CONVENING AUTHORITY'S ACTION CHECKLIST
R.C.M. 1109 and 1110

ICO _____

Procedures: If a case was referred to trial on or after 1 January 2019, the post-trial procedures contained in this checklist and Articles 60a and 60b, as well as R.C.M. 1109 and 1110 will be used.

Clemency Power: The convening authority's power to grant clemency is based on the date of the earliest offense of which the accused was convicted.

(1) If a case was referred to trial on or after 1 January 2019, the following convening authority (CA) action procedures apply:

(a) If all of the offenses of which the accused was convicted occurred **after** 1 January 2019, the post-trial procedures contained in this instruction, Articles 60a and 60b, and R.C.M. 1109 and 1110 shall apply.

(b) If the accused is convicted of any offense that occurred **before** 1 January 2019, but **after** 24 June 2014, Article 60, MCM 2016; the post-trial procedures contained in this instruction; and the clemency powers described in R.C.M. 1107, MCM 2016 shall apply.

(c) In a case in which the accused is convicted of any offense that occurred **before** 24 June 2014, the post-trial procedures contained in this instruction and the clemency authority described in R.C.M. 1107, MCM 2012 shall apply.

(d) The CA's suspension authority outlined in Article 60a(c) applies regardless of the date of any conviction, even if the operative version of Article 60 does not permit such suspension.

(e) Regardless of which version of clemency authority applies (see above), and even if the CA decides to take no action, the SJA will ensure that the CA complies with the requirements of R.C.M. 1109(g) and the action is documented using enclosure (6).

(f) Prior to taking any action on a case, the SJA should complete the below checklist and ensure the CA reviews all matters submitted under R.C.M. 1106 and 1106A. When the checklist is complete, the SJA should provide it to the Trial Counsel for inclusion in the Record of Trial.

(3) The following procedures must be performed by the Staff Judge Advocate or Convening Authority prior to taking action in a case:

____ Obtain any matters submitted by the accused and/or the victim.

____ Accused and victim have 10 days from the date the sentence is adjudged to submit

matters. However, the accused and/or victim may request an extension up to 20 days to submit matters, if good cause is shown. R.C.M. 1106 and R.C.M. 1106A.

____ If a victim submits matters for the CA's consideration, provide a copy of those matters to the accused or detailed counsel. R.C.M. 1106A.

____ If a victim submits matters for the CA's consideration, the accused has an additional 5 days to respond to those matters. R.C.M. 1106

____ Obtain a copy of the court-martial proceedings (either recording or transcript) and, unless sealed, copies of the evidence admitted at the court-martial and appellate exhibits.

***If CA would like to review evidence that has been sealed or classified evidence in order to complete the post-trial process, a formal request to review such sealed/classified evidence must be submitted to the Military Judge presiding over the court-martial.

____ Action should not be taken earlier than 10 days after the announcement of the sentence adjudged, unless the accused and victim both waive their right to submit matters before 10 days.

____ Action states:

____ The action taken or if no action is taken, so state.

____ Written explanation for the action taken when there is a mandatory minimum punishment or offenses for which the maximum sentence to confinement that may be adjudged exceeds two years, or offenses where the adjudged sentence includes a punitive discharge (Dismissal, DD, BCD) or confinement for more than six months, or a violation of Art. 120(a) or 120(b) or 120b. *See* R.C.M. 1109.

____ Address specific action with regard to findings, if applicable.

____ Rehearing on findings ordered.

____ If rehearing or new trial ordered, reasons for disapproval.

____ If no rehearing ordered on disapproved charges and specifications, statement of dismissal included.

____ If "other" trial ordered, basis for declaring the proceedings invalid stated.

____ If portion of sentence is to be suspended, indicate the terms of the suspension in the CA's Action.

____ Draft a letter of reprimand, if adjudged, and attach it to the CA's Action for service on the accused.

____ Must be signed by CA with authority to sign. No "by direction" authorized. If signed by an acting CA, ensure signature block notes acting status and that the letter designating said individual as acting is attached to the record of trial.

____ If signed by a substitute CA, acting pursuant to a specific request that is in compliance with R.C.M. 1107(a), action notes as such. (Attach documentation of reasons for substitute CA to record of trial – *U.S. v. Brown*, 57 M.J. 623 N-M. Ct. Crim. App. (2002)).

____ If action on rehearing or new trial, comply with limitations of R.C.M. 810(d).

Not Guilty by Lack of Mental Responsibility

____ If accused is found not guilty by lack of mental responsibility, the Military Judge will conduct a hearing. Prior to that hearing, the military judge or CA must order a psychiatric or psychological examination of the accused and the report must be provided to the military judge.

____ The CA may commit the accused pending an R.C.M. 1105 hearing.

____ If the judge finds the accused has met the standards set forth in R.C.M. 1105(c)(3), the accused shall be released.

____ If the judge finds the accused has not met the standards set forth in R.C.M. 1105(c)(3), the CA must turn the accused over to the Attorney General.

Service of CA's Action

____ Upon completion, provide the CA's Action to the Trial Counsel for delivery to the military judge, the accused or defense counsel and the victim or SVC.