



PRACTICE ADVISORY

Documenting Deferment Requests on the Post-Trial Action Form

This Practice Advisory will address the completion of the Post-Trial Action Form blocks 11 through 15. . These blocks pose a series of “Yes or No” questions directed at recording defense submission of a request for deferment or waiver for the convening authority’s consideration. The questions fall under the heading “Post-Trial Matters to Consider” and are phrased as follows:

11. Has the accused made a request for deferment of reduction in grade?	Yes	No
12. Has the accused made a request for deferment of confinement?	Yes	No
13. Has the accused made a request for deferment of adjudged forfeitures?	Yes	No
14. Has the accused made a request for deferment of automatic forfeitures?	Yes	No
15. Has the accused made a request for waiver of automatic forfeitures?	Yes	No

It is clear that independent requests from defense counsel made pursuant to RCM 1103 require the marking of “Yes.” The Military Justice Branch (JMJ) has received questions regarding whether to mark “Yes” to reflect deferment and waiver provisions in plea agreements. Put another way, do the deferment or waiver provisions of a plea agreement count as “requests” as contemplated in blocks 11-15? The form itself does not provide specific directions on this point. JMJ has coordinated with OJAG, Code 20, and the trial judiciary to develop the below guidance.

Blocks 11-15 are to be marked “Yes” regardless of whether the deferment or waiver request was submitted as a plea agreement provision or in the form of a separate letter. After blocks 11-15 are marked appropriately, a comment will be added to block 23 of the Post-Trial Action Form to explain which type of request was submitted.

For example: parties to a plea agreement might agree that any adjudged reduction will be suspended and include the following language, “This agreement constitutes my request for, and the convening authority’s approval of, deferment of that adjudged reduction which is to be suspended pursuant to the terms of this agreement and would otherwise become effective under Article 57(a)(1), UCMJ.” In such a case, block 11 of the Post-Trial Action Form will be marked “Yes” to reflect the request contained in the plea agreement. Block 23 will contain language stating “deferment of reduction in grade granted pursuant to request contained in plea agreement.”

Points of Contact

Questions about the contents of this Practice Advisory may be directed to the JMJ Deputy Branch Head at (703) 859-5372, or JMJ Post-Trial Chief at (703) 693-8909.