

**ANNEX**

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 405(f)(10) is amended to read as follows:

“(10) Have evidence, including documents or physical evidence, produced as provided under subsection (g) of this rule;”.

(b) R.C.M. 405(g)(1)(B) is amended to read as follows:

“(B) *Evidence.* Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely and in compliance with this rule. As soon as practicable after receipt of a request by the accused for information that may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under subsection (g)(6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence.”

(c) R.C.M. 405(g)(2)(C) is amended to read as follows:

“(C) *Evidence generally.* The investigating officer shall make an initial determination whether evidence is reasonably available. If the investigating officer decides that it is not

reasonably available, the investigating officer shall inform the parties.”

(d) R.C.M. 405(g)(2)(C)(i) is inserted to read as follows:

“(i) *Evidence under the control of the Government.* Upon the investigating officer’s determination that evidence is reasonably available, the custodian of the evidence shall be requested to provide the evidence. A determination by the custodian that the evidence is not reasonably available is not subject to appeal by the accused, but may be reviewed by the military judge under R.C.M. 906(b)(3).”

(e) R.C.M. 405(g)(2)(C)(ii) is inserted to read as follows:

“(ii) *Evidence not under the control of the Government.* Evidence not under the control of the Government may be obtained through noncompulsory means or by subpoena duces tecum issued pursuant to procedures set forth in R.C.M. 703(f)(4)(B). A determination by the investigating officer that the evidence is not reasonably available is not subject to appeal by the accused, but may be reviewed by the military judge under R.C.M. 906(b)(3).”

(f) R.C.M. 405(i) is amended to read as follows:

“(i) *Military Rules of Evidence.* The Military Rules of Evidence do not apply in pretrial investigations under this rule except as follows: