

entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published Final Procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256) ("procedures").

On August 5, 2008, the Chairman of CITA received a Request for a commercial availability determination ("Request") under the CAFTA-DR from Sandler, Travis & Rosenberg, P.A., on behalf of Badger Sportswear Inc., for certain three-yarn circular stretch knit fleece fabrics. On August 7, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by August 19, 2008, and any Rebuttal be submitted by August 25, 2008. On August 19, 2008, CITA advised interested parties that it would extend its deadlines, such that Responses would be due by August 20, 2008, and that Rebuttals would be due by August 26, 2008.

CITA received a Response from Elasticos Centroamericanos y Textiles ("Elcatex") objecting to the Request and offering to supply a substitute for the subject product. Badger submitted a Rebuttal to Elcatex's Response, arguing that Elcatex had failed to demonstrate that its proposed fabric was an acceptable substitute for the subject product. Because there was insufficient information on the record of the proceeding to make a determination whether the fabric proposed by Elcatex was an acceptable substitute, on August 28, 2008, the Chairman of CITA issued supplemental questions to both Elcatex and Badger regarding the proposed fabric. Submissions from Elcatex and Badger were received on September 2, 2008.

Section 203(o)(4)(C)(ii) of the CAFTA-DR Act provides that after receiving a Request, a determination will be made as to whether the subject product is available in commercial quantities in a timely manner in the CAFTA-DR countries. In the instant case, the information on the record clearly indicates that Badger made significant efforts to source the fabric in the CAFTA-DR countries, including from Elcatex, and that Elcatex has not

demonstrated that it can supply either the specified fabric or an acceptable substitute. Therefore, in accordance with section 203(o) of the CAFTA-DR Act, and CITA's procedures, as CITA has determined that the subject product is not available in commercial quantities in a timely manner, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA-DR Agreement.

CITA notes that in accordance with section 203(o)(4) of the CAFTA-DR Act, Article 3.25 of the CAFTA-DR Agreement, and section 9 of its procedures, six months after CITA's determination that a product is not commercially available in the CAFTA-DR countries, a CAFTA-DR supplier may submit a Request to Remove or Restrict a specific fabric that had been added to the Commercial Availability List in Annex 3.25. The supplier may request that the product be removed, but must provide the same substantive information as required of Responses, as provided in section 6 of CITA's procedures. Should CITA determine that the product is available in commercial quantities in a timely manner in the CAFTA-DR countries, e.g. that a CAFTA-DR supplier has demonstrated that it is capable to supply the subject product, that product will be removed from the Commercial Availability List in Annex 3.25.

The subject fabric has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability.

Specifications:

Three-Yarn Circular Stretch Knit Fleece

HTS: 6001.21.00

Description: Three yarn circular knit stretch fleece fabric, 20 gauge

Face Yarn:

Fiber Content:

60% ring spun cotton/40% polyester

Average Yarn Number:

Metric - 51/1
English - 30/1

Tie Yarn:

Fiber Content:

60% ring spun cotton/40% polyester

Average Yarn Number:

Metric - 51/1
English - 30/1

Nap (Fleece) Yarn:

Fiber Content:

52% ring spun cotton/48% polyester

Average Yarn Number:

Metric - 17/1
English - 10/1

NOTE: Yarn sizes relate to size prior to texturizing.

Weight:

Metric - 305-330 grams per sq. m.

English - 9.0-9.8 oz. per sq. yd.

Width: Slit open and finished to:

Metric - 156-163 cm

English - 62-64 inches

Finish: Bleached and/or piece dyed. Napped on technical back.

NOTE: All physical parameters may vary by plus/minus 5%. Fiber content may vary by plus/minus 3%.

Performance Characteristics:

Shrinkage: 6% maximum shrinkage (length and width); 1% positive shrinkage (AATCC No. 135).

Torque/Spirality: Maximum 5 degrees left or right (protractor method).

Stretch: Minimum 20% stretch in length, 30% in width.

Pilling: Grade 4 or better on technical face (ASTM D3512 Random Tumble Method)

Color Fastness to laundering: Grade 4 or better on polyester and cotton portions of multifiber strip (AATCC 61 Test No. 2A)

Color Fastness to wear: Grade 4 or better (AATCC 107)

Color Fastness to heat: Grade 4 or better on white polyester fabric (AATCC 117 Test Temperature II)

Color Fastness to crocking: Grade 4 or better dry; Grade 3 or better wet technical face side (AATCC 8)

Flammability: Class 1

Appearance: No obvious wale pattern (must be smooth); soft finish

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2008-OS-0112]

Manual for Courts-Martial; Proposed Amendments

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

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2008 ed.) and Notice of Public Meeting.

SUMMARY: The Department of Defense is considering recommending changes to the *Manual for Courts-Martial, United States* (2008 ed.) (MCM). The proposed changes constitute the 2008 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, Processing and

Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony," June 15, 2007, 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 November 18, 2008, to be assured consideration by the JSC. A public meeting for comments will be held on October 30, 2008, at 10 a.m. in the 14th Floor Conference Room, 1777 N. Kent St., Rosslyn, VA 22209-2194.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

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 any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel Thomas E. Wand, Executive Secretary, Joint Service Committee on Military Justice, Air Force Legal Operations Agency, Military Justice Division, 112 Luke Avenue, Suite 343, Bolling Air Force Base, DC 20032, (202) 767-1539, e-mail Thomas.wand@pentagon.af.mil.

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

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 1003 is amended to read as follows:

"(3) *Fine.* Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. In the case of a member of the armed forces, summary and special courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In the case of a person serving with or accompanying an armed force in the field, a summary court-martial may not adjudge a fine in excess of two-thirds of one month of the highest rate of enlisted pay, and a special court-martial may not adjudge a fine in excess of two-thirds of one year of the highest rate of officer pay. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial."

(b) R.C.M. 1003(c) is amended by renumbering subparagraph (4) as subparagraph (5) and adding a new subparagraph (4) as follows:

"(4) *Based on status as a person serving with or accompanying an armed force in the field.* In the case of a person serving with or accompanying an armed force in the field, no court-martial may adjudge forfeiture of pay and allowances, reduction in pay grade, hard labor without confinement, or a punitive separation."

(c) R.C.M. 1106(d) is amended to read as follows:

"(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) *Form.* The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) *Required contents.* The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any, any recommendation for clemency by the sentencing authority made in conjunction with the announced sentence, and the staff judge advocate's concise recommendation.

(4) *Legal errors.* The staff judge advocate or legal officer is not required to examine the record for legal errors. However, when the recommendation is prepared by a staff judge advocate, the staff judge advocate shall state whether, in the staff judge advocate's opinion, corrective action on the findings or sentence should be taken when an allegation of legal error is raised in matters submitted under R.C.M. 1105 or when otherwise deemed appropriate by the staff judge advocate. The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the staff judge advocate's statement, if any, concerning legal error is not required.

(5) *Optional matters.* The recommendation of the staff judge advocate or legal officer may include, in addition to matters included under subsection (d)(3) and (4) of this rule, any additional matters deemed appropriate by the staff judge advocate or legal officer. Such matter may include matters outside the record.

(6) *Effect of error.* In case of error in the recommendation not otherwise waived under subsection (f)(6) of this rule, appropriate corrective action shall be taken by appellate authorities without returning the case for further action by a convening authority."

(d) R.C.M. 1113(d)(2)(A)(iii) is amended to read as follows:

"(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57a(b)(1), has postponed the service of a sentence to confinement."

(e) R.C.M. 1113(d)(2)(C) is amended by deleting the last two sentences, and replacing them with the following:

"No member of the armed forces, or person serving with or accompanying an armed force in the field, may be placed in confinement in immediate association with enemy prisoners or with other foreign nationals not subject to the code. The Secretary concerned may prescribe regulations governing the place and conditions of confinement."

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 32, Article 108, Military Property of the United States—sale, loss, damage, destruction, or wrongful disposition, paragraph c.(1) is amended to read as follows:

“(1) *Military Property*. Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, all government property is not military property. An item of government property is not military property unless the item in question meets the definition provided above. It is immaterial whether the property sold, disposed, destroyed, lost, or damaged had been issued to the accused, to someone else, or even issued at all. If it is proved by either direct or circumstantial evidence that items of individual issue were issued to the accused, it may be inferred, depending on all the evidence, that the damage, destruction, or loss proved was due to the neglect of the accused. Retail merchandise of service exchange stores is not military property under this article.”

(b) Paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d) is amended to read as follows:

“(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson.”

(c) Paragraph 46, Larceny and wrongful appropriation, the Note following paragraph b.(1)(d) is amended to read as follows:

“[**Note:** If the property is alleged to be military property, as defined in paragraph 46.c.(1)(h), add the following element]”

(d) Paragraph 46, Larceny and wrongful appropriation, is amended by re-lettering paragraph 46.c.(1)(h) as paragraph 46.c.(1)(i), and adding a new paragraph 46.c.(1)(h) as follows:

“(h) *Military Property*. Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States.

Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, all government property is not military property. An item of government property is not military property unless the item in question meets the definition provided above. Retail merchandise of service exchange stores is not military property under this article.”

(e) Paragraph 68b. is added as follows: “68b. Article 134—(Child pornography)

a. *Text*. See paragraph 60.

b. *Elements*.

(1) *Possessing, receiving, or viewing child pornography*.

(a) That the accused knowingly and wrongfully possessed, received, or viewed child pornography; and

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

(2) *Possessing child pornography with intent to distribute*.

(a) That the accused knowingly and wrongfully possessed child pornography;

(b) That the possession was with the intent to distribute; and

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

(3) *Distributing child pornography*.

(a) That the accused knowingly and wrongfully distributed child pornography to another; and

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

(4) *Producing child pornography*.

(a) That the accused knowingly and wrongfully produced child pornography; and

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

c. *Explanation*.

(1) It is not a defense to any offense under this paragraph that the minor depicted was not an actual person or did not actually exist.

(2) An accused may not be convicted of possessing, receiving, viewing,

distributing, or producing child pornography, if he was not aware of the contraband nature of the visual depictions. Awareness may be inferred from circumstantial evidence such as the name of a computer file.

(3) “*Child Pornography*” means any visual depiction of a minor, or what appears to be a minor, engaging in sexually explicit conduct.

(4) “*Distributing*” means delivering to the actual or constructive possession of another.

(5) “*Minor*” means any person under the age of 18 years.

(6) “*Possessing*” means exercising control of something. Possession may be direct physical custody like holding an item in one’s hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.

(7) “*Producing*” means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.

(8) “*Sexually explicit conduct*” means actual or simulated:

(a) sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) bestiality;

(c) masturbation;

(d) sadistic or masochistic abuse; or

(e) lascivious exhibition of the genitals or pubic area of any person.

(9) “*Visual depiction*” includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, or computer image or picture, whether made or produced by electronic, mechanical, or other means.

(10) Affirmative defenses.

(a) It shall be an affirmative defense to a charge of possessing child pornography that the accused promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction:

(i) Took reasonable steps to destroy each such visual depiction; or

(ii) reported the matter to a law enforcement agency and afforded that

agency access to each such visual depiction.

(b) It shall be an affirmative defense to any offense under this paragraph that all of the persons engaging in sexually explicit conduct in a visual depiction were in fact persons at least 18 years old.

(11) On motion of the government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Lesser included offenses.*

(1) *Possessing, receiving, or viewing child pornography*

Article 80—attempts.

(2) *Possessing child pornography with intent to distribute*

Article 80—attempts.

Article 134—possessing child pornography.

(3) *Distributing child pornography*

Article 80—attempts.

Article 134—possessing child pornography.

Article 134—possessing child pornography with intent to distribute.

(4) *Producing child pornography*

Article 80—attempts.

Article 134—possessing child pornography.

Article 134—possessing child pornography with intent to distribute.

e. *Maximum punishment.*

(1) *Possessing, receiving, or viewing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Possessing child pornography with intent to distribute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(3) *Distributing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Producing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

f. *Sample specification.*

Possessing, receiving, viewing, possessing with intent to distribute, distributing or producing child pornography.

In that _____ (personal jurisdiction data), did, at _____, on or about

_____ knowingly and wrongfully (possess)(receive)(view)(distribute) (produce) child pornography, to wit: A (photograph)(video)(film)(picture) (digital image)(computer image) of a minor, or what appears to be a minor, engaging in sexually explicit conduct (, with intent to distribute the said child pornography).”

Section 3. These amendments shall take effect on [30 days after signature].

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to [30 days after signature] that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to [30 days after signature], and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

The White House

Changes to the Discussion Accompanying the Manual for Courts Martial, United States

(a) Paragraph (4) of the Discussion immediately after R.C.M. 202(a) is amended to read as follows:

“(4) *Limitations on jurisdiction over civilians.* Court-martial jurisdiction over civilians under the code is limited by judicial decisions. The exercise of jurisdiction under Article 2(a)(11) in peace time has been held unconstitutional by the Supreme Court of the United States. Before initiating court-martial proceedings against a civilian, relevant statutes, decisions, service regulations, and policy memoranda should be carefully examined.”

(b) The first paragraph of the Discussion following R.C.M. 1003(b)(3) is amended to read as follows:

A fine is in the nature of a judgment and, when ordered executed, makes the accused immediately liable to the United States for the entire amount of money specified in the sentence. A fine normally should not be adjudged against a member of the armed forces unless the accused was unjustly enriched as a result of the offense of which convicted. In the case of a civilian subject to military law, a fine, rather than a forfeiture, is the proper monetary penalty to be adjudged, regardless of whether unjust enrichment is present.

Changes to Appendix 21, Analysis of Rules for Courts-Martial

(a) Add the following to the Analysis accompanying R.C.M. 1106(d):

“200 Amendment: Subsection (d) is restated in its entirety to clarify that subsections (d)(4), (d)(5) and (d)(6) were not intended to be eliminated by the 2008 Amendment.

2008 Amendment: Subsections (d)(1) and (d)(3) were modified to simplify the requirements of the staff judge advocate’s or legal officer’s recommendation.”

Changes to Appendix 23, Analysis of Punitive Articles

(a) Add the following to the Analysis accompanying Paragraph 44, Article 119—Manslaughter:

“b. *Elements.*

200 Amendment: The 2008 Amendment inadvertently omitted the change to this paragraph in the 2007 Amendment. Paragraph (2)(d) of the elements is corrected to restore the 2007 Amendment.

2008 Amendment: Notes were included to add an element if the person killed was a child under the age of 16 years.

e. *Maximum punishment.*

2008 Amendment: The maximum authorized confinement for voluntary manslaughter was increased from 15 years to 20 years when the person killed was a child under the age of 16 years. The maximum authorized confinement for involuntary manslaughter was increased from 10 years to 15 years when the person killed was a child under the age of 16 years.”

September 15, 2008.

Morgan Frazier,

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

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DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning “Combined Skirt-Reefing and Slider Method for Controlling Parachute Opening”

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for U.S. licensing of Patent No. US 7,419,122 entitled “Combined Skirt-Reefing and Slider