

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

It has been certified that 32 CFR part 16 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 16 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 16

Military law.

■ Accordingly, 32 CFR part 16 is added to Subtitle A, Chapter I, Subchapter B to read as follows:

PART 16—SENTENCING

Sec.

- 16.1 Purpose.
- 16.2 Authority.
- 16.3 Available sentences.
- 16.4 Sentencing procedures.

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

§ 16.1 Purpose.

This part 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 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).

§ 16.2 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," and 10 U.S.C. 113(d) and 140(b). The provisions of 32 CFR part 10 are applicable to this part.

§ 16.3 Available sentences.

(a) *General.* 32 CFR part 9 permits a military commission wide latitude in sentencing. Any lawful punishment or condition of punishment is authorized, including death, so long as the prerequisites detailed in 32 CFR part 9 are met. Detention associated with an

individual's status as an enemy combatant shall not be considered to fulfill any term of imprisonment imposed by a military commission. The sentence determination should be made while bearing in mind that there are several principal reasons for a sentence given to those who violate the law. Such reasons include: punishment of the wrongdoer; protection of society from the wrongdoer; deterrence of the wrongdoer and those who know of his crimes and sentence from committing the same or similar offenses; and rehabilitation of the wrongdoer. In determining an appropriate sentence, the weight to be accorded any or all of these reasons rests solely within the discretion of commission members. All sentences should, however, be grounded in a recognition that military commissions are a function of the President's war-fighting role as Commander-in-Chief of the Armed Forces of the United States and of the broad deterrent impact associated with a sentence's effect on adherence to the laws and customs of war in general.

(b) *Conditions of imprisonment.* Decisions regarding the location designated for any imprisonment, the conditions under which a sentence to imprisonment is served, or the privileges accorded one during any period of imprisonment should generally not be made by the commission. Those decisions and actions, however, may be appropriate subjects for recommendation to the person making a final decision on the sentence in accordance with of 32 CFR 9.6(h).

(c) *Prospective recommendations for sentence modification.* A sentence imposed by military commission may be accompanied by a recommendation to suspend, remit, commute or otherwise modify the adjudged sentence in concert with one or more conditions upon which the suspension, remission, commutation, or other modification is contingent (usually relating to the performance, behavior or conduct of the Accused). Unless otherwise directed, a decision or action in accordance with such a recommendation will be effected by direction or delegation to the Appointing Authority by the official making a final decision on the sentence in accordance with of 32 CFR 9.6(h).

§ 16.4 Sentencing procedures.

(a) *General.* 32 CFR part 9 permits the military commission substantial discretion regarding the conduct of sentencing proceedings. Sentencing proceedings should normally proceed expeditiously. In the discretion of the Presiding Officer, as limited by the

Appointing Authority, reasonable delay between the announcement of findings and the commencement of sentencing proceedings may be authorized to facilitate the conduct of proceedings in accordance with of 32 CFR 9.6(b).

(b) *Information relevant to sentencing.* 32 CFR 9.6(e)(10) permits the Prosecution and Defense to present information to aid the military commission in determining an appropriate sentence. Such information may include a recommendation of an appropriate sentence, information regarding sentence ranges for analogous offenses (e.g., the sentencing range under the Federal Sentencing Guidelines that could be applicable to the Accused for the most analogous federal offenses), and other relevant information. Regardless of any presentation by the Prosecution or Defense, the military commission shall consider any evidence admitted for consideration prior to findings regarding guilt. The Presiding Officer may limit or require the presentation of certain information 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".

(c) *Cases involving plea agreements.* In accordance with 32 CFR 9.6(a)(4), after determining the voluntary and informed nature of a plea agreement approved by the Appointing Authority, the military commission is bound to adjudge findings and a sentence pursuant to that plea agreement. Accordingly, the Presiding Officer may exercise the authority granted in of 32 CFR 9.6(e) to curtail or preclude the presentation of information and argument relative to the military commission's determination of an appropriate sentence.

(d) *Special duties.* In cases involving plea agreements or recommendations for certain conditions of imprisonment or prospective sentence modification, the Prosecution and Defense shall provide whatever post-trial information or recommendation as is relevant to any subsequent decision regarding such condition or suspension, remission, commutation, or other modification recommendation associated with the sentence.

Dated: June 24, 2003.

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