

“(d) *Procedure.*

(1) A grant of immunity shall be written and signed by the individual convening authority, special trial counsel designated by the Secretary concerned, or designee who issues it. The grant shall include a statement of the authority under which it is made and shall identify the matters to which it extends.

(2) Subject to Service regulations, the convening authority shall order a person subject to the UCMJ who has received a grant of immunity, to answer questions by investigators or to testify or answer questions by counsel pursuant to that grant of immunity.”

**(ddd) R.C.M. 704(e) is amended to read as follows:**

“(e) *Decision to grant immunity.* Unless limited by superior competent authority, the decision to grant immunity is a matter within the sole discretion of the general court-martial convening authority, special trial counsel designated by the Secretary concerned, as applicable, or their designees. However, if a defense request to immunize a witness has been denied, the military judge may, upon motion by the defense, grant appropriate relief directing that either an appropriate convening authority or special trial counsel designated by the Secretary concerned, as applicable, grant testimonial immunity to a defense witness or, as to the affected charges and specifications, the proceedings against the accused be abated, upon findings that:

(1) The witness intends to invoke the right against self-incrimination to the extent permitted by law if called to testify;

(2) The Government has engaged in discriminatory use of immunity to obtain a tactical advantage, or the Government through its own overreaching, has forced the witness to invoke the privilege against self-incrimination; and

(3) The witness' testimony is material, clearly exculpatory, not cumulative, not obtainable from any other source, and does more than merely affect the credibility of other witnesses.”

**(eee) R.C.M. 705(a) is revised to read as follows:**

“(a) *In general.* Subject to such limitations as the Secretary concerned may prescribe, an accused and the convening authority or the accused and special trial counsel, as applicable, may enter into a plea agreement in accordance with this rule. In cases over which special trial counsel has exercised authority and has not deferred, an agreement may only be entered into between special trial counsel and the accused; however, any such agreement may bind convening authorities and other commanders subject to such limitations as prescribed by the Secretary concerned.”

**(fff) R.C.M. 705(b) is amended to read as follows:**

“(b) *Nature of agreement.* A plea agreement may include:

(1) A promise by the accused to plead guilty to, or to enter a confessional stipulation as to, one or more charges and specifications, and to fulfill such additional terms or conditions that may be included in the agreement and that are not prohibited under this rule; and

(2) A promise by the convening authority or special trial counsel, as applicable, to do one or more of the following:

(A) Refer the charges to a certain type of court-martial;

(B) Refer a capital offense as noncapital;

(C) Withdraw one or more charges or specifications from the court-martial;

(D) Have trial counsel present no evidence as to one or more specifications or

portions thereof; and