



DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2025-OS-0008]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of proposed changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces proposed changes to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces. Although these rules of practice and procedure fall within the Administrative Procedure Act's exemptions for notice and comment, the Department, as a matter of policy, has decided to make these changes available for public review and comment before they are implemented.

DATES: Comments on the proposed changes must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by docket number and title by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Squires, Jr., Clerk of the Court, telephone (202) 761-1448.

SUPPLEMENTARY INFORMATION: This notice announces the following proposed changes to Rules 19, 21(b), 21A(c), 24, 26(f), 36(b), 37 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

Dated: March 7, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Rule 19:

Rule 19 – Time Limits – currently reads:

(a) Petition for Grant of Review / Supplement / Answer / Reply:

(5) Filing of Petitions.

(C) *Grostefon* Issues. Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), if not raised earlier, may be presented to the Court by motion filed pursuant to Rule 30(a) no later than thirty days following the filing of the supplement to the petition.

(b) Certificate for Review / Brief / Answer / Reply:

(3) Other Cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General must be filed either: (a) no later than sixty days after the date of the Court of Criminal Appeals' decision (*see* Rules 22, 34(a)); or (b) no later than thirty days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), an appellant's brief must be filed in accordance with Rule 24 no later than thirty days after the Clerk issues a notice that the certificate for review was docketed. An appellee's answer must be filed no later than thirty days after an appellant's brief is filed. The appellant may file a reply no later than fourteen days after the appellee's answer is filed.

(f) Petition for New Trial. When a petition for new trial is filed with the Court in a case pending before the Court, a brief in support thereof, unless expressly incorporated in the petition, must be filed no later than thirty days after the Clerk issues a notice that the petition was filed. The appellee may file an answer no later than thirty days after the appellant's brief is filed. The appellant may file a reply no later than fourteen days after the appellee's answer is filed. *See* Rule 29.

The proposed change to Rule 19 would read:

(a) Petition for Grant of Review / Supplement / Answer / Reply:

(5) Filing of Petitions.

(C) *Grostefon* Issues. Issues raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), if not raised earlier, may be presented to the Court by motion filed pursuant to Rule 30(a) no later than twenty-eight days following the filing of the supplement to the petition.

(b) Certificate for Review / Brief / Answer / Reply:

(3) Other Cases. In all other cases involving a decision by a Court of Criminal Appeals, a certificate for review filed by the Judge Advocate General must be filed either: (a) no later than sixty days after the date of the Court of Criminal Appeals' decision (*see*

Rules 22, 34(a)); or (b) no later than thirty days after a petition for grant of review is granted. In cases that involve both granted and certified issues, the Clerk may establish a consolidated briefing schedule for all issues. In cases that involve only certified issue(s), an appellant's brief must be filed in accordance with Rule 24 no later than twenty-eight days after the Clerk issues a notice that the certificate for review was docketed. An appellee's answer must be filed no later than twenty-eight days after an appellant's brief is filed. The appellant may file a reply no later than fourteen days after the appellee's answer is filed.

(f) **Petition for New Trial.** When a petition for new trial is filed with the Court in a case pending before the Court, a brief in support thereof, unless expressly incorporated in the petition, must be filed no later than twenty-eight days after the Clerk issues a notice that the petition was filed. The appellee may file an answer no later than twenty-eight days after the appellant's brief is filed. The appellant may file a reply no later than fourteen days after the appellee's answer is filed. *See* Rule 29.

Comment: Instances of a thirty-day time scheme have been changed to adhere to the twenty-eight-day time scheme found throughout the rest of the Rules.

Rule 21(b):

Rule 21(b) – Supplement to Petition for Grant of Review – currently reads:

(b) The supplement to the petition must be filed in accordance with the applicable time limit set forth in Rule 19(a)(5), must include an Appendix containing an official copy of the decision of the Court of Criminal Appeals, and must conform to the provisions of Rules 35A and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto may not exceed 9,000 words. Any reply to the answer may not exceed 4,500 words. The supplement must contain:

(5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition must indicate whether the court below has:

(D) decided the validity of a provision of the UCMJ or other act of Congress, the *Manual for Courts-Martial, United States*, a service regulation, a rule of court or a custom of the service the validity of which was directly drawn into question in that court;

(6) A supplement submitted under this Rule must include a certificate stating that the number of words in the supplement complies with the applicable type-volume limitations of this Rule and Rule 37. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the supplement. The certificate must state the number of words in the supplement. Headings, footnotes, and quotations

count toward the word limitation. The index, table of cases, statutes, and other relevant authorities, the appendix and any certificates of counsel do not count toward the limitation

The proposed change to Rule 21(b) would read:

(b) The supplement to the petition must be filed in accordance with the applicable time limit set forth in Rule 19(a)(5), must include an Appendix containing an official copy of the decision of the Court of Criminal Appeals, and must conform to the provisions of Rules 35A and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto may not exceed 9,000 words. Any reply to the answer may not exceed 4,500 words. The supplement must contain:

(5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition must indicate whether the court below has:

(D) decided the validity of a provision of the Constitution, the UCMJ or other act of Congress, the *Manual for Courts-Martial, United States*, a service regulation, a rule of court or a custom of the service the validity of which was directly drawn into question in that court;

(6) A supplement submitted under this Rule must include a certificate stating that the number of words in the supplement complies with the applicable type-volume limitations of this Rule and Rule 37. Headings, footnotes, and quotations count toward the word limitation. The index, table of cases, statutes, and other relevant authorities, the appendix and any certificates of counsel do not count toward the limitation

Comment: “the Constitution” has been added to subsection (D), and the text that discusses the word count in Rule 21(b)(6) has been removed and placed in a new subsection of Rule 37, which stipulates style requirements.

Rules 21A(c):

Rule 21A(c) – Submissions under United States v. Grostefon – currently reads:

(c) *Grostefon* issues raised within thirty days of the filing of the supplement under Rule 19(a)(5)(C) are subject to and included within the fifteen-page limit in Rule 21A(a). An appellee’s answer to *Grostefon* issues may be filed no later than twenty days after the filing of such issues.

The proposed change to Rule 21A(c) would read:

(c) *Grostefon* issues raised within twenty-eight days of the filing of the supplement under Rule 19(a)(5)(C) are subject to and included within the fifteen-page limit in Rule 21A(a). An appellee's answer to *Grostefon* issues may be filed no later than twenty-one days after the filing of such issues.

Comment: Instances of a thirty-day time scheme and a twenty-day time scheme have been changed to adhere to the twenty-eight-day and twenty-one-day time scheme found throughout the rest of the Rules.

Rule 24:

Rule 24 – Form, Content, and Type-Volume Limitations – currently reads:

(a) Form and Content. All briefs will conform to the printing, copying, and style requirements of Rule 37, be legible, and be substantially as follows:

Relevant Authorities

[The constitutional provisions, treaties, statutes, rules, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in an appendix to the brief.]

(c) Certificate of Compliance. A brief submitted under Rule 24(b) must include a certificate stating that the number of words in the brief complies with the applicable type-volume limitations of this Rule and Rule 37. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief.

The proposed change to Rule 24 would read:

(a) Form and Content. All briefs will conform to the printing, copying, and style requirements of Rule 37, be legible, and be substantially as follows:

Relevant Authorities

[The constitutional provisions, treaties, statutes, rules, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. Alternatively, if a citation of the provision alone suffices at this point, the provision's pertinent text may be subsequently set out in an appendix to the brief. All citations must adhere to the specifications set forth in Rule 36B.]

(c) Certificate of Compliance. A brief submitted under Rule 24(b) must include a certificate stating that the number of words in the brief complies with the applicable type-volume limitations of this Rule and Rule 37.

Comment: The “Relevant Authorities” section of Rule 24(a) has been revised to remove confusion of what constitutes “lengthy” and when an appendix for relevant authorities may be added to the brief. A cross reference to Rule 36B has been added to the end of the finalized version of the “Relevant Authorities” section to ensure that references to the UCMJ cite the relevant version of the statute, rule, or other provision, by date. The text that discusses the word count in Rule 24(c) has been removed and placed in a new subsection of Rule 37, which stipulates style requirements.

Rule 26(f):

Rule 26(f) – Amicus Curiae Briefs– currently reads:

(f) Except for good cause shown, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief of an appellant/petitioner. If the Court grants a party permission to file a longer brief, that does not affect the maximum length of an amicus curiae brief.

The proposed change to Rule 26(f) would read:

(f) Except for good cause shown, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief of an appellant/petitioner. If the Court grants a party permission to file a longer brief, that does not affect the maximum length of an amicus curiae brief. A brief submitted under this Rule must include a certificate stating that the number of words in the brief complies with the applicable type-volume limitations of this Rule and Rule 37.

Comment: Language incorporating the new subsection, Rule 37(d), which discusses word count, has been added to this Rule for amicus curiae briefs.

Rule 36(b):

Rule 36(b) – Filing of Pleadings – currently reads:

(b) Electronic Filing

(1) If the petition for grant of review and the supplement to the petition for grant of review are filed electronically, an appendix to the supplement (containing the decision of the Court of Criminal Appeals, matters submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and other required matter) must also be filed electronically. Record matters in the form of video media on CD-ROM or DVD may be submitted in a separate volume of the appendix that is filed in accordance with Rule 21(b).

(2) The joint appendix to the brief, to include copies, must be filed both in paper form and must also be filed electronically. *See* Rule 24. Audio and video recordings are exempt from this paper requirement for the joint appendix to the brief. If the appellant or petitioner files the brief electronically, the joint appendix must be filed on the same day the brief is filed.

The proposed changes to Rule 36(b) would read:

(b) Electronic Filing

(1) If the petition for grant of review and the supplement to the petition for grant of review are filed electronically, an appendix to the supplement (containing the decision of the Court of Criminal Appeals, matters submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and other required matter) must also be filed electronically.

(2) The joint appendix to the brief must be filed in paper form and must also be filed electronically. *See* Rule 24. Record matters in the form of video and audio media on CD-ROM or DVD shall be submitted in a separate volume of the appendix that is filed in accordance with Rule 21(b). If the appellant or petitioner files the brief electronically, the joint appendix must be filed on the same day the brief is filed.

Comment: The sentence regarding “record matters” in 36(b)(1) is better placed in 36(b)(2). The sentence stating the exemption for CDs or DVDs in Rule 36(b)(2) seems unnecessary and has been deleted.

Rule 37:

Rule 37 – Printing, Copying, and Style Requirements – currently reads:

(c) Style.

(1) All pleadings that consist of ten or more pages must be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), statutes, and other authorities cited, referencing the pages cited.

(2) Citations must conform with *The Bluebook: A Uniform System of Citation*.

(3) All references to the record of trial must include page numbers or exhibit designations, as appropriate.

(4) No pleading or other paper filed with the Court may incorporate by reference any material from any other source.

The proposed change to Rule 37 would read:

(c) Style.

(1) All pleadings that consist of ten or more pages must be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), statutes, and other authorities cited, referencing the pages cited.

(2) Citations must conform with *The Bluebook: A Uniform System of Citation*.

(3) All references to the record of trial must include page numbers or exhibit designations, as appropriate.

(4) No pleading or other paper filed with the Court may incorporate by reference any material from any other source.

(d) Word Count. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the pleading. The certificate must state the number of words in the pleading.

Comment: A new subsection of Rule 37, 37(d), has been added to discuss word count requirements.