

**List of Subjects in 32 CFR Part 15**

Military law.

■ Accordingly, 32 CFR part 15 is added to Subtitle A, Chapter I, Subchapter B to read as follows:

**PART 15—REPORTING  
RELATIONSHIPS FOR MILITARY  
COMMISSION PERSONNEL**

Sec.

15.1 Purpose.

15.2 Authority.

15.3 Policies and procedures.

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

**§ 15.1 Purpose.**

This part establishes supervisory and performance evaluation relationships for military commission personnel.

**§ 15.2 Authority.**

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

**§ 15.3 Policies and Procedures.**

(a) *Supervisory and performance evaluation relationships.* Individuals appointed, assigned, detailed, designated or employed in a capacity related to the conduct of military commission proceedings conducted in accordance 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," shall be subject to the relationships set forth in paragraphs (a)(1) through (a)(9) of this section. Unless stated otherwise, the person to whom an individual "reports," as set forth in paragraphs (a)(1) through (a)(9) of this section, shall be deemed to be such individual's supervisor and shall, to the extent possible, fulfill all performance evaluation responsibilities normally associated with the function of direct supervisor in accordance with the subordinate's Military Service performance evaluation regulations.

(1) **Appointing Authority:** Any Appointing Authority designated by the Secretary of Defense pursuant to 32 CFR part 9 shall report to the Secretary of Defense in accordance with 10 U.S.C. 113(d).

(2) **Legal Advisor to Appointing Authority:** The Legal Advisor to the Appointing Authority shall report to the Appointing Authority.

(3) **Chief Prosecutor:** The Chief Prosecutor shall report to the Deputy

General Counsel (Legal Counsel) of the Department of Defense and then to the General Counsel of the Department of Defense.

(4) **Prosecutors and Assistant Prosecutors:** Prosecutors and Assistant Prosecutors shall report to the Chief Prosecutor and then to the Deputy General Counsel (Legal Counsel) of the Department of Defense.

(5) **Chief Defense Counsel:** The Chief Defense Counsel shall report to the Deputy General Counsel (Personnel and Health Policy) of the Department of Defense and then to the General Counsel of the Department of Defense.

(6) **Detailed Defense Counsel:** Detailed Defense Counsel shall report to the Chief Defense Counsel and then to the Deputy General Counsel (Personnel and Health Policy) of the Department of Defense.

(7) **Review Panel members:** Members of the Review Panel shall report to the Secretary of Defense.

(8) **Commission members:** Commission members shall continue to report to their parent commands. The consideration or evaluation of the performance of duty as a member of a military commission is prohibited in preparing effectiveness, fitness, or evaluation reports of a commission member.

(9) **Other personnel:** All other military commission personnel, such as court reporters, interpreters, security personnel, bailiffs, and clerks detailed or employed by the Appointing Authority pursuant to 32 CFR 9.4(d), if not assigned to the Office of the Chief Prosecutor or the Office of the Chief Defense Counsel, shall report to the Appointing Authority or his designee.

(b) *Responsibilities of supervisory/reporting officials.* Officials designated in this part as supervisory/reporting officials shall:

(1) Supervise subordinates in the performance of their duties.

(2) Prepare fitness or performance evaluation reports and, as appropriate, process awards and citations for subordinates. To the extent practicable, a reporting official shall comply with the rated subordinate's Military Service regulations regarding the preparation of fitness or performance evaluation reports and in executing related duties.

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 16****Sentencing**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule promulgates policy, assigns responsibilities, and prescribes procedures for matters related to sentencing of persons with regard to whom a finding of guilty is entered for an offense referred for trial by a military commission appointed pursuant to regulations on Procedures for Trials by Military Commission of Certain Non-United States Citizens in the War Against Terrorism, and 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 16 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 16 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 16 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.