

concerned may determine not to be available because of the nature or responsibilities of their assignments, exigent circumstances, military necessity, or other appropriate reasons.

(3) Consistent with 32 CFR 9.6(b), the selection and replacement of new Detailed Defense Counsel shall not unreasonably delay military commission proceedings.

(4) Unless otherwise directed by the Appointing Authority or the General Counsel of the Department of Defense, the Chief Defense Counsel will, after selection of a new Detailed Defense Counsel, relieve the original Detailed Defense Counsel of all duties with respect to that case.

(e) *Qualified Civilian Defense Counsel.* (1) The Accused may, at no expense to the United States, retain the services of a civilian attorney of the Accused's own choosing to assist in the conduct of his defense before a military commission, provided that the civilian attorney retained has been determined to be qualified pursuant to 32 CFR 9.4(c)(3)(ii).

(2) Consistent with 32 CFR 9.6(b), the retention of Civilian Defense Counsel shall not unreasonably delay military commission proceedings.

(3) Representation by Civilian Defense Counsel will not relieve Detailed Defense Counsel of the duties specified in 32 CFR 9.4(c)(2).

(4) Neither qualification of a Civilian Defense Counsel for membership in the pool of available Civilian Defense Counsel nor the entry of appearance in a specific case guarantees that counsel's presence at closed military commission proceedings or access to information protected under 32 CFR 9.6(d)(5).

(5) The Chief Defense Counsel shall monitor the conduct of all qualified Civilian Defense Counsel for compliance with all rules, regulations, and instructions governing military commissions. The Chief Defense Counsel will report all instances of noncompliance with the rules, regulations, and instructions governing military commissions to the Appointing Authority and to the General Counsel of the Department of Defense with a recommendation as to any appropriate action consistent with 32 CFR part 9 and this part.

#### **§ 13.4 Duties and responsibilities of the defense.**

(a) *Regular duties.* The Defense shall perform all duties specified or implied in 32 CFR part 9 as responsibilities of the Defense.

(b) *Special duties.* The Office of the Chief Defense Counsel shall perform such other functions, 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," and the mission of the Office of the Chief Defense Counsel, as may be directed by the Appointing Authority or the General Counsel of the Department of Defense.

#### **§ 13.5 Policies.**

(a) *Prohibition on certain agreements.* No Defense Counsel may enter into agreements with any detainee other than his client, or such detainee's Defense Counsel, that might cause him or the client he represents to incur an obligation of confidentiality with such other detainee or Defense Counsel or to effect some other impediment to representation.

(b) *Prohibition on certain disclosures.* All Defense Counsel must strictly comply with 32 CFR 9.6(d)(5) and 9.9 to ensure they do not improperly disclose classified information, national security information, or state secrets to an Accused or potential Accused or to any other person not specifically authorized to receive such information.

(c) *Statements to the media.* Consistent with DoD Directive 5122.5<sup>1</sup>, the Assistant Secretary of Defense for Public Affairs shall serve as the sole release authority for DoD information and audiovisual materials regarding military commissions. Personnel assigned to the Office of the Chief Defense Counsel, as well as all members of the Civilian Defense Counsel pool and associated personnel may communicate with news media representatives regarding cases and other matters related to military commissions only when approved by the Appointing Authority or the General Counsel of the Department of Defense.

Dated: June 24, 2003.

**Patricia L. Toppings,**

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

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 14**

#### **Qualification of Civilian Defense Counsel**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes policies and procedures for the creation and management of the pool of qualified Civilian Defense Counsel authorized in regulations on Procedures for Trials by Military Commission of Certain Non-United States Citizens in the War Against Terrorism in accordance with Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism."

**EFFECTIVE DATE:** April 30, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** Although exempt from administrative procedures for rule making, 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 14 is as a military function of the United States and exempt from administrative procedures for rule making.

#### **Executive Order 12866, "Regulatory Planning and Review"**

It has been certified that 32 CFR part 14 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 14 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 14 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 14 does not have federalism implications, as set forth in Executive

<sup>1</sup> Available at <http://www.dtic.mil/whs/directives>.