

ANNEX

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

**ALL CONTENT OF EXECUTIVE ORDER'S ANNEX, EXCEPT CONTENT
RELATED TO R.C.M. 405(i), IS OMITTED.**

ALL CONTENT OF EXECUTIVE ORDER'S ANNEX, EXCEPT CONTENT
RELATED TO R.C.M. 405(i), IS OMITTED.

(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)."

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RELATED TO R.C.M. 405(i), IS OMITTED.**

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RELATED TO R.C.M. 405(i), IS OMITTED.

Sec. 2. The Discussion to Part II of the Manual for
Courts-Martial, United States, is amended as follows:

ALL CONTENT OF EXECUTIVE ORDER'S ANNEX, EXCEPT CONTENT
RELATED TO R.C.M. 405(i), IS OMITTED.

ALL CONTENT OF EXECUTIVE ORDER'S ANNEX, EXCEPT CONTENT
RELATED TO R.C.M. 405(i), IS OMITTED.

(g) The Discussion immediately following R.C.M. 405(i) is amended to read as follows:

"With regard to all evidence, the investigating officer should exercise reasonable control over the scope of the inquiry. See subsection (e) of this rule. An investigating officer may consider any evidence, even if that evidence would not be admissible at trial. However, see subsection (g)(4) of this rule as to limitations on the ways in which testimony may be presented. Certain rules relating to the form of testimony that

may be considered by the investigating officer appear in subsection (g) of this rule.

Mil. R. Evid. 412 evidence, including closed hearing testimony, must be protected pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a. Evidence deemed admissible by the investigating officer should be made a part of the report of investigation. See subsection (j)(2)(C), *infra*. Evidence deemed inadmissible, and the testimony taken during the closed hearing, should not be included in the report of investigation and should be safeguarded. The investigating officer and counsel representing the United States are responsible for careful handling of any such evidence to prevent indiscriminate viewing or disclosure. Although R.C.M. 1103A does not apply, its requirements should be used as a model for safeguarding inadmissible evidence and closed hearing testimony. The convening authority and the appropriate judge advocate are permitted to review such safeguarded evidence and testimony. See R.C.M. 601(d)(1)."

**ALL CONTENT OF EXECUTIVE ORDER'S ANNEX, EXCEPT CONTENT
RELATED TO R.C.M. 405(i), IS OMITTED.**