

ANNEX 2

[The proposed amendments to the Manual for Courts-Martial, United States (Parts I-V, exclusive of Discussions and Analysis, plus Appendix 12A) in Annex 2 include provisions to implement the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Pursuant to section 5542 of the Military Justice Act of 2016, the amendments made to the Manual for Courts-Martial in Annex 2, if approved, will take effect on the date prescribed by the President, subject to the provisions of the Executive Order regarding prior proceedings and offenses. Under the proposed Executive Order accompanying Annex s, the effective date would be January 1, 2019. The extensive nature of the proposed changes necessitates the reproduction, in full, of Parts I-V of the Manual for Courts-Martial.

Although the Discussions and Analysis are not part of the proposed Executive Order that would be signed by the President, Annex 2 sets forth the Discussion and Analysis at appropriate locations within the Annex to facilitate review and comment on the proposed amendments. Discussion items are set out immediately following the paragraphs being discussed. The Analysis for each provision is set forth immediately following the provision to which the Analysis pertains. If the Executive Order is signed by the President, the items of Analysis will be consolidated and published as amendments to Appendix 21 (Analysis of Rules for Courts-Martial), Appendix 22 (Analysis of the Military Rules of Evidence), Appendix 23 (Analysis of Punitive Articles), and Appendix 24 (Analysis of Nonjudicial Punishment Procedure).

With the exception of Appendix 12A (lesser included offenses), none of the Appendices are issued by the President. The Discussion, the Analysis, and the Appendices (other than Appendix 12A) will not become part of an Executive Order issued by the President, and will not be included in any proposed Executive Order forwarded to the President. Rather, the Discussion, Analysis, and Appendices (other than Appendix 12A) are proposed supplementary materials that would be published by the Department of Defense, in conjunction with the Department of Homeland Security, if the President approves the portion of the proposed Manual to which they relate.]