

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 10 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 10 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 10 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 10 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 10

Military law.

■ Accordingly, 32 CFR part 10 is added to Subtitle A, Chapter I, Subchapter B to read as follows:

PART 10—MILITARY COMMISSION INSTRUCTIONS

- Sec.
- 10.1 Purpose.
 - 10.2 Authority.
 - 10.3 Applicability.
 - 10.4 Policies and procedures.
 - 10.5 Construction.
 - 10.6 Non-creation of right.
 - 10.7 Reservation of authority.
 - 10.8 Amendment.

Authority: 10 U.S.C. 113(d) and 140(b).

§ 10.1 Purpose.

This part establishes policies for the issuance and interpretation of Military Commission Instructions promulgated pursuant to 32 CFR part 9, 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).

§ 10.2 Authority.

This part is issued pursuant to 32 CFR 9.7(a) and in accordance with 10 U.S.C. 113(d) and 140(b).

§ 10.3 Applicability.

This part, and, unless stated otherwise, all other Military Commission Instructions apply throughout the Department of Defense, including to the Office of the Secretary of Defense, the Military Departments, the Chairman and Vice Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities within the Department of Defense, to any special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States to serve as a prosecutor in trials before military commissions pursuant to 32 CFR 9.4(b)(2), to any civilian attorney who seeks qualification as a member of the pool of qualified Civilian Defense Counsel authorized in 32 CFR 9.4(c)(3)(ii), and to any attorney who has been qualified as a member of that pool.

§ 10.4 Policies and procedures.

(a) *Promulgation.* Military Commission Instructions will be issued by the General Counsel of the Department of Defense (hereinafter General Counsel). Each Instruction will issue over the signature of the General Counsel and, unless otherwise specified therein, shall take effect upon the signature of the General Counsel. Instructions will be numbered in sequence.

(b) *Professional responsibility.* Compliance with these Instructions shall be deemed a professional responsibility obligation for the practice of law within the Department of Defense.

(c) *Compliance breaches.* Failure to adhere to these Instructions or any other failure to comply with any rule, regulation, or Instruction applicable to trials by military commission convened pursuant to 32 CFR part 9, and Military Order of November 13, 2001,

"Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," may be subject to appropriate action by the Appointing Authority, the General Counsel of the Department of Defense, or the Presiding Officer of a military commission. Such action may include permanently barring an individual from participating in any military commission proceeding convened pursuant to 32 CFR part 9, and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," punitive measures imposed under 10 U.S.C. 898, and any other lawful sanction.

§ 10.5 Construction.

Military Commission Instructions shall be construed in a manner consistent with 32 CFR part 9, and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism." Nothing in these Military Commission Instructions applies with respect to the trial of crimes by military commissions convened under other authority. In the event of an inconsistency, the provisions of 32 CFR part 9, and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," shall govern as provided in Section 7(B) of Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism." Pronouns referring to the male gender shall be construed as applying to both male and female.

§ 10.6 Non-creation of right.

Neither this part nor any Military Commission Instruction issued hereafter, is intended to and does not create any right, benefit, privilege, substantive or procedural, enforceable by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. Alleged noncompliance with an Instruction does not, of itself, constitute error, give rise to judicial review, or establish a right to relief for the Accused or any other person.

§ 10.7 Reservation of authority.

Neither this part nor any Military Commission Instruction issued hereafter shall be construed to limit, impair, or otherwise affect any authority granted by the Constitution or laws of the United States or Department of Defense regulation or directive.