

## Department of Defense Issues a Proposed Rule Implementing the Military Extraterritorial Jurisdiction Act of 2000

The Department of Defense (“DoD”) has issued a proposed rule implementing the Military Extraterritorial Jurisdiction Act of 2000 (“MEJA”), 18 U.S.C. §§ 3261-3267. The proposed rule can be found at 70 F.R. 75998. Comments must be received by DoD on or before February 21, 2006.

MEJA’s purpose is to extend, under certain circumstances, the criminal jurisdiction of the United States to cover acts committed beyond U.S. borders. Many federal criminal statutes cover only acts that are committed in U.S. territory. Consequently, acts committed by military and civilian personnel that would be crimes if committed in the U.S. are not crimes if committed overseas. Further, civilians, unlike military personnel, are generally not subject to the Uniform Code of Military Justice (“UCMJ”). Thus, prior to MEJA, overseas civilians generally were not subject to prosecution for acts that violate either U.S. criminal law or the UCMJ.

MEJA enacts a limited extension of federal criminal jurisdiction outside of U.S. borders. First, MEJA covers only acts that would constitute *felonies* if committed within the United States. 18 U.S.C. § 3261 (a). Second, MEJA covers felonious conduct *only* if committed by (1) certain military personnel; (2) former military personnel; (3) persons employed by the Armed Forces; and (4) dependents of persons employed by the Armed Forces. *Id.* MEJA also sets forth basic procedures for investigation, detention, transport, and prosecution of individuals under the Act. 18 U.S.C. §§ 3262-3265.

Of particular note to government contractors, DoD’s proposed rule further defines, and arguably expands, the category of persons who qualify as “persons employed by or accompanying the Armed Forces,” and who are therefore subject to MEJA. MEJA defines such persons as DoD civilian employees, DoD contractors and subcontractors, and employees of DoD contractors or subcontractors. 18 U.S.C. §§ 3267(1)(A). DoD’s proposed rule, by contrast, defines such persons as civilian employees, contractors and subcontractors, and employees of contractors or subcontractors, not only of DoD, but also of “any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the DoD overseas.” 70 F.R. at 76002-03. Thus, DoD’s proposed rule may significantly expand the range of contractors and contractor personnel subject to MEJA.

DoD’s proposed rule does not appear to contain a corresponding expansion of the category of persons who qualify as dependents of persons employed by the Armed Forces. MEJA limits covered dependents to dependents of (1) members of the Armed Forces; (2) civilian DoD employees; and (3) employees of DoD contractors and subcontractors. 18 U.S.C. §§ 3267(2)(A). DoD’s proposed rule does *not* expand this definition to include dependents of employees or contractors of other Federal agencies or provisional authorities. 70 F.R. at 76003.

DoD’s proposed rule also further addresses various procedural issues. Of particular note, it provides that a military commander may detain an individual under the act for “a reasonable period,” but should

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do so only if the individual presents a flight risk or risk of further serious criminal activity. 70 F.R. at 76005. It also provides for an initial hearing by video teleconference before a federal magistrate judge within 48 hours of arrest, and provides that detention should be addressed as part of that hearing. *Id.* at 76006, 76008. The proposed rule also includes detailed procedures for (1) investigation, arrest, and charging; (2) provision of representation by counsel; (3) removal of an individual to the U.S., and other issues. 70 F.R. at 76003-09.

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