

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:

(1) Military Rules of Evidence 301, 302, 303, 305, and Section V shall apply in their entirety.

(2) Military Rule of Evidence 412 shall apply in any case defined as a sexual offense in Mil. R. Evid. 412(d).

(3) In applying these rules to a pretrial investigation, the term "military judge," as used in these rules, shall mean the investigating officer, who shall assume the military judge's powers to exclude evidence from the pretrial investigation, and who shall, in discharging this duty, follow the procedures set forth in the rules cited in paragraphs (1) and (2)."

(g) R.C.M. 703(e)(2)(B) is amended to read as follows:

"(B) *Contents.* A subpoena shall state the command by which the proceeding is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command the person to whom it is directed to produce books, papers, documents, data, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena issued for an investigation pursuant to Article 32 shall not command any person to attend or give testimony at an Article 32 investigation."

(h) R.C.M. 703(e)(2)(C) is amended to read as follows: