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification.

In making this determination, the military judge is not bound by the rules of evidence except with respect to privileges.

(3) If the military judge finds the accused is incompetent to stand trial, the judge shall report this finding to the general court-martial convening authority, who shall commit the accused to the custody of the Attorney General.

(f) Hospitalization of the accused. An accused who is found incompetent to stand trial under this rule shall be hospitalized by the Attorney General as provided in section 4241(d) of title 18, United States Code. If notified that the accused has recovered to such an extent that he or she is able to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense of the case, then the general court-martial convening authority shall promptly take custody of the accused. If, at the end of the period of hospitalization, the accused's mental condition has not so improved, action shall be taken in accordance with section 4246 of title 18.

(g) Excludable delay. All periods of commitment shall be excluded as provided by R.C.M. 707(c). The 120-day time period under R.C.M. 707 shall begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment.

The Discussion following R.C.M. 909(f) is amended by adding the following:

Under section 4241(d) of title 18, the initial period of hospitalization for an incompetent accused shall not exceed four months. However, in determining whether there is a substantial probability the accused will attain the capacity to permit the trial to proceed in the foreseeable future, the accused may be hospitalized for an additional reasonable period of time.

This additional period of time ends either when the accused's mental condition is improved so that trial may proceed, or when the pending charges against the accused are dismissed. If charges are dismissed solely due to the accused's mental condition, the accused is subject to hospitalization as provided in section 4241 of title 18.

The analysis accompanying R.C.M. 909 is amended by inserting the following at the end thereof:

1996 Amendment: The rule was changed to provide for the hospitalization of an incompetent accused after the enactment of Article 76b, UCMJ, in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996).

The analysis accompanying R.C.M. 908 is amended by inserting the following at the end thereof:

1996 Amendment: This change resulted from Congress' amendment to Article 62 in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996). It permits interlocutory appeal of rulings disclosing classified information.

R.C.M. 909 is amended to read as follows:

(a) In general. No person may be brought to trial by court-martial if that person is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case.

(b) Presumption of capacity. A person is presumed to have the capacity to stand trial unless the contrary is established.

(c) Determination before referral. If an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, and the general court-martial convening authority concurs with that conclusion,

the accused shall be committed by the general court-martial convening authority to the custody of the U.S. Attorney General. If the general court-martial convening authority does not concur, that authority may refer the charges to trial.

(d) Determination after referral. After referral, the military judge may conduct a hearing to determine the mental capacity of the accused. If an inquiry pursuant to R.C.M. 706 conducted after referral but before trial concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the military judge shall conduct a hearing to determine the mental capacity of the accused. Any such hearing shall be conducted in accordance with paragraph (e) of this rule.

(e) Incompetency determination hearing.

(1) Nature of issue. The mental capacity of the accused is an interlocutory question of fact.

(2) Standard. Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he or she is unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense of the case.

R.C.M. 916(b) is amended to read as follows:

(b) Burden of proof. Except for the defense of lack of mental responsibility and the defense of mistake of fact as to age as described in Part IV, para. 45.c.(2) in a prosecution for carnal knowledge, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist. The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence, and has the burden of proving mistake of fact as to age in a carnal knowledge prosecution by a preponderance of the evidence.

The analysis accompanying R.C.M. 916(b) is amended by inserting the following at the end thereof:

1996 Amendment: In enacting the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996), Congress amended Article 120, UCMJ, to create a mistake of fact defense to a prosecution for carnal knowledge. The accused must prove by a preponderance of the evidence that the person with whom he or she had sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this person was at least 16 years of age. The changes to R.C.M. 916(b) & (j) implement this amendment.

R.C.M. 916(j) is amended to read as follows:

(j) Ignorance or mistake of fact.

(1) Generally. Except as otherwise provided in this subsection, it is a defense to an offense that the accused held, as a result of ignorance or mistake, an incorrect belief of the true circumstances such that, if the circumstances were as the accused believed them, the accused would not be guilty of the offense. If the ignorance or mistake goes to an element requiring premeditation, specific intent, willfulness, or knowledge of a particular fact, the ignorance or mistake need only have existed in the mind of the accused. If the ignorance or mistake goes to any other element requiring only general intent or knowledge, the ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. However, if the accused's knowledge or intent is immaterial as to an element, then ignorance or mistake is not a defense.

(2) Carnal knowledge. It is a defense to a prosecution for carnal knowledge, which the accused must prove by a preponderance of the evidence, that at the time of the sexual intercourse, the person with whom the accused had sexual intercourse was at least 12 years of age, and that the accused reasonably believed the person was at least 16 years of age.

The Discussion following R.C.M. 916(j), third paragraph, is amended to read as follows:

Examples of offenses in which the accused's intent or knowledge is immaterial include: carnal knowledge (if the victim is under 12 years of age); improper use of countersign (mistake as to authority of person to whom disclosed not a defense). Such ignorance or mistake may be relevant in extenuation and mitigation, however.

The analysis accompanying R.C.M. 916(j) is amended by inserting the following at the end thereof:

1996 Amendment: In enacting the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996), Congress amended Article 120, UCMJ, to create a mistake of fact defense to a prosecution for carnal knowledge. The accused must prove by a preponderance of the evidence that the person with whom he or she had sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this person was at least 16 years of age. The changes to R.C.M. 916(b) & (j) implement this amendment.

R.C.M. 920(e)(5)(D) is amended to read as follows:

(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact as to age in a carnal knowledge prosecution is raised, add: The burden of proving the defense of mistake of fact as to age in carnal knowledge by a preponderance of the evidence is upon the accused.]

The analysis accompanying R.C.M. 920(e) is amended by inserting the following at the end thereof:

1996 Amendment: This change to R.C.M. 920(e) implemented Congress' creation of a mistake of fact defense for carnal knowledge. Article 120(d), UCMJ provides that the accused must prove by a preponderance of the evidence that the person with whom he or she had sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this person was at least 16 years of age.

The Discussion following R.C.M. 1003(b)(2) is amended by adding the following paragraph between the existing first and second paragraphs in the Discussion:

Forfeitures of pay and allowances adjudged as part of a court-martial sentence, or occurring by operation of Article 58b are effective 14 days after the sentence is adjudged or when the sentence is approved by the convening authority, whichever is earlier.

The Discussion following R.C.M. 1003(b)(2) is amended by adding the following at the end of the Discussion:

Forfeiture of pay and allowances under Article 58b is not a part of the sentence, but is an administrative result thereof.

At general courts-martial, if both a punitive discharge and confinement are adjudged, then the operation of Article 58b results in total forfeiture of pay and allowances during that period of confinement. If only confinement is adjudged, then if that confinement exceeds six months, the operation of Article 58b results in total forfeiture of pay and allowances during that period of confinement. If only a punitive discharge is adjudged, Article 58b has no effect on pay and allowances. A death sentence results in total forfeiture of pay and allowances.

At a special court-martial, if a bad conduct discharge and confinement are adjudged, then the operation of Article 58b results in a total forfeiture of two-thirds of pay and allowances during that

period of confinement. If only confinement is adjudged, however, then Article 58b has no effect on adjudged forfeitures.

If the sentence, as approved by the convening authority or other competent authority, does not result in forfeitures by the operation of Article 58b, then only adjudged forfeitures are effective.

Article 58b has no effect on summary courts-martial.

R.C.M. 1005(e) is amended to read as follows:

(e) Required Instructions. Instructions on sentence shall include:

(1) A statement of the maximum authorized punishment which may be adjudged and of the mandatory minimum punishment, if any;

(2) A statement of the effect any sentence announced including a punitive discharge and confinement, or confinement in excess of six months will have on the accused's entitlement to pay and allowances.

(3) A statement of the procedures for deliberation and voting on the sentence set out in R.C.M. 1006;

(4) A statement informing the members that they are solely responsible for selecting an appropriate sentence and may not rely on the possibility of any mitigating action by the convening or higher authority; and

(5) A statement that the members should consider all matters in extenuation, mitigation, and aggravation, whether introduced before or after findings, and matters introduced under R.C.M. 1001(b)(1), (2), (3) and (5).

The analysis accompanying R.C.M. 1005(e) is amended by inserting the following at the end thereof:

1996 Amendment: The requirement to instruct members on the effect a sentence including a punitive discharge and confinement or confinement exceeding six months may have on adjudged forfeitures was made necessary by the creation of Article 58b, UCMJ in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996).

The catch line for R.C.M. 1101 is amended as follows:

Rule 1101. Report of result of trial; post-trial restraint; deferment of confinement, forfeitures and reduction in grade; waiver of Article 58(b) forfeitures

R.C.M. 1101(c) is amended as follows:

(c) Deferment of confinement, forfeitures or reduction in grade.

(1) In general. Deferment of a sentence to confinement, forfeitures or reduction in grade is a postponement of the service and of the running of a sentence.

(2) Who may defer. The convening authority, or if the accused is no longer in the convening authority's jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned, may, upon written application of the accused, at any time after the adjournment of the court-martial, defer the accused's service of a sentence to confinement, forfeitures or reduction in grade which has not been ordered executed.

(3) Action on deferment request. The authority acting on the deferment request may, in that authority's discretion, defer service of a sentence to confinement, forfeitures or reduction in grade. The accused shall have the burden of showing that the interests of the accused and the community in deferral outweigh the community's interest in imposition of the punishment on its effective date. Factors that the authority acting on a deferment request may consider in determining whether to grant the deferment request include, where applicable: the probability of the accused's flight; the probability of the accused's commission of other offenses, intimidation of witnesses, or interference with the administration of justice; the nature of the offenses (including the effect on the victim) of which the accused was convicted; the sentence adjudged; the command's immediate need for the accused; the effect of deferment on good order and discipline in the command; the accused's character, mental condition, family situation, and service record. The decision of the authority acting on the deferment request shall be subject to judicial review only for abuse of discretion. The action of the authority acting on the deferment request shall be in writing and a copy shall be provided to the accused.

(4) Orders. The action granting deferment shall be reported in the convening authority's action under R.C.M. 1107(f)(4)(E) and shall include the date of the action on the request when it occurs prior to or concurrently with the action. Action granting deferment after the convening authority's action under R.C.M. 1107 shall be reported in orders under R.C.M. 1114 and included in the record of trial.

(5) Restraint when deferment is granted. When deferment of confinement is granted, no form of restraint or other limitation on the accused's liberty may be ordered as a substitute form of punishment. An accused may, however, be restricted to specified limits or conditions may be placed on the accused's liberty during the period of deferment for any other proper reason, including a ground for restraint under R.C.M. 304.

(6) End of deferment. Deferment of a sentence to confinement, forfeitures or reduction in grade ends when:

(A) The convening authority takes action under R.C.M. 1107, unless the convening authority specifies in the action that service of confinement after the action is deferred;

(B) The confinement, forfeitures or reduction in grade are suspended;

(C) The deferment expires by its own terms; or

(D) The deferment is otherwise rescinded in accordance with subsection (c)(7) of this rule. Deferment of confinement may not continue after the conviction is final under R.C.M. 1209.

(7) Rescission of deferment.

(A) Who may rescind. The authority who granted the deferment or, if the accused is no longer within that authority's jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned, may rescind the deferment.

(B) Action. Deferment of confinement, forfeitures, or reduction in grade may be rescinded when additional information is presented to a proper authority which, when considered with all other information in the case, that authority finds, in that authority's discretion, is grounds for denial of deferment under subsection (c)(3) of this rule. The accused shall promptly be informed of the basis for the rescission and of the right to submit written matters on the accused's behalf and to request that the rescission be reconsidered. However, the accused may be required to serve the sentence to confinement, forfeitures, or reduction in grade pending this action.

(C) Execution. When deferment of confinement is rescinded after the convening authority's action under R.C.M. 1107, the confinement may be ordered executed. However, no such order to rescind a deferment of confinement may be issued within 7 days of notice of the rescission of a deferment of confinement to the accused under subsection (c)(7)(B) of this rule, to afford the accused an opportunity to respond. The authority rescinding the deferment may extend this period for good cause shown. The accused shall be credited with any confinement actually served during this period.

(D) Orders. Rescission of a deferment before or concurrently with the initial action in the case shall be reported in the action under R.C.M. 1107(f)(4)(E), which action shall include the dates of the granting of the deferment and the rescission. Rescission of a deferment of confinement after the convening

authority's action shall be reported in supplementary orders in accordance with R.C.M. 1114 and shall state whether the approved period of confinement is to be executed or whether all or part of it is to be suspended.

The Discussion following R.C.M. 1101 (c)(6) is amended to read as follows:

When the sentence is ordered executed, forfeitures, or reduction in grade may be suspended but may not be deferred; deferral of confinement may continue after action in accordance with R.C.M. 1107. A form of punishment cannot be both deferred and suspended at the same time. When deferment of confinement, forfeitures, or reduction in grade ends, the sentence to confinement, forfeitures, or reduction in grade begins to run or resumes running, as appropriate. When the convening authority has specified in the action that confinement will be deferred after the action, the deferment may not be terminated, except under subsections (6)(B), (C), or (D), until the conviction is final under R.C.M. 1209.

See R.C.M. 1203 for deferment of a sentence to confinement pending review under Article 67(a)(2).

The analysis accompanying R.C.M. 1101(c) is amended by inserting the following at the end thereof:

1996 Amendment: In enacting the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996), Congress amended Article 57(a) to make forfeitures of pay and allowances and reductions in grade effective either 14 days after being adjudged by a court-martial, or when the convening authority takes action in the case, whichever was earlier in time. Until this change, any adjudged forfeitures or reduction in grade took effect only at convening authority action, which meant the accused often retained the privileges of his or her rank and pay for several months. The intent of the amendment to Article 57(a) was to change this situation so that the desired punitive and rehabilitative impact on the accused occurred more quickly.

Congress, however, desired that a deserving accused be permitted to request a deferment of any adjudged forfeitures or reduction in grade, so that a convening authority, in appropriate situations, might mitigate the effect of Article 57(a).

This change to R.C.M. 1101 is in addition to the change to R.C.M. 1203. The latter implements Congress' creation of Article 57a, giving the Service Secretary concerned the authority to defer a sentence to confinement pending review under Article 67(a)(2).

R.C.M. 1101 is amended by adding the following new subparagraph (d):

(d) Waiving forfeitures resulting from a sentence to confinement to provide for dependent support.

(1) With respect to forfeiture of pay and allowances resulting only by operation of law and not adjudged by the court, the convening authority may waive all or part of the forfeitures for the purpose of providing support to the accused's dependents for up to six months.

(2) Factors that may be considered by the convening authority in determining the amount of forfeitures, if any, to be waived include, but are not limited to, the length of the accused's confinement, the number and age(s) of the accused's family members, whether the accused requested waiver, any debts owed by the accused, the ability of the accused's family members to find employment, and the availability of transitional compensation for abused dependents permitted under 10 U.S.C. 1059.

(3) For the purposes of this Rule, a ''dependent'' means any person qualifying as a ''dependent'' under section 1072 of title 10.

The Discussion following R.C.M. 1101(d) is created as follows:

Any waived forfeitures should be expressed in a dollar amount and for a period of months, not to exceed the months of confinement adjudged.

The analysis accompanying R.C.M. 1101(d) is created as follows:

1996 Amendment: All references to ''postponing'' service of a sentence to confinement were changed to the more appropriate term ''defer.''

R.C.M. 1102A is created to read as follows:

Rule 1102A. Post-trial hearing for person found not guilty only by reason of lack of mental responsibility.

(a) In general. The military judge shall conduct a hearing not later than forty days following the finding that an accused is not guilty only by reason of a lack of mental responsibility.

(b) Psychiatric or psychological examination and report. Prior to the hearing, the military judge or convening authority shall order a psychiatric or psychological examination of the accused, with the resulting psychiatric or psychological report transmitted to the military judge for use in the post-trial hearing.

(c) Post-trial hearing.

(1) The accused shall be represented by defense counsel, and shall have the opportunity to testify, present evidence, call witnesses on his or her behalf, and to confront and cross-examine witnesses who appear at the hearing.

(2) The military judge is not bound by the rules of evidence except with respect to privileges.

(3) An accused found not guilty only by reason of a lack of mental responsibility of an offense involving bodily injury to another, or serious damage to the property of another, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another due to a present mental disease or defect. With respect to any other offense, the accused has the burden of such proof by a preponderance of the evidence.

(4) If, after the hearing, the military judge finds the accused has satisfied the standard specified in subsection (3) of this section, the military judge shall inform the general court-martial convening authority of this result and the accused shall be released. If, however, the military judge finds after the hearing that the accused has not satisfied the standard specified in subsection (3) of this section, then the military judge shall inform the general court-martial convening authority of this result and that authority may commit the accused to the custody of the Attorney General.

The analysis accompanying R.C.M. 1102A is created as follows:

1996 Amendments. This new Rule implements Article 76b(b), UCMJ. Created by Congress in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996), it provides for a post-trial hearing within forty days of the finding that the accused is not guilty only by reason of a lack of mental responsibility. Depending on the offense concerned, the accused has the burden of proving either by a preponderance of the evidence, or by clear and convincing evidence, that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another due to a present mental disease or defect. The intent of the drafters is for R.C.M. 1102A to mirror the provisions of sections 4243 and 4247 of title 18, United States Code.

R.C.M. 1105(b) is amended to read as follows:

(b) Matters which may be submitted. The accused may submit to the convening authority any matters which may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence. The convening

authority is only required to consider written submissions. Submissions are not subject to the Military Rules of Evidence and may include:

(1) Allegations of errors affecting the legality of the findings or sentence;

(2) Portions or summaries of the record and copies of documentary evidence offered or introduced at trial;

(3) Matters in mitigation which were not available for consideration at the court-martial; and

(4) Clemency recommendations by any member, the military judge, or any other person. The defense may ask any person for such a recommendation.

The Discussion following R.C.M. 1105(b) is amended by adding the following at the end of the Discussion:

Although only written submissions must be considered, the convening authority may consider any submission by the accused, including, but not limited to, videotapes, photographs, and oral presentations.

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

(4) When proceedings resulted in a finding of not guilty or not guilty only by reason of lack of mental responsibility, or there was a ruling amounting to a finding of not guilty. The convening authority shall not take action approving or disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty. The convening authority, however, shall commit the accused to a suitable facility pending a hearing and disposition in accordance with R.C.M. 1102A.

The Discussion following R.C.M. 1107(b)(4) is created as follows:

Commitment of the accused to the custody of the Attorney General for hospitalization is discretionary.

The analysis accompanying R.C.M. 1107(b) is amended by inserting the following at the end thereof:

1996 Amendment: Congress created Article 76b, UCMJ in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996). It gives the convening authority discretion to commit an accused found not guilty only by reason of a lack of mental responsibility to the custody of the Attorney General.

The catch line for R.C.M. 1107(d)(3) is amended as follows:

(3) Deferring service of a sentence to confinement.

R.C.M. 1107(d)(3)(A) is amended to read as follows:

(A) In a case in which a court-martial sentences an accused referred to in subsection (B), below, to confinement, the convening authority may defer service of a sentence to confinement by a court-martial, without the consent of the accused, until after the accused has been permanently released to the armed forces by a state or foreign country.

The analysis accompanying R.C.M. 1107(d) is amended by inserting the following at the end thereof:

1996 Amendment: This new subsection implements the creation of Article 58b, UCMJ in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996). This article permits the convening authority (or other person acting under Article 60) to waive any or all of the forfeitures of pay and allowances forfeited by operation of Article 58b(a) for a period not in excess of six months. Any forfeitures waived shall be paid to the accused's dependent(s) for support.

R.C.M. 1203(c)(1) is amended to read as follows:

(1) Forwarding by the Judge Advocate General to the Court of Appeals for the Armed Forces. The Judge Advocate General may forward the decision of the Court of Criminal Appeals to the Court of Appeals for the Armed Forces for review with respect to any matter of law. In such a case, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals and the order forwarding the case to be served on the accused and on appellate defense counsel. While a review of a forwarded case is pending, the Secretary concerned may defer further service of a sentence to confinement which has been ordered executed in such a case.

The analysis accompanying R.C.M. 1203(c) is amended by inserting the following at the end thereof:

1996 Amendment: The change to the rule implements Congress' creation of Article 57a, UCMJ, contained in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996). A sentence to confinement may be deferred by the Secretary concerned when it has been set aside by a Court of Criminal Appeals and a Judge Advocate General certifies the case to the Court of Appeals for the Armed Forces for further review under Article 67(a)(2). Unless it can be shown that the accused is a flight risk or a potential threat to the community, the accused should be released from confinement pending the appeal. See *Moore* v. *Adkins*, 30 M.J. 249 (C.M.A. 1990).

R.C.M. 1210(a) is amended by adding at the end thereof the following sentence:

A petition for a new trial of the facts may not be submitted on the basis of newly discovered evidence when the petitioner was found guilty of the relevant offense pursuant to a guilty plea.

The analysis accompanying R.C.M. 1210 is amended by adding the following at the end thereof:

1996 Amendment: R.C.M. 1210(a) was amended to clarify its application consistent with interpretations of Fed. R. Crim. P. 33 that newly discovered evidence is never a basis for a new trial of the facts when the accused has pled guilty. See United States v. Lambert, 603 F.2d 808, 809 (10th Cir. 1979); see also United States v. Gordon, 4 F.3d 1567, 1572 n.3 (10th Cir. 1993), cert. denied, 114 S. Ct 1236 (1994); United States v. Collins, 898 F. 2d 103 (9th Cir. 1990)(per curiam); United States v. Prince, 533 F.2d 205 (5th Cir. 1976); Williams v. United States, 290 F.2d 217 (5th Cir. 1961). But see United States v. Brown, 11 U.S.C.M.A. 207, 211, 29 C.M.R. 23, 27 (1960) (per Latimer, J.) (newly discovered evidence could be used to attack guilty plea on appeal in era prior to the guilty plea examination mandated by United States v. Care, 18 U.S.C.M.A. 535, 40 C.M.R. 247 (1969) and R.C.M. 910(e)). Article 73 authorizes a petition for a new trial of the facts when there has been a trial. When there is a guilty plea, there is no trial. See R.C.M. 910(j). Additionally, R.C.M. 1210(f)(2)(C) provides that a new trial may not be granted on the basis of newly discovered evidence unless ''[t]he newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.'' The amendment is made in recognition of the fact that it is difficult, if not impossible, to determine whether newly discovered evidence would have an impact on the trier of fact when there has been no trier of fact and no previous trial of the facts at which other pertinent evidence has been adduced.

Part IV, paragraph 19, is amended to read as follows:

19. Article 95—Resistance, flight, breach of arrest, and escape

a. Text.

''Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement; shall be punished as a court-martial may direct.''

b. Elements.

(1) Resisting apprehension.

(a) That a certain person attempted to apprehend the accused;

(b) That said person was authorized to apprehend the accused; and

(c) That the accused actively resisted the apprehension.

(2) Flight from apprehension.

(a) That a certain person attempted to apprehend the accused;

(b) That said person was authorized to apprehend the accused; and

(c) That the accused fled from the apprehension.

(3) Breaking arrest.

(a) That a certain person ordered the accused into arrest;

(b) That said person was authorized to order the accused into arrest; and

(c) That the accused went beyond the limits of arrest before being released from that arrest by proper authority.

(4) Escape from custody.

(a) That a certain person apprehended the accused;

(b) That said person was authorized to apprehend the accused; and

(c) That the accused freed himself or herself from custody before being released by proper authority.

(5) Escape from confinement.

(a) That a certain person ordered the accused into confinement;

(b) That said person was authorized to order the accused into confinement; and

(c) That the accused freed himself or herself from confinement before being released by proper authority. [Note: If the escape was from post-trial confinement, add the following element]

(d) That the confinement was the result of a court-martial conviction.

c. Explanation.

(1) Resisting apprehension.

(a) Apprehension. Apprehension is the taking of a person into custody. See R.C.M. 302.

(b) Authority to apprehend. See R.C.M. 302(b) concerning who may apprehend. Whether the status of a person authorized that person to apprehend the accused is a question of law to be decided by the military judge. Whether the person who attempted to make an apprehension had such a status is a question of fact to be decided by the factfinder.

(c) Nature of the resistance. The resistance must be active, such as assaulting the person attempting to apprehend. Mere words of opposition, argument, or abuse, and attempts to escape from custody after the apprehension is complete, do not constitute the offense of resisting apprehension although they may constitute other offenses.

(d) Mistake. It is a defense that the accused held a reasonable belief that the person attempting to apprehend did not have authority to do so. However, the accused's belief at the time that no basis exists for the apprehension is not a defense.

(e) Illegal apprehension. A person may not be convicted of resisting apprehension if the attempted apprehension is illegal, but may be convicted of other offenses, such as assault, depending on all the circumstances. An attempted apprehension by a person authorized to apprehend is presumed to be legal in the absence of evidence to the contrary. Ordinarily the legality of an apprehension is a question of law to be decided by the military judge.

(2) Flight from apprehension. The flight must be active, such as running or driving away.

(3) Breaking arrest.

(a) Arrest. There are two types of arrest: pretrial arrest under Article 9 (see R.C.M. 304) and arrest under Article 15 (see paragraph 5c(3), Part V). This article prohibits breaking any arrest.

(b) Authority to order arrest. See R.C.M. 304(b) and paragraphs 2 and 5b, Part V concerning authority to order arrest.

(c) Nature of restraint imposed by arrest. In arrest, the restraint is moral restraint imposed by orders fixing the limits of arrest.

(d) Breaking. Breaking arrest is committed when the person in arrest infringes the limits set by orders. The reason for the infringement is immaterial. For example, innocence of the offense with respect to which an arrest may have been imposed is not a defense.

(e) Illegal arrest. A person may not be convicted of breaking arrest if the arrest is illegal. An arrest ordered by one authorized to do so is presumed to be legal in the absence of some evidence to the contrary. Ordinarily, the legality of an arrest is a question of law to be decided by the military judge.

(4) Escape from custody.

(a) Custody. ''Custody'' is restraint of free locomotion imposed by lawful apprehension. The restraint may be physical or, once there has been a submission to apprehension or a forcible taking into custody, it may consist of control exercised in the presence of the prisoner by official acts or orders. Custody is temporary restraint intended to continue until other restraint (arrest, restriction, confinement) is imposed or the person is released.

(b) Authority to apprehend. See subparagraph (1)(b) above.

(c) Escape. For a discussion of escape, see subparagraph c(4)(c), below.

(d) Illegal custody. A person may not be convicted of this offense if the custody was illegal. An apprehension effected by one authorized to apprehend is presumed to be lawful in the absence of evidence to the contrary. Ordinarily, the legality of an apprehension is a question of law to be decided by the military judge.

(e) Correctional custody. See paragraph 70.

(5) Escape from confinement.

(a) Confinement. Confinement is physical restraint imposed under R.C.M. 305; 1101; or paragraph 5b, Part V. For purposes of the element of post-trial confinement (subparagraph b (5)(d), above) and increased punishment therefor (subparagraph e (4), below), the confinement must have been imposed pursuant to an adjudged sentence of a court-martial and not as a result of pretrial restraint or nonjudicial punishment.

(b) Authority to order confinement. See R.C.M. 304(b); 1101; and paragraphs 2 and 5b, Part V concerning who may order confinement.

(c) Escape. An escape may be either with or without force or artifice, and either with or without the consent of the custodian. However, where a prisoner is released by one with apparent authority to do so, the prisoner may not be convicted of escape from confinement. See also paragraph 20c(1)(b). Any completed casting off of the restraint of confinement, before release by proper authority, is an escape, and lack of effectiveness of the restraint imposed is immaterial. An escape is not complete until the prisoner is momentarily free from the restraint. If the movement toward escape is opposed, or before it is completed, an immediate pursuit follows, there is no escape until opposition is overcome or pursuit is shaken off.

(d) Status when temporarily outside confinement facility. A prisoner who is temporarily escorted outside a confinement facility for a work detail or other reason by a guard, who has both the duty and means to prevent that prisoner from escaping, remains in confinement.

(e) Legality of confinement. A person may not be convicted of escape from confinement if the confinement is illegal. Confinement ordered by one authorized to do so is presumed to be lawful in the absence of evidence to the contrary. Ordinarily, the legality of confinement is a question of law to be decided by the military judge.

d. Lesser included offenses.

(1) Resisting apprehension. Article 128—assault; assault consummated by a battery

(2) Breaking arrest.

(a) Article 134—breaking restriction

(b) Article 80—attempts

(3) Escape from custody. Article 80—attempts

(4) Escape from confinement. Article 80—attempts

e. Maximum punishment.

(1) Resisting apprehension. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) Flight from apprehension. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(3) Breaking arrest. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(4) Escape from custody, pretrial confinement, or confinement on bread and water or diminished rations imposed pursuant to Article 15. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(5) Escape from post-trial confinement. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. Sample specifications.

(1) Resisting apprehension.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 19____, resist being apprehended by _____, (an armed force policeman) (_____), a person authorized to apprehend the accused.

(2) Flight from apprehension.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 199____, flee apprehension by_____ (an armed force policeman) (_____), a person authorized to apprehend the accused.

(3) Breaking arrest.

In that _____ (personal jurisdiction data), having been placed in arrest (in quarters) (in his/her company area) (_____) by a person authorized to order the accused into arrest, did, (at/on board—location) on or about _____ 19____, break said arrest.

(4) Escape from custody.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 19____, escape from the custody of _____, a person authorized to apprehend the accused.

(5) Escape from confinement.

In that _____ (personal jurisdiction data), having been placed in (post-trial) confinement in (place of confinement), by a person authorized to order accused into confinement did, (at/on board _____ location) (subject-matter jurisdiction data, if required), on or about _____ 19____, escape from confinement.

The following analysis is inserted after the analysis to Article 95:

1996 Amendment: Subparagraphs a, b, c and f were amended to implement the amendment to 10 U.S.C. § 895 (Article 95, UCMJ) contained in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996). The amendment proscribes fleeing from apprehension without regard to whether the accused otherwise resisted apprehension. The amendment responds to the U.S. Court of Appeals for the Armed Forces decisions in *United States* v. *Harris*, 29 M.J. 169 (C.M.A. 1989), and *United States* v. *Burgess*, 32 M.J. 446 (C.M.A. 1991). In both cases, the court held that resisting apprehension does not include fleeing from apprehension, contrary to the then-existing explanation in Part IV, paragraph 19b(i), MCM, of the nature of the resistance required for resisting apprehension. The 1951 and 1969 Manuals for Courts-Martial also explained that flight could constitute resisting apprehension under article 95, an interpretation affirmed in the only early military case on point, *United States* v. *Mercer*, 11 C.M.R. 812 (A.F.B.R. 1953).

Flight from apprehension should be expressly deterred and punished under military law. Military personnel are specially trained and routinely expected to submit to lawful authority. Rather than being a merely incidental or reflexive action, flight from apprehension in the context of the armed forces may have a distinct and cognizable impact on military discipline.

Part IV, paragraphs 45.a & b, are amended to read as follows:

45. Article 120—Rape and carnal knowledge

a. Text.

(a) Any person subject to this chapter who commits an act of sexual intercourse by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

(1) who is not his or her spouse; and

(2) who has not attained the age of sixteen years; is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

''(d)(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that the person had at the time of the alleged offense attained the age of sixteen years.

(2) The accused has the burden of proving a defense under paragraph (1) by a preponderance of the evidence.''

b. Elements.

(1) Rape.

(a) That the accused committed an act of sexual intercourse; and;

(b) That the act of sexual intercourse was done by force and without consent.

(2) Carnal knowledge.

(a) That the accused committed an act of sexual intercourse with a certain person;

(b) That the person was not the accused's spouse; and

(c) That at the time of the sexual intercourse the person was under 16 years of age.

The following analysis is inserted after the analysis to Article 120:

1996 Amendment: In enacting the National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104–106 (1996), Congress amended Article 120, UCMJ, to create a mistake of fact defense to a prosecution for carnal knowledge. The accused must prove by a preponderance of the evidence that the person with whom he or she had sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this person was at least 16 years of age.

Part IV, paragraph 45.c.(2), is amended to read as follows:

(2) Carnal knowledge. ''Carnal knowledge'' is sexual intercourse under circumstances not amounting to rape, with a person who is not the accused's spouse and who has not attained the age of 16 years. Any penetration, however slight, is sufficient to complete the offense. It is a defense, however, which the accused must prove by a preponderance of the evidence, that at the time of the act of sexual intercourse, the person with whom the accused committed the act of sexual intercourse was at least 12 years of age, and that the accused reasonably believed that this same person was at least 16 years of age.

c. Part IV, paragraph 54.e.(1), is amended to read as follows:

(1) Simple Assault.

(A) Generally. Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(B) When committed with an unloaded firearm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

The following analysis is inserted after the analysis to Article 128, para. e:

1996 Amendment: A separate maximum punishment for assault with an unloaded firearm was created due to the serious nature of the offense. Threatening a person with an unloaded firearm places the victim of that assault in fear of losing his or her life. Such a traumatic experience is a far greater injury to the victim than that sustained in the course of a typical simple assault and therefore calls for an increased punishment.

ADDRESSES: Comments on the proposed changes should be sent to Maj. Paul Holden, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Washington, D.C. 20310–2200.

DATES: Comments on the proposed changes must be received no later than [insert date of publication +75 days] for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: LT J. Russell McFarlane, JAGC, USNR, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, D.C. 20374–1111; (202) 433–5895.

Dated: April 1, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–8330 Filed 4–3–96; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Submission for OMB Review; Comment Request Entitled Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0053).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Permits, Authorities, or Franchises Certification. A request for public comments was published at 61 FR 3676, February 1, 1996. No comments were received.

DATES: *Comment Due Date:* May 6, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such, Federal Acquisition Policy Division, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes for the first completion, *1* minute for subsequent completions, or an average of *5.7* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,106;* responses per respondent, 3; total annual responses, *3,318;* preparation hours per response, *.094;* and total response burden hours, *312.*

Obtaining Copies of Proposals

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits Authorities, or Franchises Certification, in all correspondence.

Dated: March 28, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–8275 Filed 4–3–96; 8:45 am]

BILLING CODE 6820–EP–P

[OMB Control No. 9000–0054]

Submission for OMB Review; Comment Request Entitled U.S.-Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0054).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S.-Flag Air Carriers Certification. A request for public comments was published at 61 FR 3677, February 1, 1996. No comments were received.

DATES: *Comment Due Date:* May 6, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0054, U.S.-Flag Air Carriers Certification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such, Federal Acquisition Policy Division, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government