

SUBCHAPTER B—MILITARY COMMISSIONS

PART 9—PROCEDURES FOR TRIALS BY MILITARY COMMISSIONS OF CERTAIN NON-UNITED STATES CITIZENS IN THE WAR AGAINST TERRORISM

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AUTHORITY: 5 U.S.C. 552(1)(a)(1)(C) and (D).

SOURCE: 68 FR 39374, July 1, 2003, unless otherwise noted.

§9.1 Purpose.

This part implements policy, assigns responsibilities, and prescribes procedures under the United States Constitution, Article II, section 2 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), for trials before military commissions of individuals subject to the President’s Military Order. These procedures shall be implemented and construed so as to ensure that any such individual receives a full and fair trial before a military commission, as required by the President’s Military Order. Unless otherwise directed by the Secretary of Defense, and except for supplemental procedures established pursuant to the President’s Military Order or this part, the procedures prescribed herein and no others shall govern such trials.

§9.2 Establishment of Military Commissions.

In accordance with the President’s Military Order, the Secretary of Defense or a designee (“Appointing Authority”) may issue orders from time to time appointing one or more military commissions to try individuals

subject to the President’s Military Order and appointing any other personnel necessary to facilitate such trials.

§9.3 Jurisdiction.

(a) *Over persons.* A military commission appointed under this part (“Commission”) shall have jurisdiction over only an individual or individuals (“the Accused”):

(1) Subject to the President’s Military Order; and

(2) Alleged to have committed an offense in a charge that has been referred to the Commission by the Appointing Authority.

(b) *Over offenses.* Commissions established hereunder shall have jurisdiction over violations of the laws of war and all other offenses triable by military commission.

(c) *Maintaining integrity of commission proceedings.* The Commission may exercise jurisdiction over participants in its proceedings as necessary to preserve the integrity and order of the proceedings.

§9.4 Commission personnel.

(a) *Members—(1) Appointment.* The Appointing Authority shall appoint the members and the alternate member or members of each Commission. The alternate member or members shall attend all sessions of the Commission, but the absence of an alternate member shall not preclude the Commission from conducting proceedings. In case of incapacity, resignation, or removal of any member, an alternate member shall take the place of that member. Any vacancy among the members or alternate members occurring after a trial has begun may be filled by the Appointing Authority, but the substance of all prior proceedings and evidence taken in that case shall be made known to that new member or alternate member before the trial proceeds.

(2) *Number of members.* Each Commission shall consist of at least three but