

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 9****Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism**

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule implements policy, assigns responsibilities, and prescribes procedures under the United States Constitution, Article II, section 2 and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," for trials before military commissions of individuals subject to the President's Military Order. These procedures shall be implemented and construed so as to ensure that any such individual receives a full and fair trial before a military commission, as required by the President's Military Order. Unless otherwise directed by the Secretary of Defense, and except for supplemental procedures established pursuant to the President's Military Order or this part, the procedures prescribed herein and no others shall govern such trials.

EFFECTIVE DATE: March 21, 2002.

FOR FURTHER INFORMATION CONTACT:

Office of Military Commission
Spokesperson, 703-693-1115.

SUPPLEMENTARY INFORMATION: Although exempt from administrative procedures for rulemaking, publication of the final rule in the *Federal Register* is deemed appropriate under 5 U.S.C. 552(a)(1)(C). Certifications follow:

Administrative Procedures Act (Sec. 1, Pub. L. 89-544)

It has been certified that 32 CFR part 9 is as a military function of the United States and exempt from administrative procedures for rulemaking.

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 9 pertains to military functions other than procurement and import-export licenses and is exempt from Office of Management and Budget review under section 3, para (d)(2).

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that 32 CFR part 9 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in

aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 9 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 44).

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 9 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the national government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 9

Military law.

■ Accordingly, 32 CFR part 9 is added to subtitle A, chapter I, subchapter B to read as follows:

PART 9—PROCEDURES FOR TRIALS BY MILITARY COMMISSIONS OF CERTAIN NON-UNITED STATES CITIZENS IN THE WAR AGAINST TERRORISM

Sec.

- 9.1 Purpose.
- 9.2 Establishment of Military Commissions.
- 9.3 Jurisdiction.
- 9.4 Commission personnel.
- 9.5 Procedures accorded the accused.
- 9.6 Conduct of the trial.
- 9.7 Regulations.
- 9.8 Authority.
- 9.9 Protection of State secrets.
- 9.10 Other.
- 9.11 Amendment.
- 9.12 Delegation.

Authority: 5 U.S.C. 552(1)(a)(1)(C) and (D).

§ 9.1 Purpose.

This part implements policy, assigns responsibilities, and prescribes procedures under the United States Constitution, Article II, section 2 and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" (3 CFR, 2001 comp., p. 918, 66 FR 57833), for trials before military commissions of individuals subject to

the President's Military Order. These procedures shall be implemented and construed so as to ensure that any such individual receives a full and fair trial before a military commission, as required by the President's Military Order. Unless otherwise directed by the Secretary of Defense, and except for supplemental procedures established pursuant to the President's Military Order or this part, the procedures prescribed herein and no others shall govern such trials.

§ 9.2 Establishment of Military Commissions.

In accordance with the President's Military Order, the Secretary of Defense or a designee ("Appointing Authority") may issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order and appointing any other personnel necessary to facilitate such trials.

§ 9.3 Jurisdiction.

(a) Over persons. A military commission appointed under this part ("Commission") shall have jurisdiction over only an individual or individuals ("the Accused"):

(1) Subject to the President's Military Order; and

(2) Alleged to have committed an offense in a charge that has been referred to the Commission by the Appointing Authority.

(b) *Over offenses.* Commissions established hereunder shall have jurisdiction over violations of the laws of war and all other offenses triable by military commission.

(c) *Maintaining integrity of commission proceedings.* The Commission may exercise jurisdiction over participants in its proceedings as necessary to preserve the integrity and order of the proceedings.

§ 9.4 Commission personnel.

(a) *Members*—(1) *Appointment.* The Appointing Authority shall appoint the members and the alternate member or members of each Commission. The alternate member or members shall attend all sessions of the Commission, but the absence of an alternate member shall not preclude the Commission from conducting proceedings. In case of incapacity, resignation, or removal of any member, an alternate member shall take the place of that member. Any vacancy among the members or alternate members occurring after a trial has begun may be filled by the Appointing Authority, but the substance of all prior proceedings and evidence taken in that case shall be made known