

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, Article 121—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, Article 121—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."

**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:* Paragraph (4) of the elements is corrected to properly reflect the 2007 Amendment, which corrected wording was not included in the 2008 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 confinement for voluntary manslaughter when the person killed was a child under the age of 16 years was increased to 20 years. The maximum confinement for involuntary manslaughter when the person killed was a child under the age of 16 years was increased to 15 years."

Dated: December 19, 2008.

**Patricia L. Toppings,**

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

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **Renewal of Department of Defense Federal Advisory Committees**

**AGENCY:** Department of Defense.

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.65, the Department of Defense gives notice that it is renewing the charter for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (hereafter referred to as the Board).

The Board is a non-discretionary federal advisory committee established under the provisions of 10 U.S.C. 1114, to advise and assist the Secretary of Defense on actuarial matters associated with the Department of Defense Medicare-Eligible Retiree Health Care

Fund. The Board shall report annually to the Secretary of Defense periodically, but no less than once every four years, to the President and the Congress on the status of the Fund to include recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

The Board shall be composed of not more than three members appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries. The Board Members shall serve for a term of 15 years; except those Board Members appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. Board Members may serve after the end of the term until a successor has taken office. No Board Member, other than those originally appointed for less than a 15-year term or a Board Member appointed to fill an unexpired term may be reappointed for successive terms.

Board Members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, are appointed as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as Special Government employees. Pursuant to 10 U.S.C. 1114(a)(3), the members shall serve with compensation to include travel and per diem for official travel. The Chairperson of the Board shall be designated by the Under Secretary of Defense (Personnel and Readiness), on behalf of the Secretary of Defense.

The Board is authorized to establish Subcommittees or Working Groups, as necessary and consistent with its mission, and these Subcommittees or Working Groups shall operate under the provisions of the Federal Advisory Committee Act, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such Subcommittees or Working Groups shall not work independently of the chartered Board, and shall report their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or Working Groups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Agency or any Federal officers or employees who are not Board Members.

#### FOR FURTHER INFORMATION CONTACT:

Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703-601-6128.

**SUPPLEMENTARY INFORMATION:** The Board shall meet at the call of the Board's Designated Federal Officer, in

consultation with the Board's Chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries' Designated Federal Officer can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: December 19, 2008.

**Patricia L. Toppings,**

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

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### **Notice of Availability for the Final Environmental Impact Statement/ Environmental Impact Report and a Draft General Conformity Determination for the Berths 97-109 [China Shipping] Container Terminal Project, Port of Los Angeles, Los Angeles County, CA**

**AGENCY:** Department of the Army—U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** On April 30, 2008, the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps) in coordination with the Los Angeles Harbor Department (LAHD) completed and published the Recirculated Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Berths 97-109 [China Shipping] Container Terminal Project (Project) in the Port of Los Angeles. The Corps and LAHD considered all comments received in preparing the Final EIS/EIR, which is available for a 30-day review. The Final EIS/EIR includes a draft general conformity determination (see Section 3.2 and Appendix P), pursuant to Section 176(c) of the Clean Air Act. A general conformity determination is necessary because Project construction would require Federal action (i.e., issuance of a Corps permit for activities proposed in and over navigable waters and waters of the U.S.) and not all the Federal action's direct and indirect emissions would be below specified de minimis thresholds (40 CFR 93.153(b)). Pursuant to the general conformity regulations (40 CFR Part 93 Subpart B), general conformity determinations do not have to be included in the EIS and can be separately noticed, but the draft general conformity determination for the Federal action associated with the Project is being included in the Final EIS/EIR in this case.

The Final EIS/EIR, including the draft general conformity determination, is available for public review during the next 30 days at the Los Angeles Harbor Department, 425 South Palos Verdes Street, San Pedro, California, on the Port's Web site: <http://www.portoflosangeles.org>, and on the Corps' Web site: <http://www.spl.usace.army.mil/regulatory/POLA.htm> (scroll down to the links under China Shipping Project). In addition, the Final EIS/EIR, including the draft general conformity determination, is available at the