

this Affidavit and Agreement but prior to the conclusion of proceedings (defined as the review and final decision of the President or, if designated, the Secretary of Defense), if there is any change in any of the information provided in my application, including this Affidavit and Agreement, for qualification as member of the Civilian Defense Counsel pool. I understand that such notification shall be in writing and shall set forth the substantive nature of the changed information.

B. I will be well-prepared and will conduct the defense zealously, representing the Accused throughout the military commission process, from the inception of my representation through the completion of any post trial proceedings as detailed in Section 6(H) of MCO No. 1. I will ensure that these proceedings are my primary duty. I will not seek to delay or to continue the proceedings for reasons relating to matters that arise in the course of my law practice or other professional or personal activities that are not related to military commission proceedings.

C. The Defense Team shall consist entirely of myself, Detailed Defense Counsel, and other personnel provided by the Chief Defense Counsel, the Presiding Officer, or the Appointing Authority. I will make no claim against the U.S. Government for any fees or costs associated with my conduct of the defense or related activities or efforts.

D. Recognizing that my representation does not relieve Detailed Defense Counsel of duties specified in Section 4(C)(2) of MCO No. 1, I will work cooperatively with such counsel to ensure coordination of efforts and to ensure such counsel is capable of conducting the defense independently if necessary.

E. During the pendency of the proceedings, unless I obtain approval in advance from the Presiding Officer to do otherwise, I will comply with the following restrictions on my travel and communications:

1. I will not travel or transmit documents from the site of the proceedings without the approval of the Appointing Authority or the Presiding Officer. The Defense Team and I will otherwise perform all of our work relating to the proceedings, including any electronic or other research, at the site of the proceedings (except that this shall not apply during post-trial proceedings detailed in Section 6(H) of MCO No. 1).

2. I will not discuss or otherwise communicate or share documents or information about the case with anyone except persons who have been designated as members of the Defense Team in accordance with this Affidavit and Agreement and other applicable rules, regulations and instructions.

F. At no time, to include any period subsequent to the conclusion of the proceedings, will I make any public or private statements regarding any closed sessions of the proceedings or any classified information or material, or document or material constituting protected information under MCO No. 1.

G. I understand and agree to comply with all rules, regulations and instructions governing the handling of classified information and material. Furthermore, no

document or material constituting protected information under MCO No. 1, regardless of its classification level, may leave the site of the proceedings.

H. I understand that there may be reasonable restrictions on the time and duration of contact I may have with my client, as imposed by the Appointing Authority, the Presiding Officer, detention authorities, or regulation.

I. I understand that my communications with my client, even if traditionally covered by the attorney-client privilege, may be subject to monitoring or review by government officials, using any available means, for security and intelligence purposes. I understand that any such monitoring will only take place in limited circumstances when approved by proper authority, and that any evidence or information derived from such communications will not be used in proceedings against the Accused who made or received the relevant communication. I further understand that communications are not protected if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal advice.

J. I agree that I shall reveal to the Chief Defense Counsel and any other appropriate authorities, information relating to the representation of my client to the extent that I reasonably believe necessary to prevent the commission of a future criminal act that I believe is likely to result in death or substantial bodily harm, or significant impairment of national security.

K. I understand and agree that nothing in this Affidavit and Agreement creates any substantive, procedural, or other rights for me as counsel or for my client(s).

/s/

Print Name: _____

Address: _____

Date: _____

State of _____)
County of _____)

Sworn to and subscribed before me, by _____, this ____ day of _____, 20__.

Notary

My commission expires: _____

Dated: June 24, 2003.

Patricia L. Toppings,

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

[FR Doc. 03-16382 Filed 6-26-03; 12:40 pm]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 15

Reporting Relationships for Military Commission Personnel

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes supervisory and performance evaluation

relationships for military commission personnel.

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 15 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 15 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 15 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 15 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 15 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 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.

[FR Doc. 03-16383 Filed 6-26-03; 12:40 pm]

BILLING CODE 5001-08-P

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.