

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Benidxen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: August 8, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 03-20918 Filed 8-14-03; 8:45 am]

**BILLING CODE 3510-22-S**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

#### Establishment of the Defense Advisory Board for Employer Support of the Guard and Reserve

**AGENCY:** Department of Defense.

**ACTION:** Notice of establishment.

**SUMMARY:** The Defense Advisory Board for Employer Support of the Guard and Reserve (ESGR) is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92-463, the "Federal Advisory Committee Act," title 5 U.S.C., Appendix 2. The ESGR will provide advice to the Secretary of Defense about issues concerning Reservists and their civilian employers, to include recommending policies and priorities for employer support actions and programs.

The board will be composed of a national cross-section of industry, public and private sector leaders whose understanding of employer issues, as they are affected by employee membership in the guard and reserve, will serve as a foundation for providing input and recommendations to the Secretary of Defense on guard and reserve employment issues of public and private employers.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Michael E. Naylon, 703-696-1386.

Dated: August 11, 2003.

**Patricia Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-20868 Filed 8-14-03; 8:45 am]

**BILLING CODE 5001-08-M**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Manual for Courts-Martial; Proposed Amendments

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

**ACTION:** Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2002 ed.) and Notice of Public Meeting.

**SUMMARY:** The Department of Defense is considering recommending changes to the *Manual for Courts-Martial, United States* (2002 ed.) (MCM). The proposed changes constitute the 2003 annual review required by the MCM and DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These 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 also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003. 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 person.

In accordance with paragraph III.B.4 of the Internal Organization and Operating Procedures of the JSC, the committee also invites members of the

public to suggest changes to the Manual for Courts-Martial in accordance with the described format.

**DATES:** Comments on the proposed changes must be received no later than October 31, 2003 to be assured consideration by the JSC. A public meeting will be held on October 1, 2003 at 11 a.m. in Room 808, 1501 Wilson Boulevard, Rosslyn, VA 22209-2403.

**ADDRESSES:** Comments on the proposed changes should be sent to Lieutenant Commander James Carsten, Office of the Judge Advocate General, 716 Sicard St. SE., Suite 1000, Washington, DC 20374-5047.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander James Carsten, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, 716 Sicard St. SE., Suite 1000, Washington, DC 20374-5047, (202) 685-7298, (202) 685-7687 fax.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to the MCM are as follows:

Amend the Discussion section of Part I (Preamble) by twice replacing the word "Transportation" with the words "Homeland Security."

Amend Discussion section following R.C.M. 103(19), Definition for 10 U.S.C. 801(1) by replacing the phrase "the General Counsel of the Department of Transportation" with the phrase "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security."

[Note: The Secretary of Homeland Security has designated the Chief Counsel, U.S. Coast Guard, to serve as the Judge Advocate General of the Coast Guard.]

Amend R.C.M. 201(e)(2)(B) by adding the word "general" before "courts-martial" and inserting the following at the end thereof:

"assigned or attached to a combatant command or joint command."

Amend R.C.M. 201(e)(2)(C), inserting the phrase "assigned or attached to a joint command or joint task force," immediately before the words "under regulations which the superior command may prescribe."

Amend the Analysis accompanying R.C.M. 201(e)(2) by inserting the following paragraph:

"200 Amendment: Subsections (e)(2)(B) and (C) were revised to clarify that the reciprocal jurisdiction authority of joint commanders designated in either subsections (A), (B), or (C), is limited. This limitation is intended to preclude a joint commander from convening courts upon members who are not assigned or attached to a joint command."

Amend R.C.M. 201(e)(3) by inserting the following immediately after the words "armed force":

"using the implementing regulations and procedures prescribed by the Secretary concerned of the military service of the accused,"

Amend the Analysis accompanying R.C.M. 201(e)(3) by inserting the following paragraph:

"200\_\_Amendment: This rule clarifies that when a service member is tried by a court-martial convened by a combatant or joint commander, the implementing regulations and procedures of the service to which the accused is a member shall apply."

Amend R.C.M. 201(e)(4) by adding the words "member, or counsel" after the words "military judge."

Amend the Analysis accompanying R.C.M. 201(e)(4) by inserting the following paragraph:

"200\_\_Amendment: Subsection (e)(4) was amended to clarify that members and counsel from different services may be detailed to a court-martial convened by a combatant or joint commander."

Amend the Discussion following R.C.M. 201(e)(7)(B) by adding this sentence to the beginning of the Discussion:

"As to the authority to convene courts-martial, see R.C.M. 504."

Amend R.C.M. 503(a)(3) by inserting an "s" to the word "court" of the term "court-martial."

Amend R.C.M. 503(b)(3) by inserting "a combatant command or joint command" after the words "A military judge from one armed force may be detailed to a court-martial convened in a different armed force".

Amend the Analysis accompanying R.C.M. 503(b)(3) by inserting the following paragraph:

"200\_\_Amendment: Subsection (b)(3) was amended to clarify that a military judge from any service may be detailed to a court-martial convened by a combatant or joint commander."

Amend R.C.M. 503(c)(3) by inserting the phrase "a combatant command or joint command" after the words "A person from one armed force may be detailed to serve as counsel in a court-martial in a different armed force".

Amend the Analysis accompanying R.C.M. 503(c)(3) by inserting the following:

"200\_\_Amendment: Subsection (c)(3) was amended to clarify that counsel from any service may be detailed to a court-martial convened by a combatant or joint commander."

Amend R.C.M. 504(b)(2)(A) by inserting the following at the end thereof:

"A subordinate joint command or joint task force is ordinarily considered to be 'separate or detached.'"

Amend R.C.M. 504(b)(2)(B) by inserting the following as a third element thereof:

"(iii) In a combatant command or joint command, by the officer exercising general court-martial jurisdiction over the command."

Amend the Analysis accompanying R.C.M. 504(b)(2)(B) by inserting the following paragraph:

"200\_\_Amendment: Subsection (b)(2)(B) was amended to clarify those authorized to determine when a unit is 'separate or detached.'"

Amend R.C.M. 912(f)(4) by deleting the entirety of the fifth sentence and inserting the following words immediately after the words "When a challenge for cause has been denied" in the fourth sentence:

"the successful use of a peremptory challenge by either party, excusing the challenged member from further participation in the court-martial, shall preclude further consideration of the challenge of that excused member upon later review. Further,"

Amend the Analysis to R.C.M. 912(f)(4) by inserting the following paragraph:

"200\_\_Amendment: This rule change is intended to conform military practice to federal practice and limit appellate litigation when the challenged panel member could have been peremptorily challenged or actually did not participate in the trial due to a peremptory challenge by either party. This amendment is consistent with the President's lawful authority to promulgate a rule that would result in placing before the accused the hard choice faced by defendants in federal district courts—to let the challenged juror sit on the case and challenge the ruling on appeal or to use a peremptory challenge to remove the juror and ensure an impartial jury. See *United States v. Miles*, 58 M.J. 192 (C.A.A.F. 2003); *United States v. Wiesen*, 56 M.J. 172 (C.A.A.F. 2001), petition for reconsideration denied, 57 M.J. 48 (C.A.A.F. 2002); *United States v. Armstrong*, 54 M.J. 51 (C.A.A.F. 2000).

Amend R.C.M. 1004(c)(10) by deleting the words "death is authorized under the law of war for the offense" and replacing with the words "the violation constitutes a grave breach of the law of war."

Insert the following Discussion to accompany R.C.M. 1004(c)(10):

"Grave breaches of the laws and customs of war are defined by the 1949 Geneva Conventions and customary

international law. For the definition of what may constitute a grave breach see The First Geneva Convention, Aug. 12, 1949, art. 50, 6 U.S.T. 3114, T.I.A.S. 3362; The Second Geneva Convention, Aug. 12, 1949, art. 51, 6 U.S.T. 3217, T.I.A.S. 3363; The Third Geneva Convention, Aug. 12, 1949, art. 130, 6 U.S.T. 3316, T.I.A.S. 3364; and The Fourth Geneva Convention, Aug. 12, 1949, art. 147, 6 U.S.T. 3516, T.I.A.S. 3365."

Amend the Analysis accompanying R.C.M. 1004(c)(10) by inserting the following paragraph:

"200\_\_Amendment: Subsection (c)(10) was amended to clarify which law of war violations may subject the accused to capital punishment."

Amend R.C.M. 1301(a) by inserting the following after the second sentence:

"Summary courts-martial shall be conducted in accordance with the regulations of the military service to which the accused belongs."

Amend the Analysis accompanying R.C.M. 1301(a) by inserting the following paragraph:

"200\_\_Amendment: Subsection (a) was amended to clarify that summary courts-martial convened by a combatant or joint commander are to be conducted in accordance with the implementing regulations and procedures of the service to which the accused is a member."

Amend M.R.E. 317(b) replacing the word "Transportation" with the words "Homeland Security."

Amend the Analysis to M.R.E. 317(b) by replacing the word "Transportation" with the words "Homeland Security."

Amend the Analysis to M.R.E. 801(d)(1)(B) by substituting the following therefor:

"Rule 801(d)(1)(B) makes admissible on the merits a statement consistent with the in-court testimony of the witness and 'offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.' Unlike Rule 801(d)(1)(A), which addresses prior inconsistent statements given under oath, the earlier consistent statement need not have been made under oath or at any type of proceeding.

Rule 801(d)(1)(B) provides in pertinent part that a statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive. The court has interpreted the rule to require that a prior statement,

admitted as substantive evidence, precede any motive to fabricate or improper influence that it is offered to rebut. *United States v. Allison*, 49 M.J. 54 (C.A.A.F. 1998). Where multiple motives to fabricate or multiple improper influences are asserted, the statement need not precede all such motives or inferences, but only the one it is offered to rebut. *United States v. Faison*, 49 M.J. 59 (C.A.A.F. 1998). This interpretation of the rule is consistent with the Supreme Court's decision in *Tome v. United States*, 513 U.S. 150 (1995)."

Delete the Analysis to M.R.E. 803(24).  
Delete the Analysis to M.R.E. 804(b)(5).

Insert the following Analysis for M.R.E. 807:

"MRE 807 was adopted on 30 May 1998 without change from the Federal Rule and represents the residual exception to the hearsay rule formerly contained in MRE 803(24) and MRE 804(b)(5).

"The Rule strikes a balance between the general policy behind the Rules of Evidence of permitting admission of probative and reliable evidence and the congressional intent that 'that the residual hearsay exceptions will be used very rarely, and only in exceptional circumstances.' S. Rep. No. 1277, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 7051, 7066. MRE 807 represents the acceptance of the so-called 'catch-all' or 'residual' exception to the hearsay rule. Because of the Constitutional concerns associated with hearsay statements, the courts have placed specific foundational requirements in order for residual hearsay to be admitted. See *United States v. Haner*, 49 M.J. 72 (C.A.A.F. 1998). These requirements are: necessity, materiality, reliability, and notice.

"The necessity prong 'essentially creates a "best evidence" requirement.' *United States v. Kelley*, 45 M.J. 275 (C.A.A.F. 1996) (citing *Larez v. City of Los Angeles*, 946 F.2d 630, 644 (9th Cir. 1991)). Coupled with the rule's materiality requirement, necessity represents an important fact that is more than marginal or inconsequential and is in furtherance of the interests of justice and the general purposes of the rules of evidence. See *United States v. Gonzalez*, 2003 CCA Lexis 57 (A.F.Ct.Crim.App. 2003).

"In order to fulfill the reliability condition, the proponent of the statement must demonstrate that the statement has particularized guarantees of trustworthiness as shown from the totality of the circumstances. *Idaho v. Wright*, 497 U.S. 805 (1990). The factors

surrounding the taking of the statement and corroboration by other evidence should be examined to test the statement for trustworthiness. The Court of Appeals for the Armed Forces has held that the Supreme Court's prohibition against bolstering the indicia of reliability under a Sixth Amendment analysis does not apply to a residual hearsay analysis. Therefore, in addition to evidence of the circumstances surrounding the taking of the statement, extrinsic evidence can be considered. *United States v. McGrath*, 39 M.J. 158 (C.M.A. 1994)."

Amend Part IV, Punitive Articles, para. 16(c)(1)(a) by replacing the word "Transportation" with the words "Homeland Security."

Amend Part V, Nonjudicial Punishment Procedure, paragraph 1(h), by renaming existing paragraph 1(h) to 1(i) and inserting the following new paragraph 1(h):

(h) "Applicable standards. Unless otherwise provided, the service regulations and procedures of the servicemember shall apply."

Amend the Analysis section of Part V, Nonjudicial Punishment Procedure, paragraph 1(h), by renaming it paragraph 1(i) and inserting the following as paragraph 1(h):

"200 Amendment: Subsection (h) is new. This subsection was added to clarify that nonjudicial punishment proceedings conducted in a combatant or joint command are to be conducted in accordance with the implementing regulations and procedures of the service to which the accused is a member."

Amend Part V, Nonjudicial Punishment Procedure, paragraph 2(a) by deleting "Unless otherwise" and replacing with "As."

Amend Part V, Nonjudicial Punishment Procedure, paragraph 2(a) by inserting the following after the second sentence:

"Commander includes a commander of a joint command."

Amend Part V, Nonjudicial Punishment Procedure, paragraph 2(a) by inserting the phrase "of a commander" in the third sentence after the words "the authority."

Amend the Analysis accompanying Part V, Nonjudicial Punishment Procedure, paragraph 2 by inserting the following paragraph:

"200 Amendment: Subsection (2) was amended to clarify the authority of the commander of a joint command to impose nonjudicial punishment upon service members of the joint command."

Amend Part V, Nonjudicial Punishment Procedures, paragraph 7(e),

by replacing the word "Transportation" with the words "Homeland Security."

Delete Appendix 3.1.

Amend Appendix 21, Introduction, paragraph b (Supplementary Materials) by replacing the word "Transportation" with the words "Homeland Security."

Amend the Introduction to Appendix 22 by inserting the following at the end of the first sentence:

"(the department under which the Coast Guard was operating at that time.)"

Amend the Introduction to Appendix 22 by replacing the word "Transportation" located at the second paragraph with the words "Homeland Security."

Dated: August 11, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-20870 Filed 8-14-03; 8:45 am]

**BILLING CODE 5001-08-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### List of Institutions of Higher Education Ineligible for Federal Funds

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prohibits or in effect prevents military recruiter access to the campus, students on campus, or student directory information. It also implements the requirements set forth in section 983 of title 10, United States Code, and 32 CFR part 216. The institution of higher education so identified is: William Mitchell College of Law, St. Paul, Minnesota.

**ADDRESSES:** Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301-4000.

**FOR FURTHER INFORMATION CONTACT:** Major Brenda K. Leong, (703) 695-5529.

Dated: August 11, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**BILLING CODE 5001-08-M**