EXECUTIVE ORDERS

Executive Order 14091 of February 16, 2023

Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. On my first day in office, I signed Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which charged the Federal Government with advancing equity for all, including communities that have long been underserved, and addressing systemic racism in our Nation's policies and programs. By advancing equity, the Federal Government can support and empower all Americans, including the many communities in America that have been underserved, discriminated against, and adversely affected by persistent poverty and inequality. We can also deliver resources and benefits equitably to the people of the United States and rebuild trust in Government.

Over the past 2 years, through landmark legislation—including the American Rescue Plan Act of 2021 (Public Law 117–2); the bipartisan Infrastructure Investment and Jobs Act (Public Law 117–58) (Bipartisan Infrastructure Law); division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022; Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022; and the Bipartisan Safer Communities Act (Public Law 117–159)—as well as executive action, my Administration has vigorously championed racial equity and has advanced equal opportunity for underserved communities. Executive departments and agencies (agencies) have engaged in historic work assessing how their policies and programs perpetuate barriers for underserved communities and developing strategies for removing those barriers. They have made important progress incorporating an evidence-based approach to equitable policymaking and implementation, and they have crafted new action plans to advance equity. In short, my Administration has embedded a focus on equity into the fabric of Federal policymaking and service delivery. Our work to transform the way the Federal Government serves the American people has been complemented by Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in

the Federal Workforce), which continues to help ensure that my Administration—the most diverse in our Nation's history—reflects the growing diversity of the communities we serve.

My Administration's commitment to equity has produced better decision-making and more equitable outcomes. We have delivered the most equitable economic recovery in memory, and, driven by the expanded Child Tax Credit, we cut child poverty to its lowest rate on record in 2021, including record low Black, Latino, Native American, and rural child poverty. Under my Administration, the economy has created nearly 11 million jobs, and we have brought down unemployment nationwide—in particular for Black and Latino workers, for whom unemployment rates are near 50-year lows. My Administration has provided emergency rental assistance to help millions of families stay in their homes, and we have prohibited Federal contractors from paying people with disabilities subminimum wages. We are rebuilding roads and bridges, replacing the Nation's lead pipes to provide clean drinking water for all, delivering access to affordable high-speed internet to Americans in both rural and urban communities, investing in public transit, and reconnecting communities previously cut off from economic opportunity by highways, rail lines, or disinvestment. My Administration has provided funding to improve accessibility for passengers with disabilities on rail systems and in airports, expanded health coverage for millions of Americans, and expanded home- and community-based services so more people with disabilities and older adults can live independently. We have secured billions of dollars in direct new investments for Tribal Nations and Native American communities and have directed an increase in the share of Federal Government contract spending awarded to small disadvantaged businesses. My Administration has taken action to strengthen public safety, advance criminal justice reform, correct our country's failed approach to marijuana, protect civil rights, and stand up against rising extremism and hate-fueled violence that threaten the fabric of our democracy. We have taken historic steps to advance full equality for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) Americans, including by ending the ban on transgender service members in our military; prohibiting discrimination based on sexual orientation, gender identity, and sex characteristics across Federal programs; and signing into law the Respect for Marriage Act (Public Law 117–228) to preserve protections for the rights of same-sex and interracial couples. My Administration is also implementing the first-ever National Strategy on Gender Equity and Equality to ensure that all people, regardless of gender, have the opportunity to realize their full potential.

These transformative achievements have advanced the work of building a more equitable Nation. Yet, members of underserved communities—many of whom have endured generations of discrimination and disinvestment—still confront significant barriers to realizing the full promise of our great Nation, and the Federal Government has a responsibility to remove these barriers. It is imperative to reject the narrow, cramped view of American opportunity as a zero-sum game. When any person or community is denied freedom, dignity, and prosperity, our entire Nation is held back. But when we lift each other up, we are all lifted up. Therefore, my Administration must take additional action across the Federal Government—in collaboration with civil society, the private sector, and State and local government—

to continue the work begun with Executive Order 13985 to combat discrimination and advance equal opportunity, including by redressing unfair disparities and removing barriers to Government programs and services. Achieving racial equity and support for underserved communities is not a one-time project. It must be a multi-generational commitment, and it must remain the responsibility of agencies across the Federal Government. It therefore continues to be the policy of my Administration to advance an ambitious, whole-of-government approach to racial equity and support for underserved communities and to continuously embed equity into all aspects of Federal decision-making.

This order builds upon my previous equity-related Executive Orders by extending and strengthening equity-advancing requirements for agencies, and it positions agencies to deliver better outcomes for the American people. In doing so, the Federal Government shall continue to pursue ambitious goals to build a strong, fair, and inclusive workforce and economy; invest in communities where Federal policies have historically impeded equal opportunity—both rural and urban—in ways that mitigate economic displacement, expand access to capital, preserve housing and neighborhood affordability, root out discrimination in the housing market, and build community wealth; advance equity in health, including mental and behavioral health and well-being; deliver an equitable response to the COVID–19 pandemic; deliver environmental justice and implement the Justice40 Initiative; build prosperity in rural communities; ensure equitable procurement practices, including through small disadvantaged businesses contracting and the Buy Indian Act (25 U.S.C. 47); pursue educational equity so that our Nation's schools put every student on a path to success; improve our Nation's criminal justice system to end unjust disparities, strengthen public safety, and ensure equal justice under law; promote equity in science and root out bias in the design and use of new technologies, such as artificial intelligence; protect the right to vote and realize the promise of our Nation's civil rights laws; and promote equity and human rights around the world through our foreign policy and foreign assistance. By redoubling our efforts, the Federal Government can help bridge the gap between the world we see and the future we seek.

Sec. 2. *Establishing Equity-Focused Leadership Across the Federal Government*. (a) *Establishment of Agency Equity Teams*. The Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, the Secretary of Homeland Security, the Administrator of the Small Business Administration, the Commissioner of Social Security, the Administrator of General Services, the Administrator of the United States Agency for International Development, the Administrator of the Environmental Protection Agency, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, and the Director of the Office of Personnel Management (agency heads) shall, within 30 days of the date of this order, ensure that they have in place an Agency Equity Team within their respective agencies to

coordinate the implementation of equity initiatives and ensure that their respective agencies are delivering equitable outcomes for the American people.

(i) Each Agency Equity Team shall be led by a designated senior official (senior designee) charged with implementing my Administration's equity initiatives, and shall include senior officials from the office of the agency head and the agency's program, policy, civil rights, regulatory, science, technology, service delivery, financial assistance and grants, data, budget, procurement, public engagement, legal, and evaluation offices, as well as the agency's Chief Diversity Officer, to the extent applicable. Agency Equity Teams shall include a combination of competitive service employees, as defined by 5 U.S.C. 2102(a), and appointees, as defined in Executive Order 13989 of January 20, 2021 (Ethics Commitments by Executive Branch Personnel), and, to the extent practicable, shall build upon and coordinate with the agency's existing structures and processes, including with the agency's environmental justice officer designated pursuant to Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), and with the senior agency official designated to coordinate with the Gender Policy Council pursuant to Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council).

(ii) The senior designee at each agency shall be responsible for delivering equitable outcomes, to the extent consistent with applicable law, and shall report to the agency head.

(iii) Each Agency Equity Team shall support continued equity training and equity leadership development for staff across all levels of the agency's workforce.

(iv) Each agency's senior designee shall coordinate with the agency head, agency budget officials, and the Office of Management and Budget (OMB) to ensure that the Agency Equity Team has sufficient resources, including staffing and data collection capacity, to advance the agency's equity goals. Agency heads shall ensure that their respective Agency Equity Teams serve in an advisory and coordination role on priority agency actions.

(b) *Establishment of the White House Steering Committee on Equity.* There is hereby established a White House Steering Committee on Equity (Steering Committee), which shall be chaired by the Assistant to the President for Domestic Policy. The Steering Committee shall include senior officials representing policy councils and offices within the Executive Office of the President, as appropriate. The Steering Committee shall:

(i) coordinate Government-wide efforts to advance equity;

(ii) coordinate an annual process to consult with agency heads on their respective agencies' Equity Action Plans, established in section 3(a) of this order;

(iii) coordinate with the leadership of the White House Initiatives created by Executive Order 14031 of May 28, 2021 (Advancing Equity, Justice,

and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders); Executive Order 14041 of September 3, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Executive Order 14045 of September 13, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics); Executive Order 14049 of October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities); and Executive Order 14050 of October 19, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans);

(iv) coordinate with the White House Environmental Justice Interagency Council to ensure that equity and environmental justice efforts are consistent and mutually reinforcing;

(v) coordinate with the White House Gender Policy Council to align efforts to advance gender equity with broader equity efforts; and

(vi) monitor agencies' activities and promote accountability to ensure that agencies undertake ambitious and measurable steps to deliver equitable outcomes for the American people.

Sec. 3. *Delivering Equitable Outcomes Through Government Policies, Programs, and Activities*. Each agency head shall support ongoing implementation of a comprehensive equity strategy that uses the agency's policy, budgetary, programmatic, service-delivery, procurement, data-collection processes, grantmaking, public engagement, research and evaluation, and regulatory functions to enable the agency's mission and service delivery to yield equitable outcomes for all Americans, including underserved communities.

(a) In September 2023, and on an annual basis thereafter, concurrent with the agencies' submission to OMB for the President's Budget, agency heads shall submit an Equity Action Plan to the Steering Committee. The Equity Action Plan shall include actions to advance equity, including under Executive Order 13985, Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation), Executive Order 14008, and Executive Order 14020.

(b) Each Equity Action Plan, which shall be made public, shall include:

(i) an update on the progress made by the agency on the actions, performance measures, and milestones highlighted in the preceding year's Equity Action Plan, as well as the agency's performance on the annual Environmental Justice Scorecard established pursuant to section 223 of Executive Order 14008, as applicable;

(ii) potential barriers that underserved communities may face in accessing and benefitting from the agency's policies, programs, and activities, including procurement, contracting, and grant opportunities;

(iii) strategies, including new or revised policies and programs, to address the barriers described in subsection (b)(ii) of this section and to ensure equitable access and opportunity for underserved communities; and

(iv) a description of how the agency intends to meaningfully engage with underserved communities, including through accessible, culturally and

linguistically appropriate outreach, and the incorporation of the perspectives of those with lived experiences into agency policies, programs, and activities.

(c) Starting with formulation of the Fiscal Year 2025 Budget and for each subsequent year, the Director of OMB shall consider how the President's Budget can support the Equity Action Plans described in subsection (a) of this section in order to reinforce agency efforts to meaningfully engage with and invest in underserved communities and advance equitable outcomes.

(d) To ensure effective implementation of Equity Action Plans, and to strengthen the Federal Government's equitable delivery of resources and benefits to all, agency heads shall:

(i) prioritize and incorporate strategies to advance equity—including by pursuing evidence-based approaches, reducing administrative burdens, increasing access to technical assistance, and implementing equitable data practices, consistent with applicable law, into their respective:

(A) agency strategic plans developed pursuant to 5 U.S.C. 306(a);

(B) agency performance plans developed pursuant to 31 U.S.C. 1115 and 1116;

(C) portions of performance plans relating to human and capital resource requirements to achieve performance goals pursuant to 31 U.S.C. 1115(b)(5)(A);

(D) agency priority goals developed pursuant to 31 U.S.C. 1120;

(E) evaluation and evidence-building activities pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Public Law 115–435) and section 5 of the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking);

(F) customer experience capacity assessments and action plans pursuant to section 280 of OMB Circular A–11 and Executive Order 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government);

(G) selection of items for their respective regulatory agendas and plans pursuant to sections 4(b) and (c) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended;

(H) individual performance plans for senior executives consistent with 5 U.S.C. 4312, and for other senior employees consistent with 5 U.S.C. 4302; and

(I) as permitted by law, activities, acquisitions, and strategies that the Director of OMB determines to be appropriate to further the implementation of this order;

(ii) identify opportunities, as appropriate and consistent with applicable law, to incorporate into new regulations and to modify their respective agencies' regulations, internal- and public-facing guidance, and other policies to include advancing equity as part of their respective agencies' missions; and

(iii) promote coordination within and among their respective agencies concerning the elements of their respective Equity Action Plans and the

recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985.

Sec. 4. *Embedding Equity into Government-wide Processes*.

(a) The Director of OMB shall consider opportunities to review and update internal processes, directives, and Government-wide guidance (such as OMB Circulars and Memoranda) to support equitable decision-making, promote equitable deployment of financial and technical assistance, and assist agencies in advancing equity, as appropriate and wherever possible.

(b) When designing, developing, acquiring, and using artificial intelligence and automated systems in the Federal Government, agencies shall do so, consistent with applicable law, in a manner that advances equity.

Sec. 5. *Delivering Equitable Outcomes in Partnership with Underserved Communities*. Underserved communities often face significant barriers and legacy exclusions in engaging with agencies and providing input on Federal policies and programs that affect them. Agencies must increase engagement with underserved communities by identifying and applying innovative approaches to improve the quality, frequency, and accessibility of engagement. Agencies shall, consistent with applicable law:

(a) conduct proactive engagement, as appropriate, with members of underserved communities—for example, through culturally and linguistically appropriate listening sessions, outreach events, or requests for information—during development and implementation of agencies' respective annual Equity Action Plans, annual budget submissions, grants and funding opportunities, and other actions, including those outlined in section 3(d) of this order;

(b) collaborate with OMB, as appropriate, to identify and develop tools and methods for engagement with underserved communities, including those related to agency budget development and rulemaking;

(c) create more flexibilities, incentives, and guidelines for recipients of Federal funding and permits to proactively engage with underserved communities as projects are designed and implemented;

(d) identify funding opportunities for community- and faith-based organizations working in and with underserved communities to improve access to benefits and services for members of underserved communities; and

(e) identify and address barriers for individuals with disabilities, as well as older adults, to participate in the engagement process, including barriers to the accessibility of physical spaces, virtual platforms, presentations, systems, training, and documents.

Sec. 6. *Creating Economic Opportunity in Rural America and Advancing Urban Equitable Development*. (a) Agencies shall undertake efforts, to the extent consistent with applicable law, to help rural communities identify and access Federal resources in order to create equitable economic opportunity and advance projects that build community wealth, including by providing or supporting technical assistance; incentivizing the creation of good, high-paying union jobs in rural areas; conducting outreach to and soliciting input from rural community leaders; and contributing new resources and support to interagency programs such as the Rural Partners Network.

(b) Agencies shall undertake efforts, to the extent consistent with applicable law, to strengthen urban equitable development policies and practices, such as advancing community wealth building projects; preventing physical and economic displacement as the result of Federal investments; facilitating equitable flows of private capital, including to underserved communities; and incorporating outcome-based metrics focused on urban equitable development in the design and deployment of Federal programs and policies. To support these efforts, the Assistant to the President for Domestic Policy shall issue a policy memorandum on actions agencies can take to advance urban equitable development.

(c) Executive Order 13946 of August 24, 2020 (Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations), including the amendments it made to Executive Order 12072 of August 16, 1978 (Federal Space Management), and to Executive Order 13006 of May 21, 1996 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities), is revoked. Executive Orders 12072 and 13006 are reinstated as they were prior to issuance of Executive Order 13946. Executive Order 13853 of December 12, 2018 (Establishing the White House Opportunity and Revitalization Council), is also revoked. All agencies shall, consistent with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), consider taking prompt action to revoke any rules, regulations, guidelines, or policies implementing these Presidential actions that are inconsistent with the provisions of this order. Further, agencies shall ensure that planning for new Federal facilities or new leases includes consideration of neighborhoods and locations that are near existing employment centers and are accessible to a broad range of the region's workforce and population by public transit (where it exists), consistent with Executive Order 12072. Agencies shall identify displacement risks associated with Federal facility siting and development and shall engage with any community that may be affected, along with appropriate regional and local officials, to mitigate those displacement risks.

Sec. 7. *Advancing Equitable Procurement.* (a) The Government-wide goal for Federal procurement dollars awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) shall be 15 percent in Fiscal Year 2025. In furtherance of this goal, OMB shall set a Government-wide SDB goal for Fiscal Year 2024. The Small Business Administration shall, on an annual basis, work with each agency to establish an agency-specific goal that, in aggregate, supports the Government-wide goal. Further, agencies shall undertake efforts to increase contracting opportunities for all other small business concerns as described in the Small Business Act (15 U.S.C. ch. 14A).

(b) Agencies shall expand procurement opportunities for SDBs through Federal financial assistance, consistent with applicable law, under the Bipartisan Infrastructure Law, the Inflation Reduction Act of 2022, and other Federal financial assistance programs.

Sec. 8. *Affirmatively Advancing Civil Rights.* Agencies shall comprehensively use their respective civil rights authorities and offices to prevent and address discrimination and advance equity for all, including to increase the effects of civil rights enforcement and to increase public awareness of civil rights principles, consistent with applicable law. Agencies shall consider opportunities to:

(a) further elevate their respective civil rights offices, including by directing that their most senior civil rights officer report to the agency head;

(b) ensure that their respective civil rights offices are consulted on decisions regarding the design, development, acquisition, and use of artificial intelligence and automated systems;

(c) increase coordination, communication, and engagement with community-based organizations and civil rights organizations;

(d) increase the capacity, including staffing capacity, of their respective civil rights offices, in coordination with OMB;

(e) improve accessibility for people with disabilities and improve language access services to ensure that all communities can engage with agencies' respective civil rights offices, including by fully implementing Executive Order 13166 of August 11, 2000 (Improving Access to Services for Persons with Limited English Proficiency); and

(f) prevent and remedy discrimination, including by protecting the public from algorithmic discrimination.

Sec. 9. *Further Advancing Equitable Data Practices*. The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data shall, to the extent consistent with applicable law, coordinate the implementation of relevant recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985. The Director of OSTP shall provide a report on the Subcommittee's progress to the Steering Committee every January and July.

Sec. 10. *Definitions*. For purposes of this order:

(a) The term ''equity'' means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.

(b) The term ''underserved communities'' refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in Executive Orders 13985 and 14020.

(c) The term ''equitable development'' refers to a positive development approach that employs processes, policies, and programs that aim to meet the needs of all communities and community members, with a particular focus on underserved communities and populations.

(d) The term ''community wealth building'' refers to an approach to economic development that strengthens the capacities of underserved communities by ensuring institutions and local economies have ownership models with greater community participation and control. This results in upgrading skills, growing entrepreneurs, increasing incomes, expanding net asset ownership, and fostering social well-being.

(e) The term ''equitable data'' refers to data that allow for rigorous assessment of the extent to which Government programs and policies yield consistently fair, just, and impartial treatment of all individuals.

(f) The term ''algorithmic discrimination'' refers to instances when automated systems contribute to unjustified different treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex (including based on pregnancy, childbirth, and related conditions; gender identity; intersex status; and sexual orientation), religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, or any other classification protected by law.

Sec. 11. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Agencies not covered by section 2(a) of this order, including independent agencies, are strongly encouraged to comply with the provisions of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
February 16, 2023.

Executive Order 14092 of March 14, 2023

Reducing Gun Violence and Making Our Communities Safer

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. *Policy.* Every few days in the United States, we mourn a new mass shooting. Daily acts of gun violence—including community violence, domestic violence, suicide, and accidental shootings—may not always make the evening news, but they too cut lives short and leave survivors and their communities with long-lasting physical and mental wounds. We cannot accept these facts as the enduring reality of life in America. Instead, we must together insist that we have had enough, and that we will no longer allow the interests of the gun manufacturers to win out over the safety of our children and Nation.

It is the policy of my Administration that executive departments and agencies (agencies) will pursue every legally available and appropriate action to

reduce gun violence. Through this whole-of-government approach, my Administration has made historic progress to save lives. My Administration has taken action to keep guns out of dangerous hands and especially dangerous weapons off of our streets; hold gun traffickers and rogue gun dealers accountable; fund accountable, effective community policing; and invest in community violence interventions and prevention strategies.

Last year, I signed into law the Bipartisan Safer Communities Act (the ''Act''), the most significant bipartisan gun safety legislation in nearly 30 years. The Act provides communities with new tools to combat gun violence, including enhanced gun background checks for individuals under age 21, funding for extreme risk protection orders and other crisis interventions, and increased mental health resources to help children impacted by gun violence heal from the resulting grief and trauma.

I continue to call on the Congress to take additional action to reduce gun violence, including by banning assault weapons and high-capacity magazines, requiring background checks for all gun sales, requiring safe storage of firearms, funding my comprehensive Safer America Plan, and expanding community violence intervention and prevention strategies. In the meantime, my Administration will continue to do all that we can, within existing authority, to make our communities safer.

Sec. 2. *Implementation of the Bipartisan Safer Communities Act.* The Attorney General, the Secretary of Health and Human Services, the Secretary of Education, and the Secretary of Homeland Security shall each submit a report to the President within 60 days of the date of this order describing what actions their respective agencies have taken to implement the Act, data and analysis regarding the use and early effects of the Act, and additional steps their respective agencies will take to maximize the benefits of the Act. These reports shall include a plan for increasing public awareness and use of resources made available by the Act.

Sec. 3. *Additional Agency Actions to Reduce Gun Violence.* (a) The Attorney General shall develop and implement a plan to:

(i) clarify the definition of who is engaged in the business of dealing in firearms, and thus required to become Federal firearms licensees (FFLs), in order to increase compliance with the Federal background check requirement for firearm sales, including by considering a rulemaking, as appropriate and consistent with applicable law;

(ii) prevent former FFLs whose licenses have been revoked or surrendered from continuing to engage in the business of dealing in firearms;

(iii) publicly release, to the fullest extent permissible by law, inspection reports of FFL dealers cited for violations of the law; and

(iv) support efforts to modernize and make permanent the Undetectable Firearms Act (18 U.S.C. 922(p)).

(b) The Secretary of Defense; the Attorney General; the Secretary of Homeland Security; the Secretary of Health and Human Services, including through the Surgeon General of the United States; the Secretary of Education; and the Secretary of Veterans Affairs shall expand existing Federal campaigns and other efforts to promote safe storage of firearms.

(c) The Secretary of Defense; the Attorney General; the Secretary of Homeland Security; the Secretary of Health and Human Services, including

through the Surgeon General of the United States; and the Secretary of Education shall undertake efforts to encourage effective use of extreme risk protection orders (''red flag'' laws), partnering with law enforcement, health care providers, educators, and other community leaders.

(d) The Attorney General; the Secretary of Health and Human Services, including through the Surgeon General of the United States; the Secretary of Education; the Secretary of Homeland Security; the Director of the Office of Management and Budget; and the heads of other agencies, as appropriate, shall develop a proposal for the President, and submit it no later than September 15, 2023, on how the Federal Government can better support the recovery, mental health, and other needs of survivors of gun violence, families of victims and survivors of gun violence, first responders to incidents of gun violence, and communities affected by gun violence. The proposal should draw on existing evidence, where available, and take into account how to address needs in both the immediate aftermath of mass shootings and in the years following such events. The proposal should recommend any additional executive branch coordination and additional resources or authorities from the Congress needed to implement the proposal, as well as how agencies will assess the outcomes for the activities implemented.

(e) The Secretary of Defense, in consultation with the Attorney General and the Secretary of Homeland Security, shall develop and implement principles to further firearm and public safety practices through the Department of Defense's acquisition of firearms, consistent with applicable law.

(f) The heads of Federal law enforcement agencies shall, as soon as practicable, but no later than 180 days from the date of this order, ensure that their respective law enforcement components issue National Integrated Ballistic Information Network (NIBIN) submission and utilization policies with requirements that are equivalent to, or exceed, the requirements of the policy issued by the Department of Justice on December 12, 2022, to ensure the prompt entry of ballistics data recovered in connection with criminal investigations into NIBIN. In consultation with the Department of Justice, the Department of Defense policies may be tailored to address specific operational considerations.

(g) The Secretary of Transportation, in consultation with the Department of Justice, shall work to reduce the loss or theft of firearms during shipment between FFLs and to improve reporting of such losses or thefts, including by engaging with carriers and shippers.

(h) The Federal Trade Commission is encouraged to issue a public report analyzing how gun manufacturers market firearms to minors and how such manufacturers market firearms to civilians, including through the use of military imagery.

Sec. 4. *Definitions.* For purposes of this order, the term ''Federal law enforcement agency'' means an organizational unit or subunit of the executive branch that employs officers who are authorized to make arrests and carry firearms, and that is responsible for the prevention, detection, and investigation of crime or the apprehension of alleged offenders. The term ''heads of Federal law enforcement agencies'' means the heads of those units or subunits.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
March 14, 2023.

Executive Order 14093 of March 27, 2023

Prohibition on Use by the United States Government of Commercial Spyware That Poses Risks to National Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Technology is central to the future of our national security, economy, and democracy. The United States has fundamental national security and foreign policy interests in (1) ensuring that technology is developed, deployed, and governed in accordance with universal human rights; the rule of law; and appropriate legal authorization, safeguards, and oversight, such that it supports, and does not undermine, democracy, civil rights and civil liberties, and public safety; and (2) mitigating, to the greatest extent possible, the risk emerging technologies may pose to United States Government institutions, personnel, information, and information systems.

To advance these interests, the United States supports the development of an international technology ecosystem that protects the integrity of international standards development; enables and promotes the free flow of data and ideas with trust; protects our security, privacy, and human rights; and enhances our economic competitiveness. The growing exploitation of Americans' sensitive data and improper use of surveillance technology, including commercial spyware, threatens the development of this ecosystem. Foreign governments and persons have deployed commercial spyware against United States Government institutions, personnel, information, and information systems, presenting significant counterintelligence and security risks to the United States Government. Foreign governments and persons have also used commercial spyware for improper purposes, such as to target and intimidate perceived opponents; curb dissent; limit freedoms of expression, peaceful assembly, or association; enable other human rights

abuses or suppression of civil liberties; and track or target United States persons without proper legal authorization, safeguards, or oversight.

The United States has a fundamental national security and foreign policy interest in countering and preventing the proliferation of commercial spyware that has been or risks being misused for such purposes, in light of the core interests of the United States in protecting United States Government personnel and United States citizens around the world; upholding and advancing democracy; promoting respect for human rights; and defending activists, dissidents, and journalists against threats to their freedom and dignity. To advance these interests and promote responsible use of commercial spyware, the United States must establish robust protections and procedures to ensure that any United States Government use of commercial spyware helps protect its information systems and intelligence and law enforcement activities against significant counterintelligence or security risks; aligns with its core interests in promoting democracy and democratic values around the world; and ensures that the United States Government does not contribute, directly or indirectly, to the proliferation of commercial spyware that has been misused by foreign governments or facilitate such misuse.

Therefore, I hereby establish as the policy of the United States Government that it shall not make operational use of commercial spyware that poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person. In furtherance of the national security and foreign policy interests of the United States, this order accordingly directs steps to implement that policy and protect the safety and security of United States Government institutions, personnel, information, and information systems; discourage the improper use of commercial spyware; and encourage the development and implementation of responsible norms regarding the use of commercial spyware that are consistent with respect for the rule of law, human rights, and democratic norms and values. The actions directed in this order are consistent with the policy objectives set forth in section 6318 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA FY 2023) (Public Law 117–263) and section 5502 of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022) (Public Law 117–81).

Sec. 2. *Prohibition on Operational Use.* (a) Executive departments and agencies (agencies) shall not make operational use of commercial spyware where they determine, based on credible information, that such use poses significant counterintelligence or security risks to the United States Government or that the commercial spyware poses significant risks of improper use by a foreign government or foreign person. For the purposes of this use prohibition:

(i) Commercial spyware may pose counterintelligence or security risks to the United States Government when:

(A) a foreign government or foreign person has used or acquired the commercial spyware to gain or attempt to gain access to United States Government computers or the computers of United States Government personnel without authorization from the United States Government; or

(B) the commercial spyware was or is furnished by an entity that:

(1) maintains, transfers, or uses data obtained from the commercial spyware without authorization from the licensed end-user or the United States Government;

(2) has disclosed or intends to disclose non-public United States Government information or non-public information about the activities of the United States Government without authorization from the United States Government; or

(3) is under the direct or effective control of a foreign government or foreign person engaged in intelligence activities, including surveillance or espionage, directed against the United States.

(ii) Commercial spyware may pose risks of improper use by a foreign government or foreign person when:

(A) the commercial spyware, or other commercial spyware furnished by the same vendor, has been used by a foreign government or foreign person for any of the following purposes:

(1) to collect information on activists, academics, journalists, dissidents, political figures, or members of non-governmental organizations or marginalized communities in order to intimidate such persons; curb dissent or political opposition; otherwise limit freedoms of expression, peaceful assembly, or association; or enable other forms of human rights abuses or suppression of civil liberties; or

(2) to monitor a United States person, without such person's consent, in order to facilitate the tracking or targeting of the person without proper legal authorization, safeguards, and oversight; or

(B) the commercial spyware was furnished by an entity that provides commercial spyware to governments for which there are credible reports in the annual country reports on human rights practices of the Department of State that they engage in systematic acts of political repression, including arbitrary arrest or detention, torture, extrajudicial or politically motivated killing, or other gross violations of human rights, consistent with any findings by the Department of State pursuant to section 5502 of the NDAA FY 2022 or other similar findings.

(iii) In determining whether the operational use of commercial spyware poses significant counterintelligence or security risks to the United States Government or poses significant risks of improper use by a foreign government or foreign person, such that operational use should be prohibited, agencies shall consider, among other relevant considerations, whether the entity furnishing the commercial spyware knew or reasonably should have known that the spyware posed risks described in subsections (a)(i) or (ii) of this section, and whether the entity has taken appropriate measures to remove such risks, such as canceling relevant licensing agreements or contracts that present such risks; taking other verifiable action to prevent continuing uses that present such risks; or cooperating in United States Government efforts to counter improper use of the spyware.

(b) An agency shall not request or directly enable a third party to make operational use of commercial spyware where the agency has determined that such use poses significant counterintelligence or security risks to the United States Government or that the commercial spyware poses significant

risks of improper use by a foreign government or foreign person, as described in subsection (a) of this section. For purposes of this order, the term ''operational use'' includes such indirect use.

(c) To facilitate effective interagency coordination of information relevant to the factors set forth in subsection (a) of this section and to promote consistency of application of this order across the United States Government, the Director of National Intelligence (DNI) shall, within 90 days of the date of this order, and on a semiannual basis thereafter, issue a classified intelligence assessment that integrates relevant information—including intelligence, open source, financial, sanctions-related, and export controls-related information—on foreign commercial spyware or foreign government or foreign person use of commercial spyware relevant to the factors set forth in subsection (a) of this section. The intelligence assessment shall incorporate, but not be limited to, the report and assessment required by section 1102A(b) of the National Security Act of 1947, 50 U.S.C. 3001 *et seq.,* as amended by section 6318(c) of the NDAA FY 2023. In order to facilitate the production of the intelligence assessment, the head of each agency shall, on an ongoing basis, provide the DNI all new credible information obtained by the agency on foreign commercial spyware vendors or foreign government or foreign person use of commercial spyware relevant to the factors set forth in subsection (a) of this section. Such information shall include intelligence, open source, financial, sanctions-related, export controls-related, and due diligence information, as well as information relevant to the development of the list of covered contractors developed or maintained pursuant to section 5502 of the NDAA FY 2022 or other similar information.

(d) Any agency that makes a determination of whether operational use of a commercial spyware product is prohibited under subsection (a) of this section shall provide the results of that determination and key elements of the underlying analysis to the DNI. After consulting with the submitting agency to protect operational sensitivities, the DNI shall incorporate this information into the intelligence assessment described in subsection (c) of this section and, as needed, shall make this information available to other agencies consistent with section 3(b) of this order.

(e) The Assistant to the President for National Security Affairs (APNSA), or a designee, shall, within 30 days of the issuance of the intelligence assessment described in subsection (c) of this section, and additionally as the APNSA or designee deems necessary, convene agencies to discuss the intelligence assessment, as well as any other information about commercial spyware relevant to the factors set forth in subsection (a) of this section, in order to ensure effective interagency awareness and sharing of such information.

(f) For any commercial spyware intended by an agency for operational use, a relevant official, as provided in section 5(k) of this order, shall certify the determination that the commercial spyware does not pose significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person based on the factors set forth in subsection (a) of this section. The obligation to certify such a determination shall not be delegated, except as provided in section 5(k) of this order.

(g) If an agency decides to make operational use of commercial spyware, the head of the agency shall notify the APNSA of such decision, describing the due diligence completed before the decision was made, providing relevant information on the agency's consideration of the factors set forth in subsection (a) of this section, and providing the reasons for the agency's determination. The agency may not make operational use of the commercial spyware until at least 7 days after providing this information or until the APNSA has notified the agency that no further process is required.

(h) Within 90 days of the issuance of the intelligence assessment described in subsection (c) of this section, each agency shall review all existing operational uses of commercial spyware and discontinue, as soon as the head of the agency determines is reasonably possible without compromising ongoing operations, operational use of any commercial spyware that the agency determines poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, pursuant to subsection (a) of this section.

(i) Within 180 days of the date of this order, each agency that may make operational use of commercial spyware shall develop appropriate internal controls and oversight procedures for conducting determinations under subsection (a) of this section, as appropriate and consistent with applicable law.

(j) At any time after procuring commercial spyware for operational use, if the agency obtains relevant information with respect to the factors set forth in subsection (a) of this section, the agency shall determine whether the commercial spyware poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, and, if so, shall terminate such operational use as soon as the head of the agency determines is reasonably possible without compromising ongoing operations, and shall notify the DNI and the APNSA.

(k) The Federal Acquisition Security Council shall consider the intelligence assessment described in subsection (c) of this section in evaluating whether commercial spyware poses a supply chain risk, as appropriate and consistent with applicable law, including 41 CFR Part 201–1 and 41 U.S.C. 1323.

(l) The prohibitions contained in this section shall not apply to the use of commercial spyware for purposes of testing, research, analysis, cybersecurity, or the development of countermeasures for counterintelligence or security risks, or for purposes of a criminal investigation arising out of the criminal sale or use of the spyware.

(m) A relevant official, as provided in section 5(k) of this order, may issue a waiver, for a period not to exceed 1 year, of an operational use prohibition determined pursuant to subsection (a) of this section if the relevant official determines that such waiver is necessary due to extraordinary circumstances and that no feasible alternative is available to address such circumstances. This authority shall not be delegated, except as provided in section 5(k) of this order. A relevant official may, at any time, revoke any waiver previously granted. Within 72 hours of making a determination to issue or revoke a waiver pursuant to this subsection, the relevant official who has issued or revoked the waiver shall notify the President, through

the APNSA, of this determination, including the justification for the determination. The relevant official shall provide this information concurrently to the DNI.

Sec. 3. *Application to Procurement.* An agency seeking to procure commercial spyware for any purpose other than for a criminal investigation arising out of the criminal sale or use of the spyware shall, prior to making such procurement and consistent with its existing statutory and regulatory authorities:

(a) review the intelligence assessment issued by the DNI pursuant to section 2(c) of this order;

(b) request from the DNI any additional information regarding the commercial spyware that is relevant to the factors set forth in section 2(a) of this order;

(c) consider the factors set forth in section 2(a) of this order in light of the information provided by the DNI; and

(d) consider whether any entity furnishing the commercial spyware being considered for procurement has implemented reasonable due diligence procedures and standards—such as the industry-wide norms reflected in relevant Department of State guidance on business and human rights and on transactions linked to foreign government end-users for products or services with surveillance capabilities—and controls that would enable the entity to identify and prevent uses of the commercial spyware that pose significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person.

Sec. 4. *Reporting Requirements.* (a) The head of each agency that has procured commercial spyware, upon completing the review described in section 2(h) of this order, shall submit to the APNSA a report describing the review's findings. If the review identifies any existing operational use of commercial spyware, as defined in this order, the agency report shall include:

(i) a description of such existing operational use;

(ii) a determination of whether the commercial spyware poses significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, along with key elements of the underlying analysis, pursuant to section 2(a) of this order; and

(iii) in the event the agency determines that the commercial spyware poses significant risks pursuant to section 2(a) of this order, what steps have been taken to terminate its operational use.

(b) Within 45 days of an agency's procurement of any commercial spyware for any use described in section 2(l) of this order except for use in a criminal investigation arising out of the criminal sale or use of the spyware, the head of the agency shall notify the APNSA of such procurement and shall include in the notification a description of the purpose and authorized uses of the commercial spyware.

(c) Within 6 months of the date of this order, the head of each agency that has made operational use of commercial spyware or has procured commercial spyware for operational use shall submit to the APNSA a report on

the actions that the agency has taken to implement this order, including the internal controls and oversight procedures the agency has developed pursuant to section 2(i) of this order.

(d) Within 1 year of the date of this order, and on an annual basis thereafter, the head of each agency that has procured commercial spyware for operational use shall provide the APNSA a report that identifies:

(i) any existing operational use of commercial spyware and the reasons why it does not pose significant counterintelligence or security risks to the United States Government or significant risks of improper use by a foreign government or foreign person, pursuant to section 2(a) of this order;

(ii) any operational use of commercial spyware that was terminated during the preceding year because it was determined to pose significant risks pursuant to section 2(a) of this order, the circumstances under which this determination was made, and the steps taken to terminate such use; and

(iii) any purchases made of commercial spyware, and whether they were made for operational use, during the preceding year.

Sec. 5. *Definitions.* For purposes of this order:

(a) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) The term ''commercial spyware'' means any end-to-end software suite that is furnished for commercial purposes, either directly or indirectly through a third party or subsidiary, that provides the user of the software suite the capability to gain remote access to a computer, without the consent of the user, administrator, or owner of the computer, in order to:

(i) access, collect, exploit, extract, intercept, retrieve, or transmit content, including information stored on or transmitted through a computer connected to the Internet;

(ii) record the computer's audio calls or video calls or use the computer to record audio or video; or

(iii) track the location of the computer.

(c) The term ''computer'' shall have the same meaning as it has in 18 U.S.C. 1030(e)(1).

(d) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(e) The term ''foreign entity'' means an entity that is not a United States entity.

(f) The term ''foreign government'' means any national, state, provincial, or other governing authority, any political party, or any official of any governing authority or political party, in each case of a country other than the United States.

(g) The term ''foreign person'' means a person that is not a United States person.

(h) The term ''furnish,'' when used in connection with commercial spyware, means to develop, maintain, own, operate, manufacture, market,

sell, resell, broker, lease, license, repackage, rebrand, or otherwise make available commercial spyware.

(i) The term ''operational use'' means use to gain remote access to a computer, without the consent of the user, administrator, or owner of the computer, in order to:

(i) access, collect, exploit, extract, intercept, retrieve, or transmit the computer's content, including information stored on or transmitted through a computer connected to the Internet;

(ii) record the computer's audio calls or video calls or use the computer to otherwise record audio or video; or

(iii) track the location of the computer.

The term ''operational use'' does not include those uses described in section 2(l) of this order.

(j) The term ''person'' means an individual or entity.

(k) The term ''relevant official,'' for purposes of sections 2(f) and 2(m) of this order, refers to any of the following: the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the DNI, the Director of the Central Intelligence Agency, or the Director of the National Security Agency. The Attorney General's obligation under section 2(f) of this order and authority under section 2(m) of this order may be delegated only to the Deputy Attorney General.

(l) The term ''remote access,'' when used in connection with commercial spyware, means access to a computer, the computer's content, or the computer's components by using an external network (e.g., the Internet) when the computer is not in the physical possession of the actor seeking access to that computer.

(m) The term ''United States entity'' means any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).

(n) The term ''United States person'' shall have the same meaning as it has in Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended.

(o) The term ''United States Government personnel'' means all United States Government employees as defined by 5 U.S.C. 2105.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to limit the use of any remedies available to the head of an agency or any other official of the United States Government.

(c) This order shall be implemented consistent with applicable law, including section 6318 of the NDAA FY 2023, as well as applicable procurement laws, and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
March 27, 2023.

Executive Order 14094 of April 6, 2023

Modernizing Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize the regulatory process to advance policies that promote the public interest and address national priorities, it is hereby ordered as follows:

Section 1. *Improving the Effectiveness of the Regulatory Review Process.* (a) This order supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). Any provisions of those orders not amended in this order shall remain in effect. This order also further implements the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review).

(b) Section 3(f) of Executive Order 12866 is hereby amended to read as follows:

''(f) ''Significant regulatory action'' means any regulatory action that is likely to result in a rule that may:

(1) have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.''

Sec. 2. *Affirmative Promotion of Inclusive Regulatory Policy and Public Participation.* (a) To the extent practicable and consistent with applicable law, regulatory actions should be informed by input from interested or affected communities; State, local, territorial, and Tribal officials and agencies; interested or affected parties in the private sector and other regulated

entities; those with expertise in relevant disciplines; and the public as a whole. Opportunities for public participation shall be designed to promote equitable and meaningful participation by a range of interested or affected parties, including underserved communities.

(b) To inform the regulatory planning process, executive departments and agencies (agencies) shall, to the extent practicable and consistent with applicable law:

(i) clarify opportunities for interested persons to petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e);

(ii) endeavor to respond to such petitions efficiently, in light of agency judgments of available resources and priorities; and

(iii) maintain, subject to available resources, a log of such petitions received, and share with the Administrator of the Office of Information and Regulatory Affairs (OIRA), upon request, information on the status of recently resolved and pending petitions.

(c) To inform the development of regulatory agendas and plans, agencies shall endeavor, as practicable and appropriate, to proactively engage interested or affected parties, including members of underserved communities; consumers; workers and labor organizations; program beneficiaries; businesses and regulated entities; those with expertise in relevant disciplines; and other parties that may be interested or affected. These efforts shall incorporate, to the extent consistent with applicable law, best practices for information accessibility and engagement with interested or affected parties, including, as practicable and appropriate, community-based outreach; outreach to organizations that work with interested or affected parties; use of agency field offices; use of alternative platforms and media for engaging the public; and expansion of public capacity for engaging in the rulemaking process.

(d) The Administrator of OIRA, in consultation with relevant agencies, as appropriate, shall consider guidance or tools to modernize the notice-and-comment process, including through technological changes. These reforms may include guidance or tools to address mass comments, computer-generated comments (such as those generated through artificial intelligence), and falsely attributed comments.

(e) Section 6(b)(4) of Executive Order 12866 establishes a process for persons not employed by the executive branch of the Federal Government to request meetings with OIRA officials regarding the substance of regulatory actions under OIRA review. Public trust in the regulatory process depends on protecting regulatory development from the risk or appearance of disparate and undue influence, including in the OIRA review process. In order to reduce this risk or appearance, the Administrator of OIRA shall, to the extent practicable and consistent with applicable law:

(i) Provide information to facilitate the initiation of meeting requests regarding regulatory actions under OIRA review from potential participants not employed by the executive branch of the Federal Government who have not historically requested such meetings, including those from underserved communities; and

(ii) Implement reforms to improve procedures and policies with respect to OIRA's consideration of meeting requests initiated by persons not employed by the executive branch of the Federal Government regarding the

substance of regulatory actions under OIRA review to further the efficiency and effectiveness of such meetings. These reforms may include:

(A) efforts to ensure access for meeting requesters who have not historically requested such meetings;

(B) discouraging meeting requests that are duplicative of earlier meetings with OIRA regarding the same regulatory action by the same meeting requesters;

(C) consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness; and

(D) disclosure of data in an open, machine-readable, and accessible format that includes the dates and names of individuals involved in all substantive meetings and the subject matter discussed during such meetings, as required by section 6(b)(4)(C)(iii) of Executive Order 12866, so as to better facilitate transparency and analysis.

Sec. 3. *Improving Regulatory Analysis.* (a) Regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

(b) Within 1 year of the date of this order, the Director of the Office of Management and Budget, through the Administrator of OIRA and in consultation with the Chair of the Council of Economic Advisers and representatives of relevant agencies, shall issue revisions to the Office of Management and Budget's Circular A–4 of September 17, 2003 (Regulatory Analysis), in order to implement the policy set forth in subsection (a) of this section.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

April 6, 2023.

Executive Order 14095 of April 18, 2023

Increasing Access to High-Quality Care and Supporting Caregivers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* High-quality early care and education and long-term care are critical to our Nation's economic growth and economic security. Early care and education give young children a strong start in life, while long-term care helps older Americans and people with disabilities live, work, and participate in their communities with dignity. Access to both types of care is also critical to our national security because it helps ensure the recruitment, readiness, and retention of our military service members.

Throughout this order, early care and education are collectively referred to as ''child care.'' References to ''care'' that do not specify the type of care refer to both child care and long-term care. References to the ''care workforce'' refer to individuals and businesses working in the fields of child care and long-term care.

A sizeable majority of families and individuals in the United States who require care cannot access the affordable, high-quality care they need. The markets for child care and long-term care for persons with disabilities and older adults who need support in their homes and communities fail to deliver enough high-quality care because of a persistent gap between the costs of providing this care and the prices families can pay. High-quality care is labor intensive and requires skilled workers, and providers have limited ability to reduce costs. As a result, even when high-quality care is available, it costs far more than many families and individuals can afford, causing them to forgo care altogether, seek lower-quality care options, juggle unconventional shifts at work, reduce their own paid work hours, drop out of the labor force, or make other arrangements. Care expenditures represent a significant and increasing share of families' budgets, with child care prices growing by approximately 26 percent and some types of long-term care costs growing by over 40 percent in the last decade. Inadequate supply is exacerbated by high turnover in the care workforce. Care workers—disproportionately women of color—are among the lowest-paid in the country and often have to rely on public benefits despite working complex and demanding jobs. Investments in the care workforce are foundational to helping to retain care workers and improving health and educational outcomes. In recent years, more than half of the long-term care workforce and nearly 20 percent of the child care workforce turned over each year. And the workforce remains 8 percent smaller than before the COVID–19 pandemic.

In 2019, more than three in four United States households that searched for care reported difficulty finding adequate care for their young children, and roughly the same share of center-based child care providers turned families away because they lacked enough child care slots. Similarly, more than three in four long-term care service providers have reported not being able to accept new clients, making it harder for older Americans and people with disabilities to find the care they need. Military families consistently cite access to high-quality child care as an impediment to military spouse employment and family economic security. Difficulty accessing care

also poses a challenge for both spouses—and, as data shows, particularly for women in dual military couples—to continuing their service if they have caregiving responsibilities. The need for long-term care is likely to become more acute as our Nation's population ages. By 2060, there will be approximately twice as many adults over the age of 65 than in 2016, and projections indicate that there will be around 8 million long-term care job openings over the next decade.

Family caregivers provide informal, often unpaid, care to help loved ones live in their homes and communities, including caring for aging family members, people with disabilities, and children. At least 53 million people are family caregivers in the United States—including 5.5 million who are caring for wounded, ill, and injured service members and veterans—and many face challenges due to lack of support, training, and opportunities for rest. Family caregivers include spouses, parents, siblings, adult and minor children, grandparents, and other relatives. Family caregivers reflect the diversity of America's communities, and people can assume family caregiving responsibilities at any stage of life. Without adequate resources, family caregiving can affect caregivers' own physical and emotional health and well-being and contribute to financial strain. These negative consequences are felt most acutely by women, who make up nearly two-thirds of family caregivers and drop out of the workforce at a rate three times higher than men.

It is the policy of my Administration to enable families—including our military and veteran families—to have access to affordable, high-quality care and to have support and resources as caregivers themselves. It is also the policy of my Administration to ensure that the care workforce is supported, valued, and paid well. Additionally, care workers should have the free and fair choice to join a union.

The Congress must provide the transformative investments necessary to increase access to high-quality child care—including preschool and Head Start—and long-term care services, as well as high-quality, well-paying jobs that reflect the value the care workforce provides to families and communities. Such investments include removing barriers and providing the funding needed for Tribal Nations to effectively provide high-quality child care and long-term care.

Nearly every other advanced country makes greater public investments in care than the United States. Investing in care is an investment in the future of America's families, workforce, and economy.

While the Congress must make significant new investments to give families in this country more breathing room when it comes to care, executive departments and agencies (agencies) must do what they can within their existing authorities to boost the supply of high-quality early care and education and long-term care and to provide support for family caregivers. Through this order, I direct agencies to make all efforts to improve jobs and support for caregivers, increase access to affordable care for families, and provide more care options for families.

Sec. 2. *Increasing Compensation and Improving Job Quality for Family Caregivers, Early Educators, and Long-Term Care Workers.* (a) To increase compensation and benefits for early childhood educators and long-term care professionals who are providing federally funded services:

(i) the Secretary of Health and Human Services, through the Administrator for the Centers for Medicare and Medicaid Services (CMS), shall issue guidance to States on ways to use enhanced funding to better connect home- and community-based workers who provide services to Medicaid beneficiaries;

(ii) the Secretary of Health and Human Services shall implement strategies to encourage comparability of compensation and benefits between staff employed by Head Start grant recipients and elementary school teachers;

(iii) the Secretary of Health and Human Services shall expand efforts to improve care workers' access to health insurance; and

(iv) the Secretary of Education shall use grant notices for the Child Care Access Means Parents in School (CCAMPIS) program to encourage grantees to improve quality in funded programs, including by increasing compensation and providing support services for early childhood educators who serve children of students at CCAMPIS colleges using Federal and non-Federal funding as appropriate;

(v) the Department of the Treasury shall conduct outreach on the Saver's Match credit, and the Department of Commerce shall conduct—and the Small Business Administration is encouraged to consider conducting—outreach on potential Federal resources available to assist small businesses in offering retirement plans, including a per-employee credit of up to $1,000, as provided in the SECURE 2.0 Act of 2022 (Division T of Public Law 117–328), in order to ensure that the care workforce, including individuals and small businesses, are aware of Federal retirement assistance for which they may be eligible.

(b) To improve working conditions and job quality in federally assisted child care and long-term care programs, encourage providers to establish incentives to recruit and retain workers, help prevent burnout, make it as easy as possible for care workers to access behavioral health services, and thereby improve the care that individuals receive, the Secretary of Health and Human Services shall:

(i) consider additional actions—such as providing guidance, technical assistance, and provider and resident education—and rulemaking on nursing home staffing transparency to promote adequate staffing at nursing homes, building on the Department of Health and Human Services' efforts to propose minimum standards for staffing adequacy at nursing homes;

(ii) consider additional actions to reduce nursing staff turnover in nursing facilities and improve retention of those staff, advancing the Department of Health and Human Services' efforts to measure and adjust payments based on staff turnover; and

(iii) implement strategies to expand mental health support for the care workforce, including early childhood providers supported through the Child Care and Development Fund (CCDF) and Head Start.

(c) To expand training pathways and professional learning opportunities to increase job quality, improve quality of care, and attract new entrants into the care workforce, the Secretary of Labor and the Secretary of Education, in consultation with the Secretary of Health and Human Services, shall:

(i) encourage recipients of Federal financial assistance to expand opportunities for early childhood educators and long-term care professionals through community college programming, career and technical education, Registered Apprenticeship, pre-apprenticeships leading to Registered Apprenticeship, and other job training and professional development;

(ii) make available innovative funding opportunities, develop and evaluate demonstration projects for care training and educational attainment, and provide technical assistance to State, local, and Tribal partners to improve job quality for care occupations; and

(iii) develop partnerships with key stakeholders, including State, local, Tribal, and territorial governments; unions and labor organizations; State and local workforce development boards; institutions of higher education (including community colleges, Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions); aging and disability networks; and national- and community-based organizations that focus on care (including professional membership organizations).

(d) To support family caregivers of beneficiaries of Federal health care programs and services, and in conjunction with implementing the 2022 National Strategy to Support Family Caregivers:

(i) the Secretary of Health and Human Services shall, consistent with the criteria set out in section 1115A(b)(2) of the Social Security Act (42 U.S.C. 1315a(b)(2)), consider whether to select for testing by the Center for Medicare and Medicaid Innovation an innovative new health care payment and service delivery model focused on dementia care that would include family caregiver supports such as respite care;

(ii) the Secretary of Health and Human Services shall consider how better to evaluate and clearly set expectations for family caregivers in the Acute Hospital Care at Home program, which allows hospitals to treat in their homes those who would otherwise be hospital inpatients;

(iii) the Secretary of Health and Human Services shall take steps to ensure that hospitals are actively involving family caregivers in the discharge planning process, consistent with CMS condition of participation discharge planning requirements, including by promoting best practices such as partnerships with community-based organizations and using resources from the Administration for Community Living and the Agency for Healthcare Research and Quality;

(iv) the Secretary of Health and Human Services shall increase beneficiary communications and support family caregivers by increasing promotion of the option for Medicare beneficiaries to choose to give family caregivers access to their Medicare information via 1–800–MEDICARE and the State health insurance assistance program networks;

(v) the Secretary of Veterans Affairs shall consider issuing a notice of proposed rulemaking by the end of this fiscal year that would make any appropriate modifications to eligibility criteria for the Program of Comprehensive Assistance for Family Caregivers, which provides services and benefits, including a monthly stipend, for eligible caregivers of veterans who sustained a serious injury or illness in the line of duty; and

(vi) the Secretary of Veterans Affairs shall develop and implement a pilot program to offer psychotherapy via video telehealth to family caregivers within the Program of Comprehensive Assistance for Family Caregivers to improve their access to mental health services.

(e) To improve and expand opportunities through AmeriCorps to encourage more individuals to enter early learning careers, the Chief Executive Officer of AmeriCorps is encouraged to consider:

(i) expanding access to Segal AmeriCorps Education Awards, which AmeriCorps members can use to pay for education and training or reduce their student debt; providing loan forbearance for AmeriCorps members involved in early learning; and providing other benefits to supplement national service activities that support early learning; and

(ii) prioritizing applications that propose to implement or expand high-quality programs focused on early learning and prioritizing projects intended to prepare AmeriCorps members and AmeriCorps Seniors volunteers to enter early learning careers.

(f) To improve jobs of domestic child care and long-term care workers:

(i) the Secretary of Labor shall create and publish in multiple languages, as appropriate, compliance assistance and best practices materials—such as sample employment agreements for domestic child care and long-term care workers and their employers—to promote fair workplaces and ensure the parties know their rights and responsibilities, and shall identify other means to promote employers' adoption of best practices;

(ii) the Secretary of Labor shall work with community and other local partners to expand culturally and linguistically appropriate community outreach and education efforts to domestic child care and long-term care workers in order to combat their exploitation; and

(iii) the Chair of the Equal Employment Opportunity Commission is encouraged to work with the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security to develop materials addressing the employment rights of non-citizen domestic child care and long-term care workers who are legally eligible to work.

(g) To improve data and information on the care workforce:

(i) the Secretary of Labor shall conduct and publish an analysis of early childhood and home care workers' pay in comparison to the pay of other workers with similar levels of training and skill;

(ii) the Secretary of Labor shall issue guidance to help States and localities conduct their own analyses of comparable pay rates for care workers in their respective jurisdictions; and

(iii) the Secretary of Labor and the Secretary of Health and Human Services shall, in consultation with relevant agencies and external experts and organizations, jointly conduct a review to identify gaps in knowledge about the home- and community-based workforce serving people with disabilities and older adults; identify and evaluate existing data sources; and identify opportunities to expand analyses, supplement data, or launch new efforts to provide important data on the home- and community-based care workforce and ensure equity for people with disabilities and older adults. The Secretaries shall publicly release the findings and recommendations of this review no later than April 2024.

Sec. 3. *Making Care More Accessible and Affordable for Families.* (a) To increase access to affordable, high-quality child care and long-term care for workers delivering federally assisted projects:

(i) Agencies shall identify and issue guidance on which agency discretionary, formula, and program-specific funds can be used for child care and long-term care as a supportive service for workers who are being trained for and working on federally funded projects, and in doing so shall consider agency funds made available by the bipartisan Infrastructure Investment and Jobs Act (Public Law 117–58); Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022; and division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022.

(ii) With respect to the agency funds identified in subsection (a)(i) of this section:

(A) Agencies shall consider requiring, where appropriate, applicants for Federal job-creation or workforce development funds to provide affordable, accessible, safe, and reliable child care and long-term care for workers carrying out federally assisted projects (including both construction and operating phases where applicable), or shall consider preferencing applicants that use the funds for this purpose or encouraging applicants to use funds for this purpose. Agencies shall provide implementation guidance to relevant program staff and collaborate with the Department of Labor to identify potential support for these actions, including technical assistance for guidance and funding opportunities.

(B) Agencies shall consider providing technical assistance to help funding recipients provide access to child care and long-term care as a supportive service and to connect funding recipients with potential partners, including care associations, community-based organizations, Registered Apprenticeship and pre-apprenticeship programs, and labor unions.

(C) In cases where child care or long-term care is required or encouraged, agencies shall consider collecting information from funding recipients on whether and how they will provide access to child care and long-term care, and how many workers (including apprentices and pre-apprentices) would be affected.

(iii) The Secretary of Labor and the Secretary of Health and Human Services, in consultation with the Secretary of Commerce, shall support the efforts outlined in subsection (a) of this section by issuing guidance and providing technical assistance with best practices and models for how to provide supportive services, including child care and long-term care.

(b) To lower child care costs for families eligible for Federal programs, the Secretary of Health and Human Services shall:

(i) consider issuing regulations to pursue policies to reduce child care costs for families benefiting from CCDF;

(ii) identify potential opportunities to reduce barriers to eligibility for Head Start and CCDF;

(iii) encourage States, through all available avenues, to increase the use of Temporary Assistance for Needy Families funds for basic assistance

and work supports for families—including access to child care—and to spend more funds on cash assistance for families; and

(iv) identify other potential strategies to make child care and Head Start more accessible for those families most in need.

(c) To help more Federal employees access affordable care:

(i) the Director of the Office of Personnel Management shall consider establishing criteria that support equitable and accessible employee participation in child care programs, to include agencies' adoption of income thresholds that are aligned with increasing costs of child care;

(ii) the Director of the Office of Personnel Management shall conduct a review of child care subsidy policy and agency program data to determine the effectiveness of current child care subsidies within the Federal Government;

(iii) the heads of agencies are encouraged to expand employee access to child care services through Federal child care centers, child care subsidies, or contracted care providers; and

(iv) the Department of Defense shall take steps to enhance recruitment and retention of the Department's child development program workers and to improve the affordability of child care for service members by September 2023, in addition to its ongoing efforts as part of the Fourteenth Quadrennial Review of Military Compensation to assess how child care costs impact the ability of the military to attract and retain its workforce.

Sec. 4. *Expanding Options for Families by Building the Supply of Care.* (a) To provide families with more options for high-quality long-term, home-, and community-based care and early learning services:

(i) The Secretary of Health and Human Services shall consider rulemaking to improve access to home- and community-based services under Medicaid. As part of any such rulemaking, the Secretary shall consider taking steps to support provider participation in Medicaid home- and community-based programs.

(ii) The Secretary of Health and Human Services shall issue policies that would support child care providers to give families more options to access high-quality child care providers, and shall update payment practices to improve provider stability and supply.

(iii) The Secretary of Education shall update a guide for schools and districts to expand high-quality early learning programming using Federal funds so that more preschoolers are fully prepared to succeed in school.

(iv) The Secretary of Education and the Secretary of Health and Human Services shall identify and disseminate evidence-based practices for serving children with disabilities and their families in high-quality early childhood education programs, including Head Start. The Secretaries shall also take steps to ensure that services are inclusive of children with disabilities and their families; highlight any resources that are available to aid in that effort, including for preschool-aged children with disabilities under section 619 of the Individuals with Disabilities Education Act (IDEA) and for infants and toddlers with disabilities and their families under Part C of the IDEA; and provide information to support all early childhood programs in meeting their obligations under section 504 of the

Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

(v) The Director of the Bureau of Consumer Financial Protection is encouraged to consider developing financial guidance resources that support families during their care planning.

(vi) The Secretary of Health and Human Services shall take steps to streamline processes for Tribes to use CCDF and Head Start funding to construct and improve facilities, including facilities that are jointly funded.

(vii) The 12 agencies that signed the October 2022 Memorandum of Agreement to implement Public Law 102–477 (the ''Tribal 477 Program'') shall increase the effectiveness of Tribal employment and training programs to ensure child care can be used as a support for families by reducing and streamlining administrative requirements, including through consolidation of budgeting, reporting, and auditing systems.

(b) To expand options for quality home- and community-based services to veterans:

(i) The Secretary of Veterans Affairs shall consider expanding the existing Veteran Directed Care Program—which provides veterans who need help with daily living with a budget to spend on home- and community-based services including personal care services—to all Department of Veterans Affairs Medical Centers by the end of Fiscal Year 2024, and shall consider developing an implementation plan for this expansion by June 2023.

(ii) The Secretary of Veterans Affairs shall consider designing and evaluating a pilot program in no fewer than five veteran sites or in five States for a new Co-Employer Option for delivering veteran home health services. Features of the program may include allowing veterans to choose who provides their care and to determine when and how that care is delivered, and connecting veterans with a third-party agency that would help coordinate administrative tasks and act as an intermediary between veterans and their home health workers. Should the Department of Veterans Affairs implement this pilot program, it shall provide an implementation plan—including cost estimates and evaluation strategy—to the President, through the Assistant to the President for Domestic Policy, before August 31, 2023.

(iii) The Secretary of Veterans Affairs shall consider expanding the Home-Based Primary Care program by adding 75 new interdisciplinary teams to provide care to veterans in their homes.

(c) To increase the supply of providers and options for families by encouraging greater private financial protection, support, and technical assistance for care providers:

(i) the Secretary of the Treasury shall consider providing information to and sharing industry best practices with Community Development Financial Institutions to facilitate capital flows and support to care providers;

(ii) the Administrator of the Small Business Administration is encouraged to consider publishing a guide on how individuals in the care workforce may start and sustainably operate care businesses locally and through Small Business Administration programming; and

(iii) the Director of the Bureau of Consumer Financial Protection is encouraged to consider issuing guidance addressing financial institution practices that may increase the burden on the care workforce, discourage their work, and harm their financial well-being.

(d) To build the capacity of local communities to better coordinate and deliver care:

(i) the Secretary of Health and Human Services shall review existing policies to identify opportunities—including among Tribal communities—to increase the capacity of community care entities by providing operational support to these networks of providers; and

(ii) the Secretary of Agriculture shall use the Rural Partners Network and issue guidance developed in partnership with the Secretary of Health and Human Services to promote opportunities—including by hosting workshops—to increase access to child care and long-term care in rural and Tribal communities.

(e) To make the delivery and design of Federal care assistance and programs work better for families, the care workforce, and people seeking care, the Secretaries of the Treasury, Defense, Agriculture, Labor, Health and Human Services, Education, and Veterans Affairs shall consider—and the Administrator of the Small Business Administration is encouraged to consider—prioritizing engagement with parents, guardians, and other relatives with care responsibilities; individuals receiving long-term care; State and local care experts; care providers and workers; employers; and labor unions.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Where not already specified, independent agencies are encouraged to comply with the requirements of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

April 18, 2023.

Executive Order 14096 of April 21, 2023

Revitalizing Our Nation's Commitment to Environmental Justice for All

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance environmental justice, it is hereby ordered as follows:

Section 1. *Policy*. To fulfill our Nation's promises of justice, liberty, and equality, every person must have clean air to breathe; clean water to drink; safe and healthy foods to eat; and an environment that is healthy, sustainable, climate-resilient, and free from harmful pollution and chemical exposure. Restoring and protecting a healthy environment—wherever people live, play, work, learn, grow, and worship—is a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people.

We must advance environmental justice for all by implementing and enforcing the Nation's environmental and civil rights laws, preventing pollution, addressing climate change and its effects, and working to clean up legacy pollution that is harming human health and the environment. Advancing environmental justice will require investing in and supporting culturally vibrant, sustainable, and resilient communities in which every person has safe, clean, and affordable options for housing, energy, and transportation. It is also necessary to prioritize building an equitable, inclusive, and sustainable economy that offers economic opportunities, workforce training, and high-quality and well-paying jobs, including union jobs, and facilitating an equitable transition of the workforce as part of a clean energy future. Achieving this vision will also require improving equitable access to parks, tree cover, playgrounds, sports fields, rivers, ponds, beaches, lakes, and all of the benefits provided by nature, including America's public lands and waters. Pursuing these and other objectives integral to advancing environmental justice can successfully occur only through meaningful engagement and collaboration with underserved and overburdened communities to address the adverse conditions they experience and ensure they do not face additional disproportionate burdens or underinvestment.

We have more work to do to make environmental justice a reality for our Nation, both for today and for the generations that will follow us. Even as many communities in the United States have prospered and thrived in recent decades, many other communities have been left behind. Communities with environmental justice concerns face entrenched disparities that are often the legacy of racial discrimination and segregation, redlining, exclusionary zoning, and other discriminatory land use decisions or patterns. These decisions and patterns may include the placement of polluting industries, hazardous waste sites, and landfills in locations that cause cumulative impacts to the public health of communities and the routing of highways and other transportation corridors in ways that divide neighborhoods. These remnants of discrimination persist today. Communities with environmental justice concerns exist in all areas of the country, including urban and rural areas and areas within the boundaries of Tribal Nations and United States Territories. Such communities are found in geographic locations that have a significant proportion of people who have low incomes

or are otherwise adversely affected by persistent poverty or inequality. Such communities are also found in places with a significant proportion of people of color, including individuals who are Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander. Communities with environmental justice concerns also include geographically dispersed and mobile populations, such as migrant farmworkers.

Communities with environmental justice concerns experience disproportionate and adverse human health or environmental burdens. These burdens arise from a number of causes, including inequitable access to clean water, clean air, natural places, and resources for other basic human health and environmental needs; the concentration of pollution, hazardous waste, and toxic exposures; and underinvestment in affordable housing that is safe and healthy and in basic infrastructure and services to support such housing, including safe drinking water and effective sewage management. The cumulative impacts of exposure to those types of burdens and other stressors, including those related to climate change and the environment, further disadvantage communities with environmental justice concerns. People in these communities suffer from poorer health outcomes and have lower life expectancies than those in other communities in our Nation. Moreover, gaps in environmental and human health data can conceal these harms from public view, and, in doing so, are themselves a persistent and pernicious driver of environmental injustice.

Nearly three decades after the issuance of Executive Order 12898 of February 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), the Federal Government must build upon and strengthen its commitment to deliver environmental justice to all communities across America. Our Nation needs an ambitious approach to environmental justice that is informed by scientific research, high-quality data, and meaningful Federal engagement with communities with environmental justice concerns and that uses the tools available to the Federal Government, including enforcement of civil rights and environmental laws. Our Nation must also take further steps to dismantle racial discrimination and institutional bias that disproportionately affect the health, environment, safety, and resiliency of communities with environmental justice concerns.

To ensure that the Nation's policies and investments respond to the needs of every community, all people should be afforded the opportunity to meaningfully participate in agency decision-making processes that may affect the health of their community or environment. The Federal Government must continue to remove barriers to the meaningful involvement of the public in such decision-making, particularly those barriers that affect members of communities with environmental justice concerns, including those related to disability, language access, and lack of resources. The Federal Government must also continue to respect Tribal sovereignty and support self-governance by ensuring that Tribal Nations are consulted on Federal policies that have Tribal implications. In doing so, we must recognize, honor, and respect the different cultural practices—including subsistence practices, ways of living, Indigenous Knowledge, and traditions—in communities across America. As our Nation reaffirms our commitment to environmental justice, the Federal Government must continue to be transparent about, and accountable for, its actions.

It is the policy of my Administration to pursue a whole-of-government approach to environmental justice. This order builds upon my Administration's ongoing efforts to advance environmental justice and equity consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis), Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), Executive Order 14052 of November 15, 2021 (Implementation of the Infrastructure Investment and Jobs Act), Executive Order 14057 of December 8, 2021 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability), Executive Order 14082 of September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022), and Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government). This order also supplements the foundational efforts of Executive Order 12898 to address environmental justice. In partnership with State, Tribal, territorial, and local governments, as well as community organizations, businesses, and members of the public, the Federal Government will advance environmental justice and help create a more just and sustainable future for all.

Sec. 2. *Definitions*. As used in this order:

(a) ''Agency'' means an executive agency as defined by 5 U.S.C. 105, excluding the Government Accountability Office and independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) ''Environmental justice'' means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

(c) ''Federal activity'' means any agency rulemaking, guidance, policy, program, practice, or action that affects or has the potential to affect human health and the environment, including an agency action related to climate change. Federal activities may include agency actions related to: assuring compliance with applicable laws; licensing, permitting, and the reissuance of licenses and permits; awarding, conditioning, or oversight of Federal funds; and managing Federal resources and facilities. This may also include such activities in the District of Columbia and the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and other Territories and possessions of the United States.

(d) ''Tribal Nation'' means an American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges as a federally recognized Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130, 5131.

Sec. 3. *Government-Wide Approach to Environmental Justice*. (a) Consistent with section 1–101 of Executive Order 12898 and each agency's statutory authority, each agency should make achieving environmental justice part of its mission. Each agency shall, as appropriate and consistent with applicable law:

(i) identify, analyze, and address disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns;

(ii) evaluate relevant legal authorities and, as available and appropriate, take steps to address disproportionate and adverse human health and environmental effects (including risks) and hazards unrelated to Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns;

(iii) identify, analyze, and address historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment;

(iv) identify, analyze, and address barriers related to Federal activities that impair the ability of communities with environmental justice concerns to receive equitable access to human health or environmental benefits, including benefits related to natural disaster recovery and climate mitigation, adaptation, and resilience;

(v) evaluate relevant legal authorities and, as available and appropriate, take steps to provide, in consultation with unions and employers, opportunities for workforce training and to support the creation of high-quality and well-paying jobs, including union jobs, for people who are part of communities with environmental justice concerns;

(vi) evaluate relevant legal authorities and, where available and appropriate, consider adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities on communities with environmental justice concerns, to the maximum extent practicable, and to address any contribution of such Federal activities to adverse effects—including cumulative impacts of environmental and other burdens—already experienced by such communities;

(vii) provide opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by Federal activities, including by:

(A) providing timely opportunities for members of the public to share information or concerns and participate in decision-making processes;

(B) fully considering public input provided as part of decision-making processes;

(C) seeking out and encouraging the involvement of persons and communities potentially affected by Federal activities by:

(1) ensuring that agencies offer or provide information on a Federal activity in a manner that provides meaningful access to individuals with limited English proficiency and is accessible to individuals with disabilities;

(2) providing notice of and engaging in outreach to communities or groups of people who are potentially affected and who are not regular participants in Federal decision-making; and

(3) addressing, to the extent practicable and appropriate, other barriers to participation that individuals may face; and

(D) providing technical assistance, tools, and resources to assist in facilitating meaningful and informed public participation, whenever practicable and appropriate;

(viii) continue to engage in consultation on Federal activities that have Tribal implications and potentially affect human health or the environment, pursuant to Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), and the Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation), and fulfill obligations established pursuant to Executive Order 13007 of May 24, 1996 (Indian Sacred Sites);

(ix) carry out environmental reviews under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, consistent with the statute and its implementing regulations and through the exercise of the agency's expertise and technical judgment, in a manner that:

(A) analyzes direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns;

(B) considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and

(C) provides opportunities for early and meaningful involvement in the environmental review process by communities with environmental justice concerns potentially affected by a proposed action, including when establishing or revising agency procedures under NEPA;

(x) in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and agency regulations, ensure that all programs or activities receiving Federal financial assistance that potentially affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, policies, practices, or methods of administration that discriminate on the basis of race, color, or national origin;

(xi) ensure that the public, including members of communities with environmental justice concerns, has adequate access to information on Federal activities, including planning, regulatory actions, implementation, permitting, compliance, and enforcement related to human health or the environment, when required under the Freedom of Information Act, 5

U.S.C. 552; the Government in the Sunshine Act, 5 U.S.C. 552b; the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C. 1251 *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001 *et seq.*; or other environmental statutes with public information provisions;

(xii) improve collaboration and communication with State, Tribal, territorial, and local governments on programs and activities to advance environmental justice;

(xiii) encourage and, to the extent permitted by law, ensure that Government-owned, contractor-operated facilities take appropriate steps to implement the directives of this order;

(xiv) consider ways to encourage and, as appropriate, ensure that recipients of Federal funds—including recipients of block grant funding—and entities subject to contractual, licensing, or other arrangements with Federal agencies advance environmental justice;

(xv) develop internal mechanisms to achieve the goals of this order, including by:

(A) creating performance metrics and other means of accountability;

(B) identifying and dedicating staff, funding, and other resources; and

(C) providing appropriate professional development and training of agency staff; and

(xvi) consistent with section 2–2 of Executive Order 12898, ensure that Federal activities do not have the effect of:

(A) excluding persons, including populations, from participation in Federal activities on the basis of their race, color, or national origin;

(B) denying persons, including populations, the benefits of Federal activities on the basis of their race, color, or national origin; or

(C) subjecting persons, including populations, to discrimination on the basis of their race, color, or national origin.

(b) The Administrator of the Environmental Protection Agency (EPA) shall:

(i) in carrying out responsibilities under section 309 of the Clean Air Act, 42 U.S.C. 7609, assess whether each agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns; and

(ii) report annually to the Chair of the Council on Environmental Quality (CEQ) and the White House Environmental Justice Interagency Council (Interagency Council) described in section 7 of this order on EPA's Clean Air Act section 309 reviews regarding communities with environmental justice concerns and provide recommendations on legislative, regulatory, or policy options to advance environmental justice in Federal decision-making.

(c) In carrying out assigned responsibilities under Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), the Attorney General shall assess agency efforts to ensure compliance with civil rights laws in programs and activities receiving Federal financial assistance that potentially affect human health or the environment

and shall report annually based on publicly available information to the Chair of CEQ regarding any relevant pending or closed litigation.

Sec. 4. *Environmental Justice Strategic Plans*. (a) No later than 18 months after the date of this order and every 4 years thereafter, each agency shall submit to the Chair of CEQ and make available to the public online an Environmental Justice Strategic Plan.

(b) Each Environmental Justice Strategic Plan shall, based on guidance provided by the Chair of CEQ under section 9 of this order, set forth the agency's vision, goals, priority actions, and metrics to address and advance environmental justice and to fulfill the directives of this order, including through the identification of new staffing, policies, regulations, or guidance documents.

(c) Each Environmental Justice Strategic Plan shall also identify and address opportunities through regulations, policies, permits, or other means to improve accountability and compliance with any statute the agency administers that affects the health and environment of communities with environmental justice concerns. Such measures may include:

(i) increasing public reporting by regulated entities;

(ii) expanding use of pollution measurement and other environmental impact or compliance assessment tools such as fenceline monitoring;

(iii) improving the effectiveness of remedies to provide relief to individuals and communities with environmental justice concerns, such as remedies that penalize and deter violations and promote future compliance, including harm mitigation and corrective action; and

(iv) considering whether to remove exemptions or waivers that may undermine the achievement of human health or environmental standards.

(d) No later than 2 years after the submission of an Environmental Justice Strategic Plan, each agency shall submit to the Chair of CEQ, and make available to the public, an Environmental Justice Assessment that evaluates, based on guidance provided by the Chair of CEQ under section 9 of this order, the effectiveness of the agency's Environmental Justice Strategic Plan. The Environmental Justice Assessment shall include an evaluation of:

(i) the agency's progress in implementing its Environmental Justice Strategic Plan;

(ii) any barriers to implementing the agency's Environmental Justice Strategic Plan; and

(iii) steps taken to address any barriers identified.

(e) An agency's completion of an Environmental Justice Strategic Plan and Environmental Justice Assessment shall satisfy the requirements of section 1–103 of Executive Order 12898.

(f) The Environmental Justice Scorecard established under section 223(d) of Executive Order 14008 shall address agency progress toward achieving the goals outlined in this order and shall include, among other items, a section on agencies' Environmental Justice Strategic Plans and Environmental Justice Assessments.

(g) The Chair of CEQ may request additional periodic reports, information, or evaluations on environmental justice issues from agencies.

(h) Independent regulatory agencies are strongly encouraged to comply with the provisions of this order and to provide a notice to the Chair of CEQ of their intention to do so. The Chair of CEQ shall make such notices publicly available and maintain a list online of such agencies.

Sec. 5. *Research, Data Collection, and Analysis to Advance Environmental Justice*. (a) To address the need for a coordinated Federal strategy to identify and address gaps in science, data, and research related to environmental justice, the Director of the Office of Science and Technology Policy (OSTP) shall establish an Environmental Justice Subcommittee of the National Science and Technology Council (Environmental Justice Subcommittee).

(i) The Director of OSTP, in consultation with the Chair of CEQ, shall designate at least two co-chairs of the Environmental Justice Subcommittee and may designate additional co-chairs as appropriate. The membership of the Subcommittee shall consist of representatives of agencies invited by the Director, in consultation with the Chair of CEQ.

(ii) The Environmental Justice Subcommittee and the Interagency Council described in section 7 of this order shall hold an annual summit on the connection of science, data, and research with policy and action on environmental justice.

(iii) The Environmental Justice Subcommittee shall prepare, and update biennially, an Environmental Justice Science, Data, and Research Plan (Research Plan) to:

(A) analyze any gaps and inadequacies in data collection and scientific research related to environmental justice, with a focus on gaps and inadequacies that may affect agencies' ability to advance environmental justice, including through the Environmental Justice Strategic Plans required under section 4 of this order;

(B) identify opportunities for agencies to coordinate with the research efforts of State, Tribal, territorial, and local governments; academic institutions; communities; the private sector; the non-profit sector; and other relevant actors to accelerate the development of data, research, and techniques—including consideration of Indigenous Knowledge—to address gaps and inadequacies in data collection and scientific research that may affect agencies' ability to advance environmental justice;

(C) provide recommendations to agencies on the development and use of science, data, and research to support environmental justice policy and the agency responsibilities outlined in section 3 of this order;

(D) provide recommendations to the Chair of CEQ on data sources to include in the Climate and Economic Justice Screening Tool established pursuant to section 222(a) of Executive Order 14008;

(E) provide recommendations to agencies on ethical standards, privacy protections, and other requirements for the development and use of science, data, and research addressed in the Research Plan, including recommendations with respect to engaging in consultation with and obtaining consent of Tribal Nations; and

(F) provide recommendations to agencies on:

(1) encouraging participatory science, such as research or data collection undertaken by communities or the public, and, as appropriate, integrating such science into agency decision-making processes;

(2) taking steps to ensure or encourage, as appropriate, that collections of data related to environmental justice include data from the Territories and possessions of the United States;

(3) improving the public accessibility of research and information produced or distributed by the Federal Government, including through the use of machine-readable formats, where appropriate;

(4) disaggregating environmental risk, exposure, and health data by race, national origin, income, socioeconomic status, age, sex, disability, and other readily accessible and appropriate categories;

(5) identifying and addressing data collection challenges related to patterns of historical or ongoing racial discrimination and bias;

(6) analyzing cumulative impacts (including risks) from multiple sources, pollutants or chemicals, and exposure pathways, and accounting for non-chemical stressors and current and anticipated climate change;

(7) in collaboration with Tribal Nations, as appropriate, collecting, maintaining, and analyzing information on consumption patterns of fish, wildlife, and plants related to subsistence and cultural practices of Tribal and Indigenous populations;

(8) providing opportunities for meaningful engagement for communities with environmental justice concerns on the development and design of data collection and research strategies relevant to those communities; and

(9) implementing sections 3–3 and 4–4 of Executive Order 12898 in an efficient and effective manner.

(b) Consistent with sections 3–3 and 4–4 of Executive Order 12898, each agency shall take appropriate steps, considering the recommendations of the Environmental Justice Subcommittee, to promote the development of research and data related to environmental justice, including enhancing the collection of data, supporting the creation of tools to improve the consideration of environmental justice in decision-making, providing analyses of cumulative impacts and risks, and promoting science needed to inform decisions that advance environmental justice.

(c) When conducting research and data collection in furtherance of the directives in this order and Executive Order 12898, agencies shall comply with applicable regulations and directives, including those related to standards of ethics for the protection of human subjects, such as those set forth in Executive Order 12975 of October 3, 1995 (Protection of Human Research Subjects and Creation of National Bioethics Advisory Commission), and the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking).

Sec. 6. *Community Notification on Toxic Chemical Releases*. To ensure that the public, including members of communities with environmental justice concerns, receives timely information about releases of toxic chemicals that may affect them and health and safety measures available to address such releases:

(a) Each agency shall report in accordance with sections 301 through 313 of EPCRA after considering applicable EPA guidance and without regard to the Standard Industrial Classification or North American Industry Classification System delineations.

(b) No later than 6 weeks following a release requiring notification by an agency under section 304(a) of EPCRA, the notifying agency shall hold a public meeting providing the information required under section 304(b)(2) of EPCRA, including information on the nature of the release, known or anticipated health risks, and the proper precautions to take as a result. The agency shall provide notice of a public meeting no later than 72 hours after a release.

(c) The Administrator of EPA shall evaluate available legal authorities and consider any additional steps it may require or encourage non-Federal facilities that report releases under EPCRA to undertake in connection with the report.

(d) The Administrator of EPA shall provide the Environmental Justice Subcommittee established by section 5 of this order with an annual report on trends in data in the Toxic Release Inventory established by section 313 of EPCRA to inform the development of the Research Plan required under section 5(a)(iii) of this order.

Sec. 7. *White House Environmental Justice Interagency Council*. (a) Section 1–102(b) of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, and further amended by section 4(b) of Executive Order 14082, creating the White House Environmental Justice Interagency Council, is amended to read as follows:

''(b) Membership. The Interagency Council shall consist of the following additional members:

(i) the Secretary of State;

(ii) the Secretary of Defense;

(iii) the Attorney General;

(iv) the Secretary of the Interior;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Veterans Affairs;

(xiii) the Secretary of Homeland Security;

(xiv) the Administrator of the Environmental Protection Agency;

(xv) the Director of the Office of Management and Budget;

(xvi) the Chair of the Council of Economic Advisers;

(xvii) the Administrator of General Services;

(xviii) the Executive Director of the Federal Permitting Improvement Steering Council;

(xix) the Director of the Office of Science and Technology Policy;

(xx) the Assistant to the President and National Climate Advisor;

(xxi) the Assistant to the President for Domestic Policy;

(xxii) the Assistant to the President for Economic Policy;

(xxiii) the Executive Director of the White House Gender Policy Council;

(xxiv) the Senior Advisor to the President for Clean Energy Innovation and Implementation; and

(xxv) other relevant agency heads as determined by the Chair of CEQ.''

(b) Section 1–102(d) of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, is further amended by adding the following sentence at the end: ''The Interagency Council shall support and facilitate interagency collaboration on programs and activities related to environmental justice, including the development of materials for environmental justice training to build the capacity of Federal employees to advance environmental justice and to increase the meaningful participation of individuals from communities with environmental justice concerns in Federal activities.''

(c) Section 1–102(g) of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, is amended to read as follows: ''Officers. The head of each agency on the Interagency Council shall designate an Environmental Justice Officer within the agency with the authority to represent the agency on the Interagency Council and with the responsibility for leading agency planning and implementation of the agency's Environmental Justice Strategic Plan, coordinating with CEQ and other agencies, and performing such other duties related to advancing environmental justice as the head of the agency deems appropriate.''

(d) Section 1–102 of Executive Order 12898, as amended by section 220(a) of Executive Order 14008, is further amended by adding the following at the end:

''(h) Memorandum of Understanding. The Interagency Council shall adopt a Memorandum of Understanding among its members that sets forth the objectives, structure, and planned operations of the Interagency Council.

(i) Public meetings. In coordination with the White House Environmental Justice Advisory Council, the Interagency Council shall hold at least one public meeting per year. The Interagency Council shall prepare, for public review, a summary of the comments and recommendations discussed at public meetings of the Interagency Council.

(j) Clearinghouse. The Administrator of EPA, in coordination with the Interagency Council, shall, no later than March 31, 2024, establish a public, internet-based, whole-of-government clearinghouse composed of culturally and linguistically appropriate and accessible materials related to environmental justice, including:

(i) information describing the activities of the members of the Interagency Council to address issues relating to environmental justice;

(ii) information on technical assistance, tools, and resources to assist communities with environmental justice concerns in building capacity for public participation;

(iii) copies of training materials developed by the Interagency Council or its members to help individuals and employees understand and carry out environmental justice activities; and

(iv) any other information deemed appropriate by the Administrator, in coordination with the Interagency Council.''

(e) Section 5–5(a) of Executive Order 12898 is amended to read as follows: ''The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Interagency Council.''

Sec. 8. *White House Office of Environmental Justice*. (a) The White House Office of Environmental Justice is hereby established within CEQ.

(b) The Office shall be headed by a Federal Chief Environmental Justice Officer, who shall be appointed by the President. The Federal Chief Environmental Justice Officer shall advance environmental justice initiatives, including by coordinating the development of policies, programs, and partnerships to achieve the policies set forth in this order; identifying opportunities for collaboration and coordination with State, Tribal, territorial, and local governments; supporting the Interagency Council; and advising the Chair of CEQ and the Interagency Council on environmental justice matters.

(c) The heads of all agencies shall cooperate with the Federal Chief Environmental Justice Officer and provide such information, support, and assistance as the Federal Chief Environmental Justice Officer may request, as appropriate.

Sec. 9. *Guidance*. Within 6 months of the date of this order, the Chair of CEQ shall issue interim guidance, in consultation with the Interagency Council, to inform agency implementation of this order, and shall request recommendations on the guidance from the White House Environmental Justice Advisory Council established by Executive Order 14008 (Advisory Council). To reduce redundancy and streamline reporting obligations, the interim guidance shall identify ways for agencies to align other related efforts, such as obligations that agencies may have under Executive Order 13985 and Executive Order 14008. Within 18 months of the date of this order, the Chair of CEQ shall issue final guidance after considering any recommendations of the Advisory Council. The Chair of CEQ may revise any guidance, or issue additional guidance under this order, as appropriate, and shall consider any additional recommendations made by the Advisory Council in issuing or revising guidance under this section.

Sec. 10. *Reports to the President*. Within 1 year of the date for the submission of agency Environmental Justice Strategic Plans to the Chair of CEQ under section 4(a) of this order, the Chair shall, after consultation with the Interagency Council and after considering recommendations from the Advisory Council, submit to the President a report that describes the implementation of this order, includes each agency's Environmental Justice Strategic

Plan, provides recommendations for additional steps to advance environmental justice, and, beginning with the second report, also provides any insights gathered from each agency's Environmental Justice Assessment required under section 4(d) of this order.

Sec. 11. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
April 21, 2023.

Executive Order 14097 of April 27, 2023

Authority To Order the Ready Reserve of the Armed Forces to Active Duty To Address International Drug Trafficking

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and in furtherance of Executive Order 14059 of December 15, 2021 (Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade), which declared a national emergency to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by international drug trafficking, it is hereby ordered as follows:

Section 1. *Emergency Authority*. To provide additional authority to the Secretary of Defense and the Secretary of Homeland Security to respond to the national emergency declared in Executive Order 14059, the authority under section 12302 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretary of Defense and the Secretary of Homeland Security. The Secretaries of the Army, Navy, and Air Force, at the direction of the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to order to active duty such units and individual members of the Ready Reserve under the jurisdiction of the Secretary concerned as the Secretary concerned considers necessary, consistent with the terms of section 12302 of title 10, United States Code.

Sec. 2. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
April 27, 2023.

Executive Order 14098 of May 4, 2023

Imposing Sanctions on Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13067 of November 3, 1997 (Blocking Sudanese Government Property and Prohibiting Transactions With Sudan), and expanded by Executive Order 13400 of April 26, 2006 (Blocking Property of Persons in Connection With the Conflict in Sudan's Darfur Region), finding that the situation in Sudan, including the military's seizure of power in October 2021 and the outbreak of inter-service fighting in April 2023, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.

It is the policy of the United States to support a transition to democracy and civilian transitional government in Sudan, to defend such a transitional government from those who would prevent its initial formation through violence and other methods, and, once formed, to protect it from those who would undermine it. The United States, in cooperation with like-minded partners, will help such a transitional government, when formed, meet the needs of the Sudanese people and prepare for democratic elections.

Accordingly, to address the threat described in this order and to take further steps with respect to this national emergency, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter

come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be responsible for, or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(A) actions or policies that threaten the peace, security, or stability of Sudan;

(B) actions or policies that obstruct, undermine, delay, or impede, or pose a significant risk of obstructing, undermining, delaying, or impeding, the formation or operation of a civilian transitional government, Sudan's transition to democracy, or a future democratically elected government;

(C) actions or policies that have the purpose or effect of undermining democratic processes or institutions in Sudan;

(D) censorship or other actions or policies that prohibit, limit, or penalize the exercise of freedoms of expression, association, or peaceful assembly by individuals in Sudan, or that limit access to free and independent news or information in or with respect to Sudan;

(E) corruption, including bribery, misappropriation of state assets, and interference with public processes such as government oversight of parastatal budgets and revenues for personal benefit;

(F) serious human rights abuse, including serious human rights abuse related to political repression, in or with respect to Sudan;

(G) the targeting of women, children, or any other civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law;

(H) the obstruction of the activities of United Nations missions—including peacekeeping missions, as well as diplomatic or humanitarian missions—in Sudan, or of the delivery of, distribution of, or access to humanitarian assistance; or

(I) attacks against United Nations missions, including peacekeeping operations;

(ii) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be or have been a leader, official, senior executive officer, or member of the board of directors of any entity:

(A) that has, or whose members have, engaged in any activity described in subsection (a)(i) of this section relating to the tenure of such leader, official, senior executive officer, or member of the board of directors; or

(B) whose property and interests in property are blocked pursuant to this order relating to the tenure of such leader, official, senior executive officer, or member of the board of directors;

(iii) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order;

(iv) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(v) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 2. Following the issuance of a determination by the Secretary of State, in consultation with the Secretary of the Treasury and the Administrator of the United States Agency for International Development, that a civilian transitional government has been formed in Sudan, the Assistant to the President for National Security Affairs shall coordinate, through the interagency process identified in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System), or any successor memorandum, the executive branch actions necessary to implement the policy set forth in this order, including coordinating executive departments and agencies (agencies) to mobilize international assistance to support such a civilian transitional government in implementing political, economic, security, and human rights-related reforms essential for completing a democratic transition.

Sec. 3. The prohibitions in section 1 of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13067, and expanded by Executive Order 13400 and this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. (a) The unrestricted immigrant and nonimmigrant entry into the United States of noncitizens determined to meet one or more of the criteria set forth in section 1(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except when the Secretary of State or the Secretary of Homeland Security, as appropriate, determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State or the Secretary of Homeland Security, as appropriate, so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives.

(b) The Secretary of State shall implement this authority as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish.

(c) The Secretary of Homeland Security shall implement this order as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(d) Such persons shall be treated by this section in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 7. For the purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''noncitizen'' means any person who is not a citizen or noncitizen national of the United States;

(c) the term ''person'' means an individual or entity; and

(d) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 8. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13067, and expanded by Executive Order 13400 and this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All agencies of the United States shall take all appropriate measures within their authority to implement this order.

Sec. 10. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government or the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, or contractors thereof.

Sec. 11. Nothing in this order is intended to affect the continued effectiveness of any action taken pursuant to Executive Order 13761 of January 13, 2017 (Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions), and Executive Order 13804 of July 11, 2017 (Allowing Additional Time for Recognizing Positive Actions by the Government of Sudan and Amending Executive Order 13761).

Sec. 12. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
May 4, 2023.

Executive Order 14099 of May 9, 2023

Moving Beyond COVID–19 Vaccination Requirements for Federal Workers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. In 2021, based on the best available data and guidance from our public health experts, I issued Executive Order 14043 of September 9, 2021 (Requiring Coronavirus Disease 2019 Vaccination for Federal Employees), to direct executive departments and agencies (agencies) to

require coronavirus disease 2019 (COVID–19) vaccination for their employees, and Executive Order 14042 of September 9, 2021 (Ensuring Adequate COVID Safety Protocols for Federal Contractors), to ensure that Federal contractors and subcontractors have adequate COVID–19 safety protocols. I issued those orders at a time when the highly contagious B.1.617.2 (Delta) variant was the predominant variant of the virus in the United States and had led to a rapid rise in cases and hospitalizations. Those orders were necessary to protect the health and safety of critical workforces serving the American people and to advance the efficiency of Government services during the COVID–19 pandemic. Following issuance of those orders, my Administration successfully implemented a vaccination requirement for the Federal Government, the largest employer in the Nation, achieving a 98 percent compliance rate (reflecting employees who had received at least one dose of the COVID–19 vaccine or had a pending or approved exemption or extension request) by January 2022. More broadly, my Administration has effectively implemented the largest adult vaccination program in the history of the United States, with over 270 million Americans receiving at least one dose of the COVID–19 vaccine.

Following this important work, along with continued critical investments in tests and therapeutics that are protecting against hospitalization and death, we are no longer in the acute phase of the COVID–19 pandemic, and my Administration has begun the process of ending COVID–19 emergency declarations. Our public health experts have issued guidance that allows individuals to understand mitigation measures to protect themselves and those around them. Our healthcare system and public health resources throughout the country are now better able to respond to any potential surge of COVID–19 cases without significantly affecting access to resources or care. Since September 2021, COVID–19 deaths have declined by 93 percent, and new COVID–19 hospitalizations have declined by 86 percent. Considering this progress, and based on the latest guidance from our public health experts, we no longer need a Government-wide vaccination requirement for Federal employees or federally specified safety protocols for Federal contractors. Vaccination remains an important tool to protect individuals from serious illness, but we are now able to move beyond these Federal requirements.

Sec. 2. *Revocation of Vaccination Requirements.* Executive Order 14042 and Executive Order 14043 are revoked. Agency policies adopted to implement Executive Order 14042 or Executive Order 14043, to the extent such policies are premised on those orders, no longer may be enforced and shall be rescinded consistent with applicable law.

Sec. 3. *Effective Date.* This order is effective at 12:01 a.m. eastern daylight time on May 12, 2023.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
May 9, 2023.

Executive Order 14100 of June 9, 2023

Advancing Economic Security for Military and Veteran Spouses, Military Caregivers, and Survivors

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. Military-connected families are American working families. Military and veteran families, military caregivers, and survivors face many of the same challenges as their neighbors, but they can carry the additional strains of multiple deployments; frequent moves with little control over their geographic location; caring for wounded, ill, and injured service members or veterans; time apart for training and other demands of military life; and more. The unique demands of military life continue to affect veteran families, military caregivers, and survivors for years after a service member's time in uniform.

Military families, like their civilian counterparts, increasingly look to rely upon dual incomes; however, the 21 percent unemployment rate experienced by active-duty military spouses in the workforce makes that a difficult goal to achieve and maintain. Nearly one in five military families cite challenges with spousal employment as a reason when considering leaving active-duty service. The challenges associated with the military lifestyle, including permanent change-of-station moves every 2 to 3 years on average for active-duty families, mean that military spouses often struggle to find options for work that are portable or allow them to build a sustainable long-term career. Employment challenges are not limited to active-duty spouses, as Reserve and National Guard spouses must balance their careers against the unpredictable nature of the service member's schedule, activations, and deployments. Employment challenges can continue to affect the employability and career trajectory of veteran spouses well after a service member leaves the service.

Recognizing the importance of military family economic well-being to the all-volunteer force, the Federal Government employs more than 16,000 military, veteran, and surviving spouses. As the Nation's largest employer, we must be a model for diversity, equity, inclusion, and accessibility, and, in doing so, we recognize that military spouses are an underserved community. Whether they choose public service, employment in the private sector, or entrepreneurship through building a small business, it is the policy of my Administration to advance economic opportunity for military spouses. My Administration also recognizes the imperative of promoting economic

security for military spouses—the vast majority of whom are women—under the National Strategy on Gender Equity and Equality.

In addition, my Administration understands that access to high-quality, affordable child care is a necessity for working families, and a military readiness issue. While the Department of Defense offers the largest employer-sponsored child care network in the country, military families still face challenges related to capacity and non-traditional work schedules. Many military families seeking care outside of the gates of our military bases struggle to find care they can afford. Because access to child care should not be an impediment to service, I have directed the Secretary of Defense to ensure the Fourteenth Quadrennial Review of Military Compensation, undertaken in January 2023, includes an assessment of child care access and cost in its review of military benefits and pay, along with consideration of factors such as the challenge of military spouse unemployment, frequent military moves, and periods of geographic separation between service members and their spouses, including dual military couples.

Military spouses can also be service members themselves, wearing the Nation's uniform in our Active Components, National Guard, or Reserve forces, with a higher percentage of women service members in a dual military marriage than their male counterparts. As we recognize the 75th anniversary of women's integration into the Armed Forces, my Administration is committed to removing barriers to women's ability to serve, including difficulty in accessing child care, which poses a challenge for both spouses, but disproportionately affects retention for women, especially women in dual military couples, and can play a factor in women's early separation from the Armed Forces.

As we commemorate the 50th anniversary of the all-volunteer force, we must appreciate now more than ever that the commitment and resilience of military-connected families are essential to the recruitment, retention, and readiness of our Armed Forces and the enduring strength of our Nation. Meeting the economic, social, and emotional needs of our military and veteran families, military caregivers, and survivors is a national security imperative. In times of peace and of war, military and veteran families, military caregivers, and survivors have sacrificed much for our country, answering the call to duty time and again. We owe them nothing less than the dignity of a meaningful career and the opportunity to build economic security for their families.

Sec. 2. *Government-wide Military and Veteran Spouse, Military Caregiver, and Survivor Hiring and Retention Strategic Plan and Training.* Given the considerable Federal footprint around many military installations, military spouses are often interested in pursuing careers in the Federal civil service. To ensure that the Federal Government is an employer of choice for military and veteran spouses, military caregivers, and survivors, executive departments and agencies (agencies) must strengthen their ability to recruit, hire, develop, promote, and retain this skilled and diverse pool of talent. To that end:

(a) The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Labor, the Secretary of Veterans Affairs, and the Secretary of Homeland Security, shall develop and issue a Government-wide Military

and Veteran Spouse, Military Caregiver, and Survivor Hiring and Retention Strategic Plan (Military-Connected Plan) within 180 days of the date of this order that builds upon the Government-wide plans required by Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce), and Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce). The Military-Connected Plan shall be updated as appropriate and at a minimum every 4 years. The Military-Connected Plan shall:

(i) define measures of success for the recruitment, hiring, and retention of military and veteran spouses, military caregivers, and survivors based on leading policies and practices in the public, private, and nonprofit sectors;

(ii) include plans for OPM to consult with the Department of Defense and the Department of Homeland Security in developing enhanced support for the retention of military spouses in Federal careers, consistent with merit system principles as defined in 5 U.S.C. 2301;

(iii) consistent with merit system principles, identify strategies—including pursuing development of a legislative proposal, as appropriate—to eliminate, where applicable, barriers to the employment of military and veteran spouses, military caregivers, and survivors in the Federal workforce, including with respect to recruitment; hiring, including an assessment of whether to pursue expanded eligibility for derivative preference; promotion; retention; performance evaluations and awards; professional development programs; mentoring programs or sponsorship initiatives; internship, fellowship, and registered apprenticeship programs; employee resource group and affinity group programs; and training, learning, and onboarding programs;

(iv) identify strategies for marketing the talent, experience, and diversity of military and veteran spouses, military caregivers, and survivors to agencies; and

(v) develop a data-driven approach to increasing transparency and accountability in hiring and retention—including by encouraging agencies to set goals for hiring under the Military Spouse Noncompetitive Appointment Authority established by 5 U.S.C. 3330d and hiring individuals eligible for derivative preference, to use data internally to improve performance, and to use data to publicly report on progress—which would build upon, as appropriate, the reporting requirements of Executive Order 13832 of May 9, 2018 (Enhancing Noncompetitive Civil Service Appointments of Military Spouses).

(b) Beginning with Fiscal Year 2025, the Director of OPM shall revise the title of the ''Employment of Veterans in the Federal Executive Branch'' annual report to ''Employment of Veterans and Military-Connected Spouses and Survivors in the Federal Executive Branch,'' and shall include in the report the existing data previously reported in the ''Employment of Veterans in the Federal Executive Branch'' report, including statistics on the hiring of military and veteran spouses and survivors in a manner that allows for comparison and analysis of the distinct populations and hiring mechanisms.

(c) The Secretary of Veterans Affairs and the Director of OPM shall collaborate on opportunities to better share Federal employee survey data to enable analysis and reporting relevant to the employment of military and veteran spouses and survivors.

(d) In collaboration with the Director of OPM and consistent with 5 U.S.C. 4103, agencies shall provide annual training for agency human resources personnel and hiring managers concerning the employment of military and veteran spouses, military caregivers, and survivors, including training on special authorities for the hiring of military spouses and survivors, and the provision of tools to build the agencies' capacity to make use of applicable hiring authorities, including distribution of the Joining Forces military spouse hiring toolkit, which OPM shall publish on the FedsHireVets website.

(e) The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data, as designated by Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), shall develop recommendations on ways in which agencies can expand Federal datasets to track outcomes for military and veteran spouses, military caregivers, and survivors. Such recommendations shall be included in the Director of OSTP's reports to the White House Steering Committee on Equity under section 9 of Executive Order 14091.

(f) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall work together through existing interagency collaborations, including the Transition Assistance Program, to increase training and employment opportunities for military spouses in the workforce through the transition to veteran spouse status.

Sec. 3. *Updates to Federal Training and Hiring Authorities.* To strengthen the ability of the Federal Government to train, develop, and hire military and veteran spouses and survivors:

(a) Beginning with Fiscal Year 2025, agencies shall list the Military Spouse Noncompetitive Appointment Authority established by 5 U.S.C. 3330d when soliciting applications from outside of their workforce for positions announced on USAJOBS or other job posting sites. This requirement applies when using merit promotion procedures to fill competitive service positions.

(b) The Secretary of Labor shall examine the eligibility of military and veteran spouses for programs that provide education, job training, employment services, employer engagement, and other relevant programs, and, as appropriate, shall work to reduce barriers that military and veteran spouses may face in accessing those programs.

(c) The Director of OPM shall examine the eligibility criteria for the Recent Graduates Program established by section 2 of Executive Order 13562 of December 27, 2010 (Recruiting and Hiring Students and Recent Graduates), and, as appropriate, including by recommending Presidential action as necessary, shall work to reduce barriers that military spouses may face in accessing the Program.

Sec. 4. *Retention of Military and Veteran Spouses and Military Caregivers, Including Those Employed by the Federal Government.* In order to support

military and veteran spouses and military caregivers, including those who are employed by the Federal Government:

(a) The Director of OPM shall issue guidance to agencies:

(i) reinforcing existing telework and remote work flexibility options pursuant to 5 U.S.C. 6502 for Federal employees, including military spouses and military caregivers, and encouraging agency leaders to consider these as options for retaining Federal employee military spouses and military caregivers;

(ii) encouraging agencies to support the policies set forth in section 1 of this order by granting up to 5 days of administrative leave to military spouses during a geographic relocation occurring as directed by a service member's orders; and

(iii) encouraging agencies to collaborate so that a military spouse or military caregiver Federal employee may be placed in another Federal agency position when arrangements to retain a military spouse or military caregiver—including following changes to support continuity of care or relocation due to permanent change-of-station orders for the active-duty service member—are unavailable to allow them to continue in their existing position.

(b) The Secretary of State and the Secretary of Defense, when reevaluating or entering agreements with host nations, shall consider work options for military spouses who are performing remote work for non-Department of Defense entities, so as to reduce barriers for military spouses seeking to continue their private sector- or self-employment.

(c) The Secretary of Defense shall coordinate with the heads of the Military Departments, and the Secretary of Homeland Security shall coordinate with the Commandant of the United States Coast Guard, to amend their respective legal assistance instructions to allow for consultation, advice, and assistance to military families on Status of Forces Agreements and other agreements with host nations affecting family employment, so as to provide support for military spouses navigating complex employment requirements related to working remotely while their active-duty service member spouse is stationed overseas. Those amendments shall specify that legal assistance is limited to the personal civil legal affairs of military dependents affected by employment restrictions related to a Status of Forces Agreement or other host nation agreement, and does not extend to their employers or the establishment, management, or taxation of small business organizations.

Sec. 5. *Domestic Employees Teleworking Overseas Policy.* In order to ensure that military spouses are able to equitably and reasonably access opportunities for remote work in their Federal jobs when their service-member spouse receives orders overseas, promote togetherness for military families, and enable agencies that employ military spouses—resilient and talented civil servants—to retain them, the following improvements shall be made to the Domestic Employees Teleworking Overseas (DETO) program implemented by agencies pursuant to the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81):

(a) The Secretary of State and the Secretary of Defense shall enter into a Memorandum of Understanding (MOU) to address residential security and safety requirements for military spouses employed by the Federal Government and working overseas through the DETO program. The MOU shall be communicated to sponsoring agencies, and the Secretaries of State and

Defense shall develop appropriate guidance to communicate the provisions of the MOU to military spouses who are civilian employees of the Federal Government.

(b) To promote consistency and effective coordination in the implementation of the DETO program across the executive branch, agencies shall:

(i) develop common standards for DETO policies, including identification of points of contact and creation of guidelines to ensure that such policies are communicated and advertised in a manner accessible to military spouse employees;

(ii) establish a DETO application system and develop a method to track DETO applications received and processed, as well as application processing timelines; and

(iii) establish time frames for DETO application processing and approvals, considering the time-sensitive nature of decisions for applications by military spouses due to permanent change-of-station moves and other factors unique to military families.

Sec. 6. *Expanding Support for Military and Veteran Spouse Entrepreneurs.* Many military spouses start their own businesses because of a need for flexibility or inability to find or maintain other employment. When military spouses must discontinue their businesses, however, they often cite military moves, rather than lack of profitability, as the reason. To support military spouse entrepreneurs in starting and sustaining their businesses, the Administrator of the Small Business Administration shall:

(a) expand access to resources tailored to military and veteran spouses who are interested in starting or growing a small business, including guidance to help military spouses with relocating a business following a military move; and

(b) evaluate access to capital gaps for military spouse entrepreneurs.

Sec. 7. *Child Care for Military Families.* The Department of Defense operates the largest employer-sponsored child care program in the United States in order to provide military families with support that is essential to overall mission readiness, retention, and recruitment. To build on the existing support and ensure that military families have access to affordable, high-quality child care allowing both the service member and the spouse to pursue professional opportunities, the Secretary of Defense shall:

(a) in coordination with the Director of OPM, establish flexible spending accounts for the care of military dependents, available to military personnel no later than January 1, 2024; and

(b) expand pathways for military spouses to provide certified, home-based child care on military installations, including by providing them with support in seeking licensure and achieving government-mandated quality benchmarks.

Sec. 8. *Definitions.* For the purposes of this order:

(a) The term ''active duty'' has the meaning set forth in 10 U.S.C. 101(d)(1), except that the term also includes ''active Guard and Reserve duty,'' as defined in 10 U.S.C. 101(d)(6)(a).

(b) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(c) The term ''derivative preference'' means those who are ''preference eligible,'' as defined in 5 U.S.C. 2108(3), because they are eligible spouses and parents who use a veteran's preference when the veteran is unable to do so.

(d) The term ''military caregiver'' means the spouse, child, parent, or next of kin of a veteran who is the primary caregiver for a veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable.

(e) The term ''military spouse'' means an individual married to a member of the Armed Forces who is performing active duty.

(f) The term ''survivor'' means the spouse, child, parent, or next of kin of a service member who died while on active duty, or from a service-connected disability following discharge or release under conditions other than dishonorable.

(g) The term ''veteran spouse'' means an individual married to a retired or separated member of the Armed Forces who was discharged or released under conditions other than dishonorable, so long as the marriage occurred prior to or during the service member's active service.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

June 9, 2023.

Executive Order 14101 of June 23, 2023

Strengthening Access to Affordable, High-Quality Contraception and Family Planning Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. Women should have access to the healthcare they need, including contraception and family planning services. Access to contraception is essential to ensuring that all people have control over personal decisions about their own health, lives, and families. High-quality contraception improves health outcomes, advances economic stability, and promotes women's overall well-being. Contraception access is linked to improved maternal and child health, expanded educational and professional opportunities, and higher lifetime earnings.

Through new requirements for private health coverage and expanded access to Medicaid, the Affordable Care Act extended access to affordable contraception to millions of women, helping them save billions of dollars on birth control. Yet access to high-quality contraception continues to vary based on income, location, health insurance coverage, and the availability of healthcare providers. Millions of people continue to face barriers to obtaining the contraception they need even as access has become more critical in the wake of the Supreme Court's decision in *Dobbs* v. *Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), to overturn *Roe* v. *Wade*, 410 U.S. 113 (1973).

Given that the Supreme Court overruled *Roe*, which rested on the fundamental right to privacy in matters of health, bodily autonomy, and family, it has never been more important to protect and expand access to family planning services. *Dobbs* has already had, and will continue to have, devastating implications for women's health. In States with laws that restrict access to abortion, health clinics that provide contraception and other essential health services have shuttered, eliminating critical points of care. Some State officials have adopted policies interfering with access to emergency contraception, including for vulnerable populations. Such policies further threaten women's ability to make decisions about their own bodies, families, and futures. These threats persist despite decades of Supreme Court precedent, beginning with *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972), affirming the right to contraception. Moreover, an overwhelming majority of Americans support access to contraception.

In the wake of the Supreme Court's decision in *Dobbs*, I issued Executive Order 14076 of July 8, 2022 (Protecting Access to Reproductive Healthcare Services), and Executive Order 14079 of August 3, 2022 (Securing Access to Reproductive and Other Healthcare Services), to direct my Administration to take action to protect access to reproductive healthcare services, including contraception and abortion. In Executive Order 14076, I directed the Secretary of Health and Human Services and the Director of the Gender Policy Council to establish an Interagency Task Force on Reproductive Healthcare Access to coordinate these efforts across my Administration. Consistent with these Executive Orders and other applicable authorities, executive departments and agencies have taken numerous steps to protect and strengthen access to contraception, including:

(a) issuing guidance and convening sponsors of employee benefit plans and health insurers to clarify contraception coverage requirements under the Affordable Care Act;

(b) expanding walk-in contraceptive care services for active duty service members and other Military Health System beneficiaries;

(c) issuing a Notice of Proposed Rulemaking to improve access to affordable contraception for certain dependents of veterans;

(d) providing additional funding to bolster training, develop and expand telehealth infrastructure and capacity, and provide technical assistance for clinics funded under Title X of the Public Health Service Act (42 U.S.C. 300 *et seq.*) (Title X);

(e) strengthening the inclusion of family planning providers in insurance networks for qualified health plans under the Affordable Care Act;

(f) issuing a Notice of Proposed Rulemaking to provide a new pathway for women to access contraceptives when their private health coverage is exempt from covering this benefit;

(g) issuing a Notice of Proposed Rulemaking to strengthen privacy protections under the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, 110 Stat. 1936, as amended by Public Law 111–5, 123 Stat. 115 (2009), by proposing to prohibit doctors, other healthcare providers, and health plans from using or disclosing individuals' protected health information related to lawful reproductive healthcare, such as contraception use, under certain circumstances;

(h) issuing a Notice of Proposed Rulemaking to ensure healthcare providers that receive Federal financial assistance do not deny healthcare, including contraception, on the basis of any ground protected by Federal law; and

(i) reminding Health Resources and Services Administration (HRSA)-funded health centers of their obligations to provide family planning services to patients consistent with Federal requirements.

Through this order, I direct my Administration to build on this progress and further strengthen and bolster access to affordable, high-quality contraception. It remains the policy of my Administration to support access to reproductive healthcare services and to protect and defend reproductive rights in the face of ongoing efforts to strip Americans of their fundamental freedoms.

Sec. 2. *Improving Access and Affordability Under the Affordable Care Act.* (a) The Secretaries of the Treasury, Labor, and Health and Human Services (Secretaries) shall consider issuing guidance, consistent with applicable law, to further improve Americans' ability to access contraception, without out-of-pocket expenses, under the Affordable Care Act. In doing so, the Secretaries shall consider actions that would, to the greatest extent permitted by law:

(i) ensure coverage of comprehensive contraceptive care, including all contraceptives approved, granted, or cleared by the Food and Drug Administration, without cost sharing for enrollees, participants, and beneficiaries; and

(ii) streamline the process for patients and healthcare providers to request coverage, without cost sharing, of medically necessary contraception.

(b) The Secretaries shall consider additional actions, as appropriate and consistent with applicable law, to promote increased access to affordable over-the-counter contraception, including emergency contraception.

Sec. 3. *Supporting Access Through Medicaid and Medicare*. The Secretary of Health and Human Services, through the Administrator of the Centers for Medicare and Medicaid Services, shall consider taking steps, as appropriate and consistent with applicable law, to:

(a) expand access to affordable family planning services and supplies across the Medicaid program, including by identifying and disseminating best practices for providing high-quality family planning services and supplies, including through Medicaid-managed care; and

(b) improve coverage and payment for contraceptives for Medicare beneficiaries through Medicare Advantage and Medicare Part D plans.

Sec. 4. *Additional Actions to Support Contraception Access*. (a) To promote access to affordable, high-quality contraception, the Secretary of Defense, the Secretary of Veterans Affairs, and the Director of the Office of Personnel Management shall consider additional actions, as appropriate and consistent with applicable law, to:

(i) ensure, where appropriate, robust coverage of contraception under Federal programs;

(ii) offer technical assistance to help promote access to contraception, where relevant; and

(iii) educate Federal program participants and beneficiaries on how to access affordable, high-quality contraception, including through public awareness initiatives that provide timely and accurate information about such access.

(b) To promote access to affordable, high-quality contraception across Federal healthcare programs and relevant human services programs, including through Title X clinics, HRSA-funded health centers, and the Indian Health Service, the Secretary of Health and Human Services shall consider taking actions, as appropriate and consistent with applicable law, to:

(i) encourage all federally funded health centers, including HRSA-funded health centers, to expand the availability and quality of voluntary family planning services offered to beneficiaries;

(ii) support healthcare providers that participate in the Title X program through new technical assistance and training;

(iii) support access to culturally and linguistically appropriate care, including by developing and disseminating materials on family planning services available at federally funded health centers;

(iv) provide guidance on contraception-related obligations, such as confidentiality protections, and technical assistance resources to funding recipients, where relevant; and

(v) support research and data analysis to document gaps and disparities in access to contraception, as well as the benefits of comprehensive coverage for contraception and family planning services through public and private healthcare programs.

(c) The Secretary of Labor shall identify best practices for making affordable, high-quality contraception available to health plan enrollees, participants, and beneficiaries to share with employers and organizations that sponsor private health coverage.

(d) The Secretary of Education shall convene institutions of higher education to share best practices for making affordable, high-quality contraception available, as well as ways to raise awareness of options for accessing contraception.

Sec. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

June 23, 2023.

Executive Order 14102 of July 13, 2023

Ordering the Selected Reserve and Certain Members of the Individual Ready Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active Armed Forces of the United States for the effective conduct of Operation Atlantic Resolve in and around the United States European Command's area of responsibility. In furtherance of this operation, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under their respective jurisdictions, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit of the Selected Reserve, or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, not to exceed 3,000 total members at any one time, of whom not more than 450 may be members of the Individual Ready Reserve, as they deem necessary, and to terminate the service of those units and members ordered to active duty.

This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against

the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
July 13, 2023.

Executive Order 14103 of July 28, 2023

2023 Amendments to the Manual for Courts Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946a), and in order to prescribe additions and amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Part II, Part III, Part IV, and Part V of the Manual for Courts-Martial, United States, are amended as described in Annex 1, which is attached to and made a part of this order. The amendments in Annex 1 shall take effect on the date of this order, subject to the following:

(a) Nothing in Annex 1 shall be construed to make punishable any act committed or omitted prior to the date of this order that was not punishable when committed or omitted.

(b) Nothing in Annex 1 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action begun prior to the date of this order, and any such nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if the Annex 1 amendments had not been prescribed.

Sec. 2. Part I, Part II, Part III, Part IV, Part V, and Appendix 12A of the Manual for Courts-Martial, United States, are amended as described in Annex 2, which is attached to and made a part of this order. The amendments in Annex 2 shall apply in accordance with the effective date established by section 539C of the National Defense Authorization Act for Fiscal Year 2022 (NDAA FY 2022), Public Law 117–81, subject to the following:

(a) Nothing in Annex 2 shall be construed to make punishable any act committed or omitted prior to the effective date established by section 539C of the NDAA FY 2022.

(b) Nothing in Annex 2 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date established by section 539C of the NDAA FY 2022, and any such nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if the Annex 2 amendments had not been prescribed.

Sec. 3. Appendix 12B, Appendix 12C, and Appendix 12D are added to the Manual for Courts-Martial, United States, and Part II of the Manual is amended as described in Annex 3, which is attached to and made a part of this order. The additions and amendments in Annex 3 shall take effect on December 27, 2023, and shall apply in accordance with section 539E(f) of the NDAA FY 2022 (10 U.S.C. 853 note), subject to the following:

(a) Nothing in Annex 3 shall be construed to make punishable any act committed or omitted prior to the effective date established by section 539E(f) of the NDAA FY 2022.

(b) Nothing in Annex 3 shall be construed to invalidate any nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date established by section 539E(f) of the NDAA FY 2022, and any such nonjudicial punishment proceeding, restraint, preliminary hearing, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if the Annex 3 amendments had not been prescribed.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
July 28, 2023.

ANNEX 1

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

(a) R.C.M. 104 is amended to read as follows:

"**Rule 104. Command influence**

(a) *General prohibitions.*

(1) *Convening authorities and commanders.*

(A) No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish a court-martial or other military tribunal or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court-martial or tribunal, or with respect to any other exercise of the functions of the court-martial or tribunal or such persons in the conduct of the proceedings.

(B) No court-martial convening authority, nor any other commanding officer, may deter or attempt to deter a potential witness from participating in the investigatory process or testifying at a court-martial. The denial of a request to travel at government expense or refusal to make a witness available shall not by itself constitute unlawful command influence.

(2) *All persons subject to the UCMJ.* No person subject to the UCMJ may attempt to coerce or, by any unauthorized means, attempt to influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case or the action of any preliminary hearing officer or convening, approving, or reviewing authority with respect to such preliminary hearing officer's or authority's acts concerning the following: any decision to place a Servicemember into pretrial confinement; disposition decisions; rulings on pre-referral matters; findings at a preliminary hearing; convening a court-martial; decisions concerning plea agreements; selecting members; decisions concerning witness requests;

taking action on any clemency or deferment request; or any appellate or post-trial review of a case.

(3) *Scope.*

(A) *Instructions.* Paragraphs (a)(1) and (2) of this rule do not prohibit general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial.

(B) *Court-martial statements.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements and instructions given in open session by the military judge or counsel.

(C) *Professional supervision.* Paragraphs (a)(1) and (2) of this rule do not prohibit action by the Judge Advocate General concerned under R.C.M. 109.

(D) *Offense.* Paragraphs (a)(1) and (2) of this rule do not prohibit appropriate action against a person for an offense committed while detailed as a military judge, counsel, or member of a court-martial, or while serving as individual counsel.

(E) *General statements regarding criminal activity or offenses.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, do not advocate a particular court-martial finding or sentence, and do not relate to a particular accused.

(b) *Communication between superiors and subordinates.*

(1) A superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of the UCMJ with a subordinate convening authority or officer, and a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under the UCMJ.

(2) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(c) *Prohibitions concerning evaluations.*

(1) *Evaluation of member or counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims' Counsel.

(2) *Evaluation of military judge.*

(A) *General courts-martial.* Unless the general court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of the convening authority's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed to a general court-martial that relates to the performance of duty as a military judge.

(B) *Special courts-martial.* The convening authority may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to a special court-martial that relates to the performance of duty as a military judge. When the military judge is normally rated or the military judge's report is reviewed by the convening authority, the manner in which such military judge will be rated or evaluated upon the performance of duty as a military judge may be as prescribed in regulations of the Secretary concerned, which shall ensure the absence of any command influence in the rating or evaluation of the military judge's judicial performance.

(d) *Command discretion.*

(1) A superior convening authority or commanding officer may withhold the authority of a subordinate convening authority or officer to dispose of offenses in individual cases, types of cases, or generally.

(2) Except as provided in paragraph (d)(1) of this rule or as otherwise authorized under the UCMJ, a superior convening authority or commanding officer may not limit the discretion of a subordinate convening authority or officer to act with respect to a case for which the subordinate convening authority or officer has the authority to dispose of the offenses."

(b) R.C.M. 201(e) is amended to read as follows:

"(e) *Reciprocal jurisdiction.*

(1) Each armed force has court-martial jurisdiction over all persons subject to the UCMJ.

(2)(A) A commander of a unified or specified combatant command may convene courts-martial over members of any of the armed forces.

(B) So much of the authority vested in the President under Article 22(a)(9), to empower any commanding officer of a joint command or joint task force to convene courts-martial is

delegated to the Secretary of Defense, and such a commanding officer may convene general courts-martial for the trial of members of any of the armed forces assigned or attached to a combatant command or joint command.

(C) A commander who is empowered to convene a court-martial under subparagraphs (e)(2)(A) or (e)(2)(B) of this rule may expressly authorize a commanding officer of a subordinate joint command or subordinate joint task force who is authorized to convene special and summary courts-martial to convene such courts-martial for the trial of members of other armed forces assigned or attached to a joint command or joint task force, under regulations that the superior command may prescribe.

(3)(A) An accused should not ordinarily be tried by a court-martial convened by a member of a different armed force except when the circumstances described in subparagraphs (e)(2)(A) or (B) of this rule exist. However, failure to comply with this non-binding policy does not affect an otherwise valid referral.

(B) The non-binding policy stated by subparagraph (e)(3)(A) of this rule does not apply when one or more of the following circumstances exists:

(i) The court-martial is convened by a commander authorized to convene courts-martial under paragraph (e)(2) of this rule;

(ii) The accused cannot be delivered to the armed force of which the accused is a member without manifest injury to the armed forces;

(iii) The court-martial is convened by a member of the Space Force to try a member of the Air Force; or

(iv) The court-martial is convened by a member of the Air Force to try a member of the Space Force.

(4) Nothing in this rule prohibits detailing to a court-martial a military judge, member, or counsel who is a member of an armed force different from that of the accused, the convening authority, or both.

(5) When a member of one armed force is tried by a court-martial convened by a member of another armed force, the court-martial will use the implementing regulations and procedures prescribed by the Secretary concerned of the military service of the accused. In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command that held the trial, where that review is required by the UCMJ, shall be carried out by the department that includes the armed force of which the accused is a member.

(6) Unless otherwise directed by the President or Secretary of Defense, whenever action under this Manual is required or authorized to be taken by a person superior to—

(A) a commander of a unified or specified combatant command; or

(B) a commander of any other joint command or joint task force that is not part of a unified or specified combatant command,

the matter shall be referred to the Secretary of the armed force of which the accused is a member. The Secretary may convene a court-martial, take other appropriate action, or, subject to R.C.M. 504(c), refer the matter to any person authorized to convene a court-martial of the accused.

(7) When there is a disagreement between the Secretaries of two military departments or between the Secretary of a military department and the commander of a unified or specified combatant command or other joint command or joint task force as to which organization should exercise jurisdiction over a particular case or class of cases, the Secretary of Defense or an official acting under the authority of the Secretary of Defense shall designate which organization will exercise jurisdiction."

(c) R.C.M. 305(j) is amended to read as follows:

"(j) *Review by military judge.* Once the charges for which the accused has been confined are referred to trial, or in a pre-referral proceeding conducted in accordance with R.C.M. 309, the military judge shall review the propriety of pretrial confinement upon motion for appropriate relief.

(1) *Release.* The military judge shall order release from pretrial confinement only if:

(A) The 7-day reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to the military judge justifying continuation of pretrial confinement under subparagraph (h)(2)(B) of this rule;

(B) Information not presented to the 7-day reviewing officer establishes that the confinee should be released under subparagraph (h)(2)(B) of this rule; or

(C) The provisions of paragraph (i)(1) or (2) of this rule have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under subparagraph (h)(2)(B) of this rule.

(2) *Credit.* Upon sentencing, the military judge shall order administrative credit under subsection (k) of this rule for any pretrial confinement served as a result of an abuse of discretion or failure to comply with the provisions of subsections (f), (h), or (i) of this rule."

(d) R.C.M. 307(b) is amended to read as follows:

"(b) *How charges are preferred; oath.* In preferring charges and specifications —

(1) The person preferring the charges and specifications must sign them under oath before a commissioned officer of the armed forces authorized to administer oaths; and

(2) The writing under paragraph (b)(1) must state that—

(A) the signer has personal knowledge of, or has investigated, the matters set forth in the

charges and specifications; and

(B) the matters set forth in the charges and specifications are true to the best of the knowledge and belief of the signer.

(3) Any procedure, including those by remote means, which appeals to the conscience of the person to whom the oath is administered and which binds that person to properly perform that person's duties under this rule, is sufficient."

(e) R.C.M. 309 is amended to read as follows:

"Rule 309. Proceedings conducted before referral

(a) *In general.*

(1) A military judge detailed under regulations of the Secretary concerned may conduct proceedings under Article 30a, before referral of charges and specifications to court-martial for trial, and may issue such rulings and orders as necessary to further the purpose of the proceedings. A military judge may issue such orders and rulings only when the matters would be subject to consideration by a military judge in a general or special court-martial.

(2) The matters that may be considered and ruled upon by a military judge in proceeding under this rule are limited to those matters specified in subsection (b) of this rule.

(3) If any matter in a proceeding under this rule becomes a subject at issue with respect to charges that have been referred to a general or special court-martial, the matter, to include any motions, related papers, and the record of the hearing, if any, shall be provided to the military judge detailed to the court-martial.

(b) *Pre-referral matters.*

(1) *Pre-referral investigative subpoenas.* A military judge may, upon application by the Government, consider whether to issue a pre-referral investigative subpoena under R.C.M.

703(g)(3)(C). The proceeding may be conducted ex parte and may be conducted in camera.

(2) *Pre-referral warrants or orders for wire or electronic communications.* A military judge may, upon written application by a federal law enforcement officer or authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, consider whether to issue a warrant or order for wire or electronic communications and related information as provided under R.C.M. 703A. The proceeding may be conducted ex parte and may be conducted in camera.

(3) *Requests for relief from subpoena or other process.* A person in receipt of a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C), a victim named in a specification whose personal and confidential information has been subpoenaed under R.C.M. 703(g)(3)(C)(ii), or a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government.

(4) *Pre-referral matters referred by an appellate court.* When a Court of Criminal Appeals or the Court of Appeals for the Armed Forces, in the course of exercising the jurisdiction of such court, remands the case for a pre-referral judicial proceeding, a military judge may conduct such a proceeding under this rule. This includes matters referred by a Court of Criminal Appeals under subsection (e) of Article 6b.

(5) *Pre-referral matters under subsection (c) of Article 6b.* The military judge may

designate a suitable person to assume the rights of a victim who is under 18 years of age (but who is not a member of the armed forces), or who is incompetent, incapacitated, or deceased. Upon appointment by the military judge, the legal guardian of the victim, the representative of the victim's estate, a family member, or any other person designated as suitable by the military judge, may assume the rights of the victim. Under no circumstances may the military judge designate the accused to assume the rights of the victim.

(6) *Pretrial confinement of an accused.* After action by the 7-day reviewing officer under R.C.M. 305(i)(2)(C), a military judge may, upon application of an accused for appropriate relief, review the propriety of pretrial confinement. A military judge may order release from pretrial confinement under the provisions of R.C.M. 305(j)(1).

(7) *The mental capacity or mental responsibility of an accused.*

(A) A military judge may, under the provisions of R.C.M. 706(b)(1), order an inquiry into the mental capacity or mental responsibility of an accused before referral of charges. The proceeding may be conducted ex parte and may be conducted in camera.

(B) A military judge may, under the provisions of R.C.M. 909, conduct a hearing to determine the mental capacity of the accused.

(8) *A request for individual military counsel.* When an accused requests individual military counsel prior to charges being referred to a general or special court-martial, a military judge may review the request subject to the provisions of R.C.M. 506(b).

(9) *Victim's petition for relief.*

(A) A victim of an offense under the UCMJ, as defined in Article 6b(b), may file a motion pre-referral requesting that a military judge require a preliminary hearing officer conducting a preliminary hearing under R.C.M. 405 to comply with:

(i) Articles 6b or 32;

(ii) R.C.M. 405; or

(iii) Mil. R. Evid. 412, 513, 514, or 615.

(B) The military judge may grant or deny such a motion. The ruling is subject to further review pursuant to Article 6b(e).

(c) *Procedure for submissions.* The Secretary concerned shall prescribe the procedures for receiving requests for proceedings under this rule and for detailing military judges to such proceedings.

(d) *Hearings.* Any hearing conducted under this rule shall be conducted in accordance with the procedures generally applicable to sessions conducted under Article 39(a), and R.C.M. 803.

(e) *Record.* A separate record of any proceeding under this rule shall be prepared and forwarded to the convening authority or commander with authority to dispose of the charges or offenses in the case. If charges are referred to trial in the case, such record shall be included in the record of trial.

(f) *Military magistrate.* If authorized under regulations of the Secretary concerned, a military judge detailed to a proceeding under this rule, other than a proceeding under paragraph (b)(2), (b)(7)(B), or (b)(8) of this rule, may designate a military magistrate to preside and exercise the authority of the military judge over the proceeding."

(f) R.C.M. 405(f) is amended to read as follows:

"(f) *Rights of the accused.* At any preliminary hearing under this rule, the accused shall have the right to:

(1) Be advised of the charges under consideration;

(2) Be represented by counsel;

(3) Be informed of the purpose of the preliminary hearing;

(4) Be informed of the right against self-incrimination under Article 31;

(5) In accordance with the terms of R.C.M. 405(j)(4), be present throughout the preliminary hearing;

(6) Cross-examine witnesses on matters relevant to the issues for determination under subsection (a) of this rule;

(7) Present matters relevant to the issues for determination under subsection (a); and

(8) Make a sworn or unsworn statement relevant to the issues for determination under subsection (a).”

(g) R.C.M. 405(h)(3)(B)(iii) is amended to read as follows:

“(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under subsection (a) of this rule and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense-requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under subsection (l) of this rule.”

(h) R.C.M. 405(i)(2)(A) is amended to read as follows:

"(A) *Inadmissibility of certain evidence.* In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that the alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim's sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(1) or (2); and

(ii) the evidence is not cumulative and is necessary to a determination of the issues under subsection (a) of this rule."

(i) R.C.M. 405(j)(3) is amended to read as follows:

"(3) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible, whether conducted in person or via remote means. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report."

(j) R.C.M. 405(j)(4) is amended to read as follows:

"(4) *Presence of accused.* The accused shall be present for the preliminary hearing.

(A) *Remote presence of the accused.* The convening authority that directed the

preliminary hearing may authorize the use of audio-visual technology between the parties and the preliminary hearing officer. In such circumstances the "presence" requirement of the accused is met only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused shall be considered to have waived the right to be present at the preliminary hearing if the accused:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify exclusion from the proceeding."

(k) A new R.C.M. 406(c) is inserted immediately after R.C.M. 406(b) to read as follows:

"(c) *Distribution.* A copy of the advice of the staff judge advocate shall be provided to the defense if charges are referred to trial by general court-martial."

(l) R.C.M. 703(d) is amended to read as follows:

"(d) *Employment of expert witnesses and consultants.*

(1) *Experts for the prosecution.* When the employment of a prosecution expert witness or consultant is considered necessary, counsel for the Government shall, in advance of employment of the expert, and with notice to the defense, submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(2) *Experts for the defense.* When the employment of a defense expert witness or

consultant is considered necessary, the defense shall submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(A) After referral of charges, a denied defense request for an expert witness or consultant may be raised before the military judge. Motions for expert consultants may be raised *ex parte*. The military judge shall determine—

(i) in the case of an expert witness, whether the testimony is relevant and necessary; and

(ii) in the case of an expert consultant, whether the assistance is necessary for an adequate defense.

(B) If the military judge grants a motion for employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute, shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under subparagraph (g)(3)(E) of this rule."

(m) R.C.M. 703(g)(3)(G) is amended to read as follows:

"(G) *Relief.* If either a person subpoenaed or a victim named in a specification whose personal and confidential information has been subpoenaed under subparagraph (g)(3)(C)(ii) of this rule requests relief on grounds that compliance is unreasonable, oppressive, or prohibited by law, the military judge or, if before referral, a military judge detailed under Article 30a, shall review the request and shall—

(i) order that the subpoena be modified or quashed, as appropriate; or

(ii) order the person to comply with the subpoena."

(n) R.C.M. 703(g)(3)(H)(iii) is amended to read as follows:

"(iii) *Form.* A warrant of attachment shall be written. All documents in support of the warrant of attachment shall be attached to the warrant, together with any charge sheets and convening orders, if applicable."

(o) R.C.M. 703A is amended to read as follows:

"Rule 703A. Warrant or order for wire or electronic communications

(a) *In general.* A military judge detailed in accordance with Article 26 or Article 30a, may, upon written application by a federal law enforcement officer, trial counsel, or other authorized counsel for the Government in connection with an ongoing investigation of an offense or offenses under the UCMJ, issue one or more of the following:

(1) A warrant for the disclosure by a provider of electronic communication service of the contents of any wire or electronic communication.

(2) A warrant for the disclosure by a provider of remote computing service of the contents of any wire or electronic communication that is held or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(3) A warrant or order for the disclosure by a provider of electronic communication service or remote computing service of a record or other information pertaining to a subscriber to

or customer of such service (not including the contents of communications).

(b) *Warrant procedures.*

(1) *Probable cause required.* A military judge shall issue a warrant authorizing the search for and seizure of information specified in subsection (a) of this rule if—

(A) The federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for the warrant presents an affidavit or sworn testimony, subject to examination by the military judge, in support of the application; and

(B) Based on the affidavit or sworn testimony, the military judge determines that there is probable cause to believe that the information sought contains evidence of a crime.

(2) *Issuing the warrant.* The military judge shall issue the warrant to the federal law enforcement officer, trial counsel, or other authorized counsel for the Government who applied for the warrant.

(3) *Contents of the warrant.* The warrant shall identify the property to be searched, identify any property or other information to be seized, and designate the military judge to whom the warrant must be returned.

(4) *Executing the warrant.* The presence of the federal law enforcement officer, trial counsel, or other authorized counsel for the Government identified in the warrant shall not be required for service or execution of a search warrant issued in accordance with this rule requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

(5) *Quashing or modifying the warrant.* A military judge issuing a warrant under subsection (a), on a motion made promptly by the service provider, may quash or modify such

warrant, if the warrant is determined to be unreasonable or oppressive or prohibited by law.

(c) *Order procedures.*

(1) A military judge shall issue an order authorizing the disclosure of information specified in paragraph (a)(3) of this rule if the federal law enforcement officer, trial counsel, or other authorized counsel for the Government applying for the order offers specific and articulable facts showing that there are reasonable grounds to believe that the records or other information sought are relevant and material to an ongoing criminal investigation.

(2) *Quashing or modifying order.* A military judge issuing an order under paragraph (c)(1) of this rule, on a motion made promptly by the service provider, may quash or modify such order if the order is determined to be unreasonable, oppressive, or prohibited by law.

(d) *Non-disclosure orders.*

(1) A federal law enforcement officer, trial counsel, or other authorized counsel for the Government acting under this rule may apply to a military judge for an order commanding a provider of electronic communications service or remote computing service to whom a warrant or order under this rule is directed, for such period as the military judge deems appropriate, not to notify any other person of the existence of the warrant or order. The military judge shall issue the order if the military judge determines that there is reason to believe that notification of the existence of the warrant or order will result in an adverse result described in paragraph (d)(2) of this rule.

(2) An adverse result for the purposes of paragraph (d)(1) of this rule is—

(A) endangering the life or physical safety of an individual;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(e) *No cause of action against a provider disclosing information under this rule.* As provided under 18 U.S.C. § 2703(e), no cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a warrant or order under this rule.

(f) *Requirement to preserve evidence.* To the same extent as provided in 18 U.S.C. § 2703(f)—

(1) A provider of wire or electronic communication services or a remote computing service, upon the request of a federal law enforcement officer, trial counsel, or other authorized counsel for the Government, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of an order or other process; and

(2) Shall retain such records and other evidence for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) *Definition.* As used in this rule, the term "federal law enforcement officer" includes an employee of the Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, or the Coast Guard Investigative Service who has authority to request a search warrant."

(p) R.C.M. 705(d)(1) is amended to read as follows:

"(1) *In general.* Subject to such limitations as the Secretary concerned may prescribe pursuant to R.C.M. 705(a), a plea agreement that limits the sentence that can be imposed by the court-martial for one or more charges and specifications may contain:

(A) a limitation on the maximum punishment that can be imposed by the court-

martial;

(B) a limitation on the minimum punishment that can be imposed by the court-martial;

(C) limitations on the maximum and minimum punishments that can be imposed by the court-martial; or,

(D) a specified sentence or portion of a sentence that shall be imposed by the court-martial."

(q) R.C.M. 706(b)(1) is amended to read as follows:

"(1) *Before referral.* Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the convening authority before whom the charges are pending for disposition, or by a military judge or magistrate in a proceeding conducted in accordance with R.C.M. 309."

(r) R.C.M. 706(c)(3)(A) is amended to read as follows:

"(A) That upon completion of the board's investigation, a statement consisting only of the board's ultimate conclusions as to all questions specified in the order shall be submitted to the officer ordering the examination, the accused's commanding officer, the preliminary hearing officer, if any, appointed pursuant to Article 32, and to all government and defense counsel in the case, the convening authority, and, after referral, to the military judge."

(s) R.C.M. 707(c)(1) is amended to read as follows:

"(1) *Procedure.* Prior to referral, all requests for pretrial delay, together with supporting reasons, will be submitted to the convening authority for resolution. After referral, such requests for pretrial delay will be submitted to the military judge for resolution."

(t) R.C.M. 707(e) is amended to read as follows:

"(e) *Waiver.* Except as provided in R.C.M. 910(a)(2), a plea of guilty that results in a finding of guilty waives any speedy trial issue under this rule as to that offense."

(u) R.C.M. 804(b) is amended to read as follows:

"(b*) Presence by remote means.*

(1) The military judge may order the use of audiovisual technology, such as video teleconferencing technology, between the parties and the military judge for purposes of Article 39(a) sessions, subject to the limitations in paragraph (2) of this rule. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(2) The use of audiovisual technology between the parties and the military judge may be used for a plea inquiry under R.C.M. 910(d), (e), and (f) and for presentencing proceedings before a military judge under R.C.M. 1001, only when there are exceptional circumstances that interfere with the normal administration of military justice, as determined by the military judge, and with the consent of the accused. Defense counsel must be physically present at the accused's location during an inquiry prior to the acceptance of a plea under R.C.M. 910(d), (e), and (f) and during presentencing proceedings before a military judge under R.C.M. 1001."

(v) R.C.M. 813(a) through (d) are amended to read as follows:

"(a) *Opening sessions.* Except as noted in subsection (d), when the court-martial is called to order for the first time in a case, the military judge shall ensure that the following is announced:

(1) The order, including any amendment, by which the court is convened;

(2) The name, rank, and unit or address of the accused;

(3) The name and rank of the military judge presiding;

(4) The names and ranks of the members, if any, who are present;

(5) The names and ranks of members who are absent, if presence of members is required

(6) The names and ranks (if any) of counsel who are present;

(7) The names and ranks (if any) of counsel who are absent; and

(8) The name and rank (if any) of any detailed court reporter.

(b) *Later proceedings.* When the court-martial is called to order after a recess or adjournment or after it has been closed for any reason, the military judge shall ensure that the record reflects whether all parties and members who were present at the time of the adjournment or recess, or at the time the court-martial closed, are present.

(c) *Additions, replacement, and absences of personnel.* Whenever there is a replacement of the military judge, any member, or counsel, either through the appearance of new personnel or personnel previously absent or through the absence of personnel previously present, the military judge shall ensure the record reflects the change and the reason for it.

(d) Under R.C.M. 813(a)(1), the name, grade, and position of the convening authority, with the exception of the Secretary concerned, the Secretary of Defense, or the President, shall be omitted from announcement during the opening session of the court-martial."

(w) R.C.M. 909(c) is amended to read as follows:

"(c) *Determination before referral.*

(1) If an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders the accused mentally incompetent to stand trial, the convening authority before whom the charges are pending for

disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, the convening authority shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then he or she shall commit the accused to the custody of the Attorney General. If the general court-martial convening authority does not concur, that authority may take any action that the authority deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(2) Upon request of the Government or the accused, a military judge may conduct a hearing to determine the mental capacity of the accused in accordance with R.C.M. 309 and subsection (e) of this rule at any time prior to referral."

(x) A new R.C.M. 910(f)(8) is inserted immediately after R.C.M. 910(f)(7) to read as follows:

"(8) *Basis for rejecting a plea agreement.* The military judge of a general or special court-martial shall reject a plea agreement that—

(A) contains a provision that has not been accepted by both parties;

(B) contains a provision that is not understood by the accused;

(C) except as provided in Article 53a(c), contains a provision for a sentence that is less than the mandatory minimum sentence applicable to an offense referred to in Article 56(b)(2);

(D) is prohibited by law; or

(E) is contrary to, or is inconsistent with, these rules with respect to the terms, conditions, or other aspects of plea agreements."

(y) R.C.M. 910(j) is amended to read as follows:

"(j) *Waiver.* Except as provided in paragraph (a)(2) of this rule, a plea of guilty that results in a finding of guilty waives any objection, whether or not previously raised, as to the factual issue of guilt of the offense(s) to which the plea was made and any non-jurisdictional defect as to the offense(s) to which the plea was made that occurred prior to the plea."

(z) R.C.M. 912A(a)(4)(A) is amended to read as follows:

"(A) If the convening authority authorizes the military judge to impanel a specific number of alternate members, the number of members impaneled shall be the number of members required under paragraphs (1), (2), or (3) of this subsection, as applicable, plus the number of alternate members specified by the convening authority. The military judge shall not impanel the court-martial until the specified number of alternate members has been identified. New members may be detailed in order to impanel the specified number of alternate members."

(aa) A new R.C.M. 912A(d)(3)(C) is inserted immediately after R.C.M. 912A(d)(3)(B) to read as follows:

"(C) In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the convening authority may instruct the military judge to prioritize impaneling a specific number of alternate enlisted members before impaneling alternate officer members. These members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 912(f)(5), after first identifying members under paragraph (1) of this subsection."

(bb) R.C.M. 914(e) is amended to read as follows:

"(e) *Remedy for failure to produce statement.*

(1) *Party refusal to comply.* If the other party elects not to comply with an order to deliver a statement to the moving party, the military judge shall order that the testimony of the witness

be disregarded by the trier of fact and that the trial proceed, or, if it is the trial counsel who elects not to comply, shall declare a mistrial if required in the interest of justice.

(2) *Exception.* In the event that the other party cannot comply with this rule because the statement is lost, and can prove, by a preponderance of evidence, that the loss of the witness statement was not attributable to bad faith or gross negligence, the military judge may exercise the sanctions set forth in paragraph (e)(1) of this rule only if—

(A) the statement is of such central importance to an issue that it is essential to a fair trial, and

(B) there is no adequate substitute for the statement."

(cc) R.C.M. 916(e)(2) is amended to read as follows:

"(2) *Certain aggravated offer-type assault cases.* It is a defense to aggravated assault that the accused:

(A) Apprehended, on reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) In order to deter the assailant, offered but did not actually inflict or attempt to inflict substantial or grievous bodily harm."

(dd) A new R.C.M. 920(g) is inserted immediately after R.C.M. 920(f) to read as follows:

"(g) *Waiver.* Instructions on a lesser included offense shall not be given when both parties waive such an instruction. After receiving applicable notification of those lesser included offenses of which an accused may be convicted, the parties may waive the reading of a lesser included offense instruction. A written waiver is not required. The accused must affirmatively acknowledge that the accused understands the rights involved and affirmatively waive the instruction on the record. The accused's waiver must be made freely, knowingly, and

intelligently. In the case of a joint or common trial, instructions on a lesser included offense shall not be given as to an individual accused when that accused and the Government agree to waive such an instruction."

(ee) R.C.M. 1003(b)(2) is amended to read as follows:

"(2) *Forfeiture of pay and allowances.* Unless a total forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last. Allowances shall be subject to forfeiture only when the sentence includes forfeiture of all pay and allowances. The maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or retainer pay, as applicable, or, in the case of reserve component personnel on inactive duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or hardship duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced. Forfeitures of greater than two-thirds' pay per month may be imposed only during periods of confinement."

(ff) R.C.M. 1003(c)(2) is amended to read as follows:

"(2) *Based on grade of accused.*

(A) *Commissioned or warrant officers, cadets, and midshipmen.*

(i) A commissioned or warrant officer or a cadet or midshipman may not be reduced in grade by any court-martial. However, in time of war or national emergency, the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned, may commute a sentence of dismissal to reduction to any enlisted grade.

(ii) A commissioned or warrant officer or a cadet or midshipman may not

be sentenced to hard labor without confinement.

(iii) Only a general court-martial, upon conviction of any offense in violation of the UCMJ, may sentence a commissioned or warrant officer or a cadet or midshipman to be separated from the service with a punitive separation. In the case of commissioned officers, cadets, midshipmen, and commissioned warrant officers, the separation shall be by dismissal. In the case of all other warrant officers, the separation shall be by dishonorable discharge.

(B) *Enlisted persons.* See paragraph (b)(9) of this rule and R.C.M. 1301(d)."

(gg) A new R.C.M. 1101(e) is inserted immediately after R.C.M. 1101(d) to read as follows:

"(e) *Modification.* The Statement of Trial Results may be modified as follows:

(1) The military judge may modify the Statement of Trial Results to correct any errors prior to certification of the record of trial under R.C.M. 1112.

(2) The Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Judge Advocate General or the Judge Advocate General's designee may modify the Statement of Trial Results in the performance of their duties and responsibilities.

(3) If a case is remanded to a military judge, the military judge may modify the Statement of Trial Results consistent with the purposes of the remand.

(4) Any modification to the Statement of Trial Results must be included in the record of trial."

(hh) R.C.M. 1102(b)(1) is amended to read as follows:

"(1) *Forfeiture.* Unless deferred under R.C.M. 1103 or suspended under R.C.M. 1107, that part of an adjudged sentence that includes forfeitures is executed and takes effect as follows:

(A) *Generally.* Subject to subparagraph (B), if a sentence includes forfeitures in

pay or allowances, or, if forfeiture is required by Article 58b, that part of the sentence shall take effect on the earlier of—

(i) 14 days after the sentence is announced under R.C.M. 1007; or

(ii) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(B) *Accused Not in Confinement.* If an accused is not confined and is performing military duties, that portion of the sentence that provides for forfeiture of more than two-thirds' pay per month shall not be executed."

(ii) A new R.C.M. 1102(b)(6) is inserted immediately after R.C.M. 1102(b)(5) to read as follows:

"(6) *Reduction in Enlisted Grade.*

(A) *Adjudged Reduction.* Unless deferred under R.C.M. 1103 or suspended under R.C.M. 1107, that part of an adjudged sentence that includes reduction in enlisted grade shall take effect on the earlier of—

(i) 14 days after the sentence is announced under R.C.M. 1007; or

(ii) in the case of a summary court-martial, the date on which the sentence is approved by the convening authority.

(B) *Automatic Reduction.* An enlisted accused in a pay grade above E-1 whose sentence as set forth in the judgment of a court-martial includes a dishonorable or bad-conduct discharge, confinement, or hard labor without confinement may be reduced automatically to pay grade E-1 if permitted by, and under circumstances provided in, regulations prescribed by the Secretary concerned."

(jj) A new R.C.M. 1104(e) is inserted immediately after R.C.M. 1104(d) to read as follows:

"(e) *Notice to Victims.* A victim must be notified of any post-trial motion, filing, or hearing that may address:

(1) the findings or sentence of a court-martial with respect to the accused;

(2) the unsealing of privileged or private information of a victim; or

(3) any action resulting in the release of an accused."

(kk) R.C.M. 1106(a) is amended to read as follows:

"(a) *In general.* After a sentence is announced in a court-martial, the accused may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109, 1110, or 1306."

(ll) R.C.M. 1106A(a) is amended to read as follows:

"(a) *In general.* In a case with a crime victim, after a sentence is announced in a court-martial any crime victim of an offense of which the accused was found guilty may submit matters to the convening authority for consideration in the exercise of the convening authority's powers under R.C.M. 1109, 1110, or 1306."

(mm) R.C.M. 1107(b)(2) is amended to read as follows:

"(2) *Suspension after entry of judgment.* The convening authority who convened the original court-martial, the convening authority's successor in command, or a convening authority otherwise designated by the Secretary concerned may suspend any part of the unexecuted part of any sentence except a sentence of death, dishonorable discharge, bad-conduct discharge, dismissal, or confinement for more than six months."

(nn) R.C.M. 1109(e)(3) is amended to read as follows:

"(3) *Who may act.*

(A) Before entry of judgment, the convening authority who convened the original

court-martial or the convening authority's successor in command may act on the recommendation of trial counsel under paragraph (2).

(B) After entry of judgment, the convening authority who convened the original court-martial or the convening authority's successor in command or a convening authority otherwise designated by the Secretary concerned may act on the recommendation of trial counsel under paragraph (2)."

(oo) R.C.M. 1109(e)(5)(B) is amended to read as follows:

"(B) In the case of a recommendation by trial counsel under paragraph (2) of this subsection made more than one year after entry of judgment, the convening authority who convened the original court-martial or the convening authority's successor in command or a convening authority otherwise designated by the Secretary concerned may reduce a sentence only if the substantial assistance of the accused involved—

(i) Information not known to the accused until one year or more after sentencing;

(ii) Information the usefulness of which could not reasonably have been anticipated by the accused until more than one year after sentencing and which was promptly provided to the Government after its usefulness was reasonably apparent to the accused; or

(iii) Information provided by the accused to the Government within one year of sentencing, but which did not become useful to the Government until more than one year after sentencing."

(pp) R.C.M. 1109(e)(7) is amended to read as follows:

"(7) *Action after entry of judgment.* If the convening authority who convened the original court-martial or the convening authority's successor in command or a convening authority

otherwise designated by the Secretary concerned acts on the sentence of an accused after entry of judgment, the action shall be forwarded to the chief trial judge. The chief trial judge, or a military judge detailed by the chief trial judge, shall modify the judgment of the court-martial to reflect the action. The action and the modified judgment shall be forwarded to the Judge Advocate General and shall be included in the original record of trial. The reduction of a sentence under this rule shall not abridge any right of the accused to appellate review."

(qq) R.C.M. 1109(g)(2) is amended to read as follows:

"(2) *Action on sentence.* If the convening authority decides to act on the sentence under this rule, such action shall be in writing and shall include a written statement explaining the action. If any part of the sentence is disapproved, reduced, commuted, or suspended, the action shall clearly state which parts or parts are disapproved, reduced, commuted, or suspended. The convening authority's staff judge advocate or legal advisor shall forward the action with the written explanation to the military judge to be attached to the record of trial."

(rr) R.C.M. 1111(c) is amended to read as follows:

"(c) *Modification of judgment.* The judgment may be modified as follows—

(1) The military judge who entered a judgment may issue a modified judgment to correct any errors prior to certification of the record of trial under R.C.M. 1112.

(2) The Court of Criminal Appeals, the Court of Appeals for the Armed Forces, and the Judge Advocate General or the Judge Advocate General's designee may modify a judgment in the performance of their duties and responsibilities.

(3) If a case is remanded to a military judge, the military judge may modify the judgment consistent with the purposes of the remand.

(4) Any modification to the judgment of a court-martial must be included in the record of

trial."

(ss) R.C.M. 1112(b)(5) is amended to read as follows:

"(5) The election, if any, for application of sentencing rules as in effect on or after January 1, 2019 under R.C.M. 902A; and the election, if any, for sentencing by members in lieu of sentencing by military judge under R.C.M. 1002(b);"

(tt) R.C.M. 1113(b)(3)(C) is amended to read as follows:

"(C) *Disclosure.* Appellate counsel shall not disclose sealed materials in the absence of:

(i) prior authorization of the Judge Advocate General in the case of review under R.C.M. 1201 or 1210;

(ii) prior authorization of the appellate court before which a case is pending review under R.C.M. 1203 or 1204; or

(iii) prior authorization of the Judge Advocate General for a case eligible for review under R.C.M. 1203 or 1204."

(uu) R.C.M. 1113(b)(3)(D) is amended to read as follows:

"(D) For purposes of this rule, reviewing and appellate authorities are limited to:

(i) Judge advocates reviewing records pursuant to R.C.M. 1307;

(ii) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to R.C.M. 1201 and 1210;

(iii) Officers and attorneys designated by the Judge Advocate General;

(iv) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(v) The judges of the United States Court of Appeals for the Armed Forces

and their professional staffs;

(vi) The Justices of the United States Supreme Court and their professional staffs; and

(vii) Any other court of competent jurisdiction."

(vv) R.C.M. 1115(a) is amended to read as follows:

"(a) *In general.* After any general court-martial, except one in which the judgment entered into the record includes a sentence of death, and after any special court-martial in which the judgment entered into the record includes a finding of guilt, the accused may waive or withdraw the right to appellate review by a Court of Criminal Appeals. The accused may sign a waiver of the right to appeal at any time after entry of judgment and may withdraw an appeal at any time before such review is completed."

(ww) R.C.M. 1116(c) is amended to read as follows:

"(c) *General and special courts-martial not reviewed by a Court of Criminal Appeals.* General and special courts-martial with a finding of guilty not reviewed by a Court of Criminal Appeals under Article 66(b)(1) or (3) shall be reviewed under Article 65(d)(2)."

(xx) R.C.M. 1201(h) is amended to read as follows:

"(h) *Application for relief to the Judge Advocate General after final review.*

(1) *In general.* Notwithstanding R.C.M. 1209, the Judge Advocate General may, upon application of the accused or a person with authority to act for the accused or receipt of the record pursuant to R.C.M. 1307(g):

(A) With respect to a summary court-martial previously reviewed under R.C.M. 1307, modify or set aside, in whole or in part, the findings and sentence; or

(B) With respect to a general or special court-martial previously reviewed under paragraph (a)(1) or (2), order such a court-martial to be reviewed under R.C.M. 1203 by the Court of Criminal Appeals.

(2) Timing. To qualify for consideration under this subsection, an accused must submit an application not later than one year after—

(A) In the case of a summary court-martial, the date of completion of review under R.C.M. 1307; or

(B) In the case of a general or special court-martial, the end of the 90-day period beginning on the date the accused is provided notice of appellate rights under R.C.M. 1116(b)(2).

(3) Extension. The Judge Advocate General may, for good cause shown, extend the period for submission of an application under paragraph (h)(2) for a time period not to exceed three additional years. The Judge Advocate General may not consider an application submitted more than three years after the applicable expiration date specified in paragraph (h)(2)."

(yy) R.C.M. 1202(b)(2)(A) is amended to read as follows:

"(A) In every general and special court-martial that includes a finding of guilty, an appellate defense counsel shall be detailed to review the case, unless the accused has waived the right to appeal under Article 61 or submits a written statement declining representation. Upon request, the detailed appellate defense counsel shall represent the accused in accordance with subparagraph (B)."

(zz) A new R.C.M. 1208(c) is inserted immediately after R.C.M. 1208(b) to read as follows:

"(c) *Effective date of sentences.* Once a sentence has been set aside or disapproved, the effective date of a sentence that relates to that portion which was set aside or disapproved shall be calculated from the date a new sentence relating to that portion is adjudged at a new trial, other

trial, or rehearing and shall be in accordance with R.C.M. 1102."

(aaa) R.C.M. 1304(b)(2)(F) is amended to read as follows:

"(F) *Findings and sentence.*

(i) The summary court-martial shall apply the principles in R.C.M. 918 in determining the findings. The summary court-martial shall announce the findings to the accused in open session.

(ii) The summary court-martial shall follow the procedures in R.C.M. 1001 and 1002 and apply the principles in the remainder of Chapter X in determining a sentence, except as follows:

(I) If an accused is found guilty of more than one offense, a summary court-martial shall determine the appropriate confinement and fine, if any, for all offenses of which the accused was found guilty. The summary court-martial shall not determine or announce separate terms of confinement or fines for each offense; and

(II) The summary court-martial shall announce the sentence to the accused in open session.

(iii) If the sentence includes confinement, the summary court-martial shall advise the accused of the right to apply to the convening authority for deferment of the service of the confinement.

(iv) If the accused is found guilty, the summary court-martial shall advise the accused of the rights under R.C.M. 1306(a) and (h) and R.C.M. 1307(h) after the sentence is announced.

(v) The summary court-martial shall, as soon as practicable, inform the convening authority of the findings, sentence, recommendations, if any, for suspension of the

sentence, and any deferment request.

(vi) If the sentence includes confinement, the summary court-martial shall cause the delivery of the accused to the accused's commanding officer or the commanding officer's designee."

(bbb) R.C.M. 1304(b)(2)(G) is deleted.

Section 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 311(c)(3) is amended to read as follows:

"(3) *Good Faith Exception of a Warrant or Search Authorization:* Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) the search or seizure resulted from an authorization to search, seize, or apprehend issued by an individual competent to issue the authorization under Mil. R. Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority, or from such an authorization or warrant issued by an individual whom the officials seeking and executing the authorization or warrant reasonably and with good faith believed was competent to issue the authorization or warrant;

(B) the individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause or the officials seeking and executing the authorization or warrant reasonably and with good faith believed that the individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(C) the officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith is to be determined using an objective standard."

(b) Mil. R. Evid. 311(d)(4)(B) is amended to read as follows:

"(B) *False Statements.* If the defense makes a substantial preliminary showing that a government agent knowingly and intentionally or with reckless disregard for the truth included a false statement or omitted a material fact in the information presented to the authorizing officer, and if the allegedly false statement or omitted material fact is necessary to the finding of probable cause, the defense, upon request, is entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion must be granted unless the search is otherwise lawful under these rules."

(c) Mil. R. Evid. 315(b)(2) is amended to read as follows:

"(2) "Search warrant" means express permission to search and seize issued by competent civilian authority or under R.C.M. 703A."

(d) A new Mil. R. Evid. 315(b)(3) is inserted immediately after Mil. R. Evid. 315(b)(2) to read as follows:

"(3) "Warrant for wire or electronic communications" means a warrant issued by a military judge pursuant to 18 U.S.C. §§ 2703(a), (b)(1)(A), or (c)(1)(A) in accordance with 10 U.S.C. § 846(d)(3) and R.C.M. 309(b)(2) and R.C.M. 703A."

(e) Mil. R. Evid. 315(d) is amended to read as follows:

"(d) *Who May Authorize.* A search authorization under this rule is valid only if issued by an impartial individual in one of the categories set forth in paragraphs (d)(1), (d)(2), and (d)(3) of

this rule. Only a military judge may issue a warrant for wire or electronic communications under this rule. An otherwise impartial authorizing official does not lose impartiality merely because the official is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(1) *Commander.* A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war;

(2) *Military Judge or Magistrate.* A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned; or

(3) *Other competent search authority.* A competent, impartial official as designated under regulations by the Secretary of Defense or the Secretary concerned as an individual authorized to issue search authorizations under this rule."

(f) Mil. R. Evid. 404(b) is amended to read as follows:

"(b) *Other Crimes, Wrongs, or Acts.*

(1) *Prohibited Uses.* Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses.* This evidence may be admissible for another purpose, such as proving

motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

(3) *Notice in a Criminal Case.* In a criminal case, the trial counsel must:

(A) provide reasonable notice of any such evidence that the trial counsel intends to offer at trial, so the accused has a fair opportunity to meet it;

(B) articulate in the notice the permitted purpose for which the trial counsel intends to offer the evidence and the reasoning that supports the purpose; and

(C) do so in writing before trial—or in any form during trial if the court, for good cause, excuses lack of pretrial notice."

(g) **Mil. R. Evid. 503 is amended to read as follows:**

"Rule 503. Communications to clergy

(a) *General Rule.* A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergy member or to a clergy member's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) *Definitions.* As used in this rule:

(1) "Clergy member" means a minister, priest, rabbi, imam, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergy member.

(2) "Clergy member's assistant" means a person employed or assigned to assist a clergy member in the clergy member's capacity as a spiritual advisor.

(3) A communication is "confidential" if made to a clergy member in the clergy member's capacity as a spiritual advisor or to a clergy member's assistant in the assistant's

official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

(c) *Who May Claim the Privilege.* The privilege may be claimed by the person, guardian, or conservator, or by a personal representative if the person is deceased. The clergy member or clergy member's assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergy member or clergy member's assistant to do so is presumed in the absence of evidence to the contrary."

(h) Mil. R. Evid. 611(d)(1) is amended to read as follows:

"(1) In a case involving domestic violence or a case involving the abuse of a child, the military judge must, subject to the requirements of subdivision (d)(3) of this rule, allow a child victim or child witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A."

(i) Mil. R. Evid. 611(d)(2)(E) is amended to read as follows:

"(E) "Domestic violence" means conduct that may constitute an offense under Article 128b."

(j) Mil. R. Evid. 803(16) is amended to read as follows:

"(16) *Statements in Ancient Documents.* A statement in a document that was prepared before January 1, 1998, and whose authenticity is established."

(k) Mil. R. Evid. 803(22) is amended to read as follows:

"(22) *Judgment of a Previous Conviction.* Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death, dishonorable discharge, or imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecution for a purpose other than impeachment, the judgment was against the accused.

The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment for more than one year, the maximum punishment prescribed by the President under Article 56 of the Uniform Code of Military Justice at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(l) Mil. R. Evid. 807 is amended to read as follows:

"(a) *In General.* Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Mil. R. Evid. 803 or 804:

(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it is made and evidence, if any, corroborating the statement; and

(2) the statement is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

(b) *Notice.* The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant's name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a

lack of earlier notice."

(m) A new Mil. R. Evid. 902(12) is inserted immediately after Mil. R. Evid. 902(11) to read as follows:

"(12) Reserved."

(n) A new Mil. R. Evid. 902(13) is inserted immediately after new Mil. R. Evid. 902(12) to read as follows:

"(13) *Certified Records Generated by an Electronic Process or System.* A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Mil. R. Evid. 902(11). The proponent also must meet the notice requirements of Mil. R. Evid. Rule 902(11)."

(o) A new Mil. R. Evid. 902(14) is inserted immediately after new Mil. R. Evid. 902(13) to read as follows:

"(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File.* Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Mil. R. Evid. 902(11). The proponent also must meet the notice requirements of Mil. R. Evid. 902(11)."

Section 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 3.b.(4) is amended to read as follows:

"(4) *Sua sponte duty.* Subject to R.C.M. 920(g), a military judge must instruct panel members on lesser included offenses reasonably raised by the evidence."

(b) Paragraph 6.d. is amended to read as follows:

"d. *Maximum punishment.*

(1) *Solicitation of espionage.* Such punishment that a court-martial may direct, other than death.

(2) *Solicitation of desertion; mutiny or sedition; misbehavior before the enemy.* If the offense solicited or advised is committed or attempted, then the accused shall be punished with the punishment provided for the commission of the offense solicited or advised. If the offense solicited or advised is not committed or attempted, then the following punishment may be imposed: dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years, or the maximum punishment of the underlying offense, whichever is lesser.

(3) *Solicitation of all other offenses.* Any person subject to the UCMJ who is found guilty of soliciting or advising another person to commit an offense not specified in subparagraph d.(1)-(2) of this paragraph that, if committed by one subject to the UCMJ, would be punishable under the UCMJ, shall be subject to the following maximum punishment: dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years, or the maximum punishment of the underlying offense, whichever is lesser."

(c) Paragraph 19.c.(2) is amended to read as follows:

"(2) *Nature of act.* The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense if the conduct meets the elements of this offense. Sexual harassment under this paragraph includes influencing, offering to influence, or threatening the career, pay, or job of another person in exchange for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature. The imposition of necessary or proper duties

and the exaction of their performance does not constitute this offense even though the duties are arduous or hazardous or both."

(d) Paragraph 20.b. is amended to read as follows:

"b. *Elements.*

(1) *Abuse of training leadership position.*

(a) That the accused was a commissioned, warrant, noncommissioned, or petty officer;

(b) That the accused was in a training leadership position with respect to a specially protected member of the armed forces; and

(c) That the accused engaged in prohibited sexual activity with a person the accused knew was a specially protected junior member of the armed forces.

(2) *Abuse of position as a military recruiter.*

(a) That the accused was a commissioned, warrant, noncommissioned, or petty officer;

(b) That the accused was performing duties as a military recruiter; and

(c) That the accused engaged in prohibited sexual activity with a person the accused knew was an applicant for military service or a specially protected junior member of the armed forces who is enlisted under a delayed entry program."

(e) Paragraph 20.c. is amended to read as follows:

"c. *Explanation.*

(1) *In general.* The prevention of inappropriate sexual activity by trainers, recruiters, and drill instructors with recruits, trainees, students attending service academies, and other potentially vulnerable persons in the initial training environment is crucial to the maintenance of

good order and military discipline. Military law, regulation, and custom invest officers, non-commissioned officers, drill instructors, recruiters, cadre, and others with the right and obligation to exercise control over those they supervise. In this context, inappropriate sexual activity between those potentially vulnerable persons and those with authority to exercise control over them is inherently destructive to good order and discipline.

(2) *Prohibited activity.* The responsibility for identifying relationships subject to this offense and those outside the scope of this offense is entrusted to the individual Services to determine and specify by appropriate regulations. This offense is intended to cover those situations that involve the improper use of authority by virtue of an individual's position in either a training or recruiting environment. Not all contact or associations are prohibited by this article. Service regulations must consider circumstances where pre-existing relationships (for example, marriage relationships) exist. Additionally, this offense criminalizes only activity occurring when there is a training or recruiting relationship between the accused and the alleged victim of this offense.

(3) *Knowledge.* The accused must have actual or constructive knowledge that a person was a "specially protected junior member of the armed forces" or an "applicant for military service" (as those terms are defined in this offense). Knowledge may be proved by circumstantial evidence.

(4) *Consent.* Consent is not a defense to this offense."

(f) Paragraph 20.e. is amended to read as follows:

"e. *Sample specifications.*

(1) *Prohibited act with specially protected junior member of the armed forces.*

In that ___ (personal jurisdiction data), a (commissioned) (warrant) (noncommissioned) (petty)

officer, while in a training leadership position over ___, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ___ 20__, engage in a prohibited act, to wit: _____ with _____, whom the accused knew was a specially protected junior Servicemember in initial active duty training.

(2) *Prohibited act with an applicant for military service.*

In that ___ (personal jurisdiction data), a (commissioned) (warrant) (noncommissioned) (petty) officer, while in a training leadership position over ___, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ___ 20__, engage in a prohibited act, to wit: _____ with _____, whom the accused knew was (an applicant for military service) (a specially protected junior member of the armed forces who is enlisted under a delayed entry program)."

(g) Paragraph 51.e. is amended to read as follows:

"e. *Sample specification.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____, 20 __, (in the motor pool area) (near the Officers' Club) (at the intersection of _____ and _____) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) (_____)] [an aircraft, to wit: (an AH-64 helicopter) (an F-14A fighter) (a KC-135 tanker) (_____)] [a vessel, to wit: (the aircraft carrier USS _____) (the Coast Guard Cutter _____) (_____)], [while drunk] [while impaired by _____] [while the alcohol concentration in (his) (her) (blood or breath) equaled or exceeded the applicable limit under subsection (b) of the text of the statute in paragraph 51 as shown by chemical analysis] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (ordering

that the aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure _____)]."

(h) Paragraph 55. is amended by deleting the following:

"[NOTE: For Article 117a, UCMJ, Wrongful broadcast, *See* Appendix 2, Article 117a, UCMJ]"

(i) Paragraph 60.e.(3) is amended to read as follows:

"(3) *Aggravated sexual contact.*

(a) *By force.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____] by using unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20__, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by using force likely to cause death or grievous bodily harm to _____, to wit: _____.

(c) *By threatening or placing that other person in fear that any person would be*

subjected to death, grievous bodily harm, or kidnapping.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20__, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by (threatening _____) (placing _____ in fear) that _____ would be subjected to (death) (grievous bodily harm) (kidnapping).

(d) *By first rendering that other person unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by rendering _____ unconscious by_____.

(e) *By administering a drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20___, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by administering to _____ (by force) (by threat of force) (without the knowledge or permission of _____) a (drug) (intoxicant) (_____) thereby substantially impairing the

ability of _____ to appraise or control (his) (her) conduct."

(j) Paragraph 60.e.(4) is amended to read as follows:

"(4) *Abusive sexual contact.*

(a) *By threatening or placing that other person in fear*.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20__, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by (threatening _____) (placing _____ in fear).

(b) *By fraudulent representation.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20__, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by making a fraudulent representation that the sexual contact served a professional purpose, to wit: _____.

(c) *By false pretense.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20__, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an

intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person.

(d) *Without consent.*

In that _____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20___, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____] without the consent of _____.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], when (he) (she) (knew) (reasonably should have known) that _____ was (asleep) (unconscious) (unaware the sexual contact was occurring due to _____).

(f) *When that person is incapable of consenting.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(touch) (cause ____ to touch)] [(directly) (through the clothing)] the (vulva) (penis) (scrotum) (anus) (groin) (breast) (inner

thigh) (buttocks) of _____, with [(_____'s body part) (an object), to wit: _____] with an intent to [(abuse) (humiliate) (harass) (degrade) _____] [(arouse) (gratify) the sexual desire of _____], when _____ was incapable of consenting to the sexual contact because (he) (she) [was impaired by (a drug, to wit: _____) (an intoxicant, to wit: _____) (_____)] [had a (mental disease, to wit: _____) (mental defect, to wit: _____) (physical disability, to wit: _____)] and the accused (knew) (reasonably should have known) of that condition."

(k) Paragraph 63.b. is amended to read as follows:

"b. *Elements.*

(1) *Indecent viewing.*

(a) That the accused, without legal justification or lawful authorization, knowingly and wrongfully viewed the private area of another person;

(b) That said viewing was without the other person's consent; and

(c) That said viewing took place under circumstances in which the other person had a reasonable expectation of privacy.

(2) *Indecent recording.*

(a) That the accused, without legal justification or lawful authorization, knowingly recorded (photographed, videotaped, filmed, or recorded by any means) the private area of another person;

(b) That said recording was without the other person's consent; and

(c) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(3) *Broadcasting of an indecent recording.*

(a) That the accused, without legal justification or lawful authorization, knowingly broadcast a certain recording of another person's private area;

(b) That said recording was made without the other person's consent;

(c) That the accused knew or reasonably should have known that the recording was made without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonable should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(4) *Distribution of an indecent recording.*

(a) That the accused, without legal justification or lawful authorization, knowingly distributed a certain recording of another person's private area;

(b) That said recording was made without the other person's consent;

(c) That the accused knew or reasonably should have known that said recording was made without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(5) *Forcible pandering.*

That the accused compelled another person to engage in an act of prostitution with any

person.

(6) *Indecent exposure.*

(a) That the accused exposed the accused's genitalia, anus, buttocks, or female areola or nipple;

(b) That the exposure was in an indecent manner; and

(c) That the exposure was intentional."

(l) Paragraph 63.e.(1) is amended to read as follows:

"e. *Sample specifications.*

(1) *Indecent viewing, recording, or broadcasting.*

(a) *Indecent viewing.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20__, without legal justification or lawful authorization, knowingly and wrongfully view the private area of _____, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(b) *Indecent recording.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20__, without legal justification or lawful authorization, knowingly (photograph) (videotape) (film) (make a recording of) the private area of _____, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(c) *Broadcasting or distributing an indecent recording.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter

jurisdiction, if required), on or about _____ 20__, without legal justification or lawful authorization, knowingly (broadcast) (distribute) a recording of the private area of _____, when the said accused knew or reasonably should have known that the said recording was made without the consent of _____ and under circumstances in which (he) (she) had a reasonable expectation of privacy."

(m) Paragraph 64.d.(1)(c) is amended to read as follows:

"(c) *Property other than military property of a value of more than $1,000 or any motor vehicle, aircraft, vessel, firearm, or explosive not included in subparagraph d.(1)(b).* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years."

(n) Paragraph 69.c.(1) is amended to read as follows:

"(1) *Access.* "Access" means to gain entry to, instruct, cause input to, cause output from, cause data processing with, or communicate with, the logical, arithmetical, or memory function resources of a computer, computer system, or computer network."

(o) Paragraph 77.d.(1) is amended to read as follows:

"(1) *Simple assault.*

(a) *Generally.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(b) *When committed with an unloaded firearm or other dangerous weapon.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(c) *When committed with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 4 years."

(p) Paragraph 77.d.(5) is amended to read as follows:

"(5) *Assault with intent to commit specified offenses.*

(a) *Assault with intent to commit murder, rape, or rape of a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, kidnapping, sexual assault, or sexual assault of a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years."

(q) Paragraph 78. is amended by deleting:

"[NOTE: For Article 128b, UCMJ, Domestic Violence, added as part of the FY19 National Defense Authorization Act, *See* Appendix 2, Article 128b, UCMJ]"

(r) Paragraph 89.c.(2) is amended to read as follows:

"(2) *Personnel action.* For purposes of this offense, "personnel action" means—

(a) any action taken on a Servicemember that affects, or has the potential to affect, that Servicemember's current position or career, including promotion; disciplinary or other corrective action; transfer or reassignment; performance evaluations; decisions concerning pay, benefits, awards, or training; relief and removal; separation; discharge; referral for mental health evaluations; and any other personnel actions as defined by law or regulation, such as 5 U.S.C. § 2302 and DoD Directive 7050.06 (17 April 2015); or,

(b) any action taken on a civilian employee that affects, or has the potential to affect, that person's current position or career, including promotion; disciplinary or other corrective action; transfer or reassignment; performance evaluations; decisions concerning pay, benefits, awards, or training; relief and removal; discharge; and any other personnel actions as defined by law or regulation such as 5 U.S.C. § 2302."

(s) The title of Paragraph 90 is amended to read as follows:

"90. Article 133 (10 U.S.C. 933)—Conduct unbecoming an officer"

(t) Paragraph 90.a. is amended to read as follows:

"a. *Text of statute.*

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct."

(u) Paragraph 90.b. is amended to read as follows:

"b. Elements.

(1) That the accused was a commissioned officer, cadet, or midshipman;

(2) That the accused did or omitted to do certain acts; and

(3) That, under the circumstances, these acts or omissions constituted conduct unbecoming an officer."

(v) Paragraph 90.c. is amended to read as follows:

"c. Explanation.

(1) *Officership generally.* As used in the phrase "conduct unbecoming an officer" in this article, "officer" refers to a "commissioned officer, cadet, or midshipman."

(2) *Nature of the offense.* The focus of this article is conduct that is likely to seriously compromise the accused's standing as an officer. A military officer holds a particular position of responsibility in the armed forces, and one critically important responsibility of a military officer is to inspire the trust and respect of the personnel who must obey the officer's orders. Conduct violative of this article is action or behavior in an official capacity that, in dishonoring or disgracing the person as an officer, seriously compromises the officer's character, or action or behavior in an unofficial or private capacity that, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer. This article includes misconduct that approximates, but may not meet every element of, another enumerated offense.

An officer's conduct need not violate other provisions of the UCMJ or be otherwise criminal to violate Article 133. The gravamen of the offense is that the officer's conduct disgraces the officer personally or brings dishonor to the military profession in a manner that affects the officer's fitness to command the obedience of the officer's subordinates so as to effectively complete the military mission. The absence of a "custom of the service," statute, regulation, or order expressly prohibiting certain conduct is not dispositive of whether the officer was on sufficient notice that such conduct was unbecoming.

(3) *Examples of offenses.* Instances of violation of this article include knowingly making a false official statement; dishonorable failure to pay a debt; cheating on an exam; opening and reading a letter of another without authority; using insulting or defamatory language to another officer in that officer's presence or about that officer to other military persons; being drunk and disorderly in a public place; committing or attempting to commit a crime involving moral turpitude; and failing without good cause to support the officer's family.

(4) *Relation to Other Punitive Articles*: This article includes acts made punishable by any other article, provided these acts amount to conduct unbecoming an officer. Thus, a commissioned officer who steals property violates both this article and Article 121. Whenever the offense charged is the same as a specific offense set forth in this Manual, the elements of proof are the same as those set forth in the paragraph that treats that specific offense, with the additional requirement that the act or omission constitutes conduct unbecoming an officer."

(w) Paragraph 91.c.(4)(a)(1)(iii) is as amended to read as follows:

(iii) The Federal Assimilative Crimes Act (18 U.S.C. § 13) is an adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction, provided federal criminal law, including the UCMJ, has not defined an applicable

offense for the misconduct committed. The Act applies to state laws validly existing at the time of the offense without regard to when these laws were enacted, whether before or after passage of the Act, and whether before or after the acquisition of the land where the offense was committed. For example, if a person committed an act on a military installation in the United States at a certain location over which the United States had either exclusive or concurrent jurisdiction, and it was not an offense specifically defined by federal law (including the UCMJ), that person could be punished for that act by a court-martial if it was a violation of a noncapital offense under the law of the State where the military installation was located. This is possible because the Act adopts the criminal law of the State wherein the military installation is located and applies it as though it were federal law. As amended, the Act provides that: "Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

Section 4. Part V of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 1.f.(4) is amended to read as follows:

"(4) *Statute of limitations.* Except as provided in Article 43(c) and (d), nonjudicial punishment may not be imposed for offenses which were committed more than 2 years before the date of imposition, unless knowingly and voluntarily waived by the member. *See* Article 43(b)(3)."

(b) Paragraph 1.h. is amended to read as follows:

"h. Applicable standards. The burden of proof to be utilized by commanders throughout the nonjudicial punishment process shall be a preponderance of the evidence."

(c) A new paragraph 1.j. is inserted immediately after paragraph 1.i. to read as follows:

"j. *Service regulations and procedures.* Unless otherwise provided, the Service regulations and procedures of the Servicemember shall apply.

(d) Paragraph 4.c.(4) is amended to read as follows:

"(4) Decision. After considering all relevant matters presented by a preponderance of the evidence standard, if the nonjudicial punishment authority—

(A) does not conclude that the Servicemember committed the offenses alleged, the nonjudicial punishment authority shall so inform the member and terminate the proceedings;

(B) concludes that the Servicemember committed one or more of the offenses alleged, the nonjudicial punishment authority shall:

(i) so inform the Servicemember;

(ii) inform the Servicemember of the punishment imposed; and

(iii) inform the Servicemember of the right to appeal (see paragraph 7 of this Part)."

ANNEX 2

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

(a) Paragraph 3 is amended to read as follows:

"**3. Nature and purpose of military law**

Military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and Executive Orders and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purposes of military law are to promote justice, to deter misconduct, to facilitate appropriate accountability, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."

(b) Paragraph 4 is redesignated as Paragraph 5 and is amended to read as follows:

"5. Structure and application of the Manual for Courts-Martial

The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, the Nonjudicial Punishment Procedures (Parts I-V), and Appendixes 12A through 12D. This Manual shall be applied in a manner consistent with the purpose of military law.

The Department of Defense (DoD), in conjunction with the Department of Homeland Security, publishes supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Preface, a Table of Contents, Discussions, Appendices (other than Appendixes 12A through 12D, which were promulgated by the President), and an Index. These supplementary materials do not have the force of law.

The Manual shall be identified by the year in which it was printed; for example, "Manual for Courts-Martial, United States (20xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "20xx" Amendments to the Manual for Courts-Martial, United States, "20xx" being the year the Executive Order was signed.

The DoD-Joint Service Committee on Military Justice (JSC) reviews the Manual for Courts-Martial and proposes amendments to the DoD-for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Instruction 5500.17, "Role and Responsibilities of the Joint Service Committee on Military Justice (JSC)." DoD Instruction 5500.17 includes provisions allowing public participation in the annual review process."

(c) A new paragraph 4 is inserted immediately after paragraph 3 to read as follows:

"4. The Evolving Military Justice System

The military operates a modern criminal justice system that recognizes and protects the rights of both the victims of alleged offenses and those accused of offenses. The continuous evolution of the military justice system has progressed through statutes, Executive Orders, regulations, and judicial interpretations. The Uniform Code of Military Justice (UCMJ), enacted in 1950, significantly enhanced the fairness of military justice across the armed forces, including by establishing a civilian appellate court at the system's apex. The Military Justice Act of 1968, which created the position of military judge and enhanced the role of lawyers in the system, resulted in further improvements. The promulgation of the Military Rules of Evidence by a 1980 Executive Order brought court-martial practice into closer alignment with federal civilian criminal practice. In 2014, Congress added a victims' rights article to the UCMJ and also made counsel available to represent certain victims of alleged UCMJ offenses. The Military Justice Act

of 2016 further modernized the military justice system by expanding pretrial judicial authorities, updating trial and post-trial procedures, and enacting new punitive articles. Most recently, the National Defense Authorization Act for Fiscal Year 2022 made historic reforms to the military justice system, including the unprecedented transfer of prosecutorial discretion from commanders to independent, specialized counsel to prosecute certain covered offenses, including sexual assault and domestic violence, as recommended by the Independent Review Commission on Sexual Assault in the Military to strengthen Service members' trust in the military justice system. These and many other improvements have been vital to maintaining a fair, just, and efficient military justice system. The system must continue to evolve to be worthy of those who protect our Nation and its freedoms."

Section 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 103 is amended to read as follows:

"Rule 103. Definitions and rules of construction

The following definitions and rules of construction apply throughout this Manual, unless otherwise expressly provided.

(1) "Appellate military judge" means a judge of a Court of Criminal Appeals.

(2) "Article" refers to articles of the Uniform Code of Military Justice unless the context indicates otherwise.

(3) "Capital case" means a general court-martial to which a capital offense has been referred with an instruction that the case be treated as a capital proceeding, and, in the case of a rehearing or new or other trial, for which offense death remains an authorized punishment under R.C.M. 810(d).

(4) “Capital offense” means an offense for which death is an authorized punishment under the UCMJ and Part IV of this Manual or under the law of war.

(5) “Commander” means a commissioned officer in command or an officer in charge except in Part V or unless the context indicates otherwise.

(6) “Convening authority” includes a commissioned officer in command for the time being and successors in command.

(7) “Copy” means an accurate reproduction, however made. Whenever necessary and feasible, a copy may be made by handwriting.

(8) “Court-martial” includes, depending on the context:

(A) The military judge and members of a general or special court-martial;

(B) The military judge when a session of a general or special court-martial is conducted without members under Article 39(a);

(C) The military judge when a request for trial by military judge alone has been approved under R.C.M. 903;

(D) The military judge when the case is referred as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A); or

(E) The summary court-martial officer.

(9) “Days.” When a period of time is expressed in a number of days, the period shall be in calendar days, unless otherwise specified. Unless otherwise specified, the date on which the period begins shall not count, but the date on which the period ends shall count as one day.

(10) “Deferral” of an offense means a special trial counsel declines to prefer charges for an offense or declines to refer charges to court-martial. Once a special trial counsel declines to

prefer or refer charges for an offense, a commander shall exercise authority within the scope of these rules.

(11) "Detail" means to order a person to perform a specific temporary duty, unless the context indicates otherwise.

(12) "Exercise authority over" means when a special trial counsel acts on a covered, related, or known offense in furtherance of a special trial counsel's statutory duties or authorities under Article 24a(c).

(13) "Explosive" means gunpowders; powders used for blasting; all forms of high explosives; blasting materials; fuzes (other than electrical circuit breakers), detonators, and other detonating agents; smokeless powders; any explosive bomb, grenade, missile, or similar device; any incendiary bomb or grenade, fire bomb, or similar device; and any other compound, mixture, or device which is an explosive within the meaning of 18 U.S.C. § 232(5) or 844(j).

(14) "Firearm" means any weapon that is designed to or may be readily converted to expel any projectile by the action of an explosive.

(15) "Joint" in connection with military organization connotes activities, operations, organizations, and the like in which elements of more than one military service of the same nation participate.

(16) "Lead Special Trial Counsel" within the Department of Defense means a general or flag officer with significant experience in military justice who is responsible for a dedicated office within each Military Department from which office the Lead Special Trial Counsel will provide for the overall supervision and oversight of the activities of the special trial counsel of a Military Department or Military Service, and who reports directly to the Secretary concerned, without intervening authority.

(17) “Members.” The members of a court-martial are the voting members detailed by the convening authority.

(18) “Military judge” means a judge advocate designated under Article 26(c) who is detailed under Article 26(a) or Article 30a to preside over a general or special court-martial or proceeding before referral. In the context of a summary court-martial, “military judge” means the summary court-martial officer. In the context of a pre-referral proceeding or a special court-martial consisting of a military judge alone, “military judge” includes a military magistrate designated under Article 19 or Article 30a.

(19) “Military magistrate” means a commissioned officer of the armed forces certified under Article 26a who is performing duties under Article 19 or 30a.

(20) “Party,” in the context of parties to a court-martial or other proceeding under these rules, means:

(A) The accused and any defense or associate or assistant defense counsel and agents of the defense counsel when acting on behalf of the accused with respect to the court-martial or proceeding in question; and

(B) Any trial or assistant trial counsel representing the United States, and agents of the trial counsel or such counsel when acting on behalf of the United States with respect to the court-martial or proceeding in question.

(21) “Preferral” is the act by which a person subject to the UCMJ formally accuses another person subject to the UCMJ of an offense, in accordance with R.C.M. 307(b).

(22) “Referral” is the order of a convening authority or a special trial counsel that one or more charges and specifications against an accused will be tried by a specified court-martial.

(23) “Referral authority” means a convening authority or special trial counsel who may

order that one or more charges and specifications against an accused be tried by a specified court-martial pursuant to R.C.M. 601.

(24) "Special trial counsel" means a judge advocate who is qualified, certified, and assigned as such by the Judge Advocate General of the armed force of which the officer is a member, or, in the case of the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps, and who is independent of the military chains of command of both the victim and those accused of covered offenses over which a special trial counsel at any time exercises authority in accordance with Article 24a. Special trial counsel shall be well-trained, experienced, highly skilled and competent in handling cases involving covered offenses. Within the Department of Defense, special trial counsel work within dedicated offices under the overall supervision and oversight of a Lead Special Trial Counsel. Within the Coast Guard, special trial counsel work under the overall supervision and oversight of an officer designated under regulations prescribed by the Commandant of the Coast Guard.

(25) "Staff judge advocate" means a judge advocate so designated in the Army, Air Force, or Marine Corps, and means the principal legal advisor of a command in the Navy and Coast Guard who is a judge advocate.

(26) "*Sua sponte*" means that the person involved acts on that person's initiative, without the need for a request, motion, or application.

(27) "Trial counsel," unless otherwise specified in these rules, includes special trial counsel.

(28) "UCMJ" refers to the Uniform Code of Military Justice.

(29) "War, time of." For purposes of R.C.M. 1004(c)(6) and of implementing the applicable paragraphs of Parts IV and V of this Manual only, "time of war" means a period of

war declared by Congress, or the factual determination by the President that the existence of hostilities warrants a finding that a "time of war" exists for purposes of R.C.M. 1004(c)(6) and Parts IV and V of this Manual.

(30) The terms "writings" and "recordings" have the same meaning as in Mil. R. Evid. 1001.

(31) The definitions and rules of construction in 1 U.S.C. §§ 1 through 5 and in 10 U.S.C. §§ 101 and 801."

(b) R.C.M. 104(b)(2) is amended to read as follows:

"(2) *All persons subject to the UCMJ.* No person subject to the UCMJ may attempt to coerce or, by any unauthorized means, attempt to influence the action of:

(A) a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case or the action of any case; or

(B) any preliminary hearing officer or convening, referral, approving, or reviewing authority with respect to such preliminary hearing officer's or authority's acts concerning the following:

(i) any decision to place a service member into pretrial confinement;

(ii) disposition decisions;

(iii) rulings on pre-referral matters;

(iv) findings at a preliminary hearing;

(v) convening a court-martial;

(vi) decisions concerning plea agreements;

(vii) selecting members;

(viii) decisions concerning witness requests;

(ix) taking action on the findings or sentence;

(x) taking action on any clemency or deferment request; or

(xi) any appellate or post-trial review of a case."

(c) R.C.M. 104(c) is amended to read as follows:

"(c) *Prohibitions concerning evaluations.*

(1) *Evaluation of members, defense counsel, and special victims' counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims' Counsel."

(d) R.C.M. 105 is amended to read as follows:

"Rule 105. Direct communications: convening authorities and staff judge advocates; among staff judge advocates; with special trial counsel

(a) *Convening authorities and staff judge advocates.* Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice, and may communicate directly with special trial counsel, although any input by

the convening authority regarding case dispositions shall be non-binding on the special trial counsel for cases involving covered, known, and related offenses.

(b) *Among staff judge advocates and with the Judge Advocate General.* The staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, the Judge Advocate General, or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps.

(c) *Communications among special trial counsel, staff judge advocates, and convening authorities.* Special trial counsel, staff judge advocates, and convening authorities may communicate directly while ensuring that all communications regarding case disposition for covered, related, and known offenses are non-binding on the special trial counsel.

(d) *Free from unlawful or unauthorized influence or coercion.* All communications referenced in this rule shall be free from unlawful or unauthorized influence or coercion."

(e) R.C.M. 201(d)(2) is amended to read as follows:

"(2) An act of omission that violates both the UCMJ and local criminal law, foreign or domestic, may be tried by a court-martial, or by a proper civilian tribunal, foreign or domestic, or, subject to R.C.M. 907(b)(2)(C) and regulations of the Secretary concerned, by both."

(f) R.C.M. 201(f)(1)(D) is amended to read as follows:

"(D) *Jurisdiction for Certain Sexual Offenses.* Only a general court-martial has jurisdiction to try offenses under Articles 120(a), 120(b), 120b(a), and 120b(b), and attempts thereof under Article 80."

(g) R.C.M. 201(f)(2)(C) is amended to read as follows:

"(C) *Capital offenses.*

(i) A capital offense for which there is prescribed a mandatory punishment beyond the punitive power of a special court-martial shall not be referred to such a court-martial.

(ii) Other than offenses described in (C)(i):

(I) a general court-martial convening authority over the command that includes the accused may permit any capital offense to be referred to a special court-martial for trial.

(II) a special trial counsel exercising authority over a capital offense may refer such an offense to a special court-martial for trial.

(III) The Secretary concerned may authorize, by regulation, special court-martial convening authorities to refer capital offenses to trial by a special court-martial without first obtaining the consent of the general court-martial convening authority."

(h) R.C.M. 301 is amended to read as follows:

"**Rule 301. Report of offense**

(a) *Who may report.* Any person may report an offense subject to trial by court-martial.

(b) *To whom reports are conveyed.* Ordinarily, any military authority who receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. Competent authority superior to that commander may direct otherwise.

(c) *Special trial counsel*. All reports of covered offenses shall be forwarded promptly to a special trial counsel. A special trial counsel shall have the authority to determine whether a reported offense is a covered, known, or related offense in accordance with R.C.M. 303A."

(i) R.C.M. 302(b)(1) is amended to read as follows:

"(1) *Military law enforcement officials.* Persons designated by proper authorities to perform military criminal investigative, guard, or police duties, whether subject to the UCMJ or not, when in each of the foregoing instances, the official making the apprehension is in the execution of law enforcement duties;"

(j) R.C.M. 302(c) is amended to read as follows:

"(c) *Grounds for apprehension.* A person subject to the UCMJ or trial thereunder may be apprehended for an offense triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exists when there is a reasonable belief that an offense has been or is being committed and the person to be apprehended committed or is committing it. Persons authorized to apprehend under R.C.M. 302(b)(2) may also apprehend persons subject to the UCMJ who take part in quarrels, frays, or disorders, wherever they occur."

(k) R.C.M. 303 is amended to read as follows:

"Rule 303. Preliminary inquiry into reported offenses

Except for covered offenses as defined by Article 1(17), upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses. A commander who receives a report of a covered offense shall promptly forward the report to a special trial counsel in accordance with R.C.M. 301(c) and regulations prescribed by the Secretary concerned."

(l) A new R.C.M. 303A is inserted immediately after R.C.M. 303 to read as follows:

"Rule 303A. Determination by special trial counsel to exercise authority

(a) *Initial determination.* A special trial counsel has the exclusive authority to determine if a reported offense is a covered offense.

(b) *Covered offense.* If a special trial counsel determines that a reported offense is a covered offense or receives a preferred charge alleging a covered offense, a special trial counsel shall exercise authority over that covered offense.

(c) *Related offenses.* If a special trial counsel exercises authority pursuant to R.C.M. 303A(b), the special trial counsel may also exercise authority over any reported offense or charge related to a covered offense, whether alleged to have been committed by the suspect of the covered offense or by anyone else subject to the UCMJ.

(d) *Known offenses.* If a special trial counsel exercises authority pursuant to R.C.M. 303A(b), the special trial counsel may also exercise authority over any offense or charge alleged to have been committed by the suspect of the covered offense.

(e) *Notification to command.* When a special trial counsel exercises authority over any reported offense, the special trial counsel shall notify the officer exercising special court-martial convening authority over the suspect."

(m) R.C.M. 305 is amended to read as follows:

"Rule 305. Pretrial confinement

(a) *In general.* Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of charges.

(b) *Who may be confined.* Any person who is subject to trial by court-martial may be confined if the requirements of this rule are met.

(c) *Who may order confinement. See* R.C.M. 304(b).

(d) *When a person may be confined.* No person may be ordered into pretrial confinement except for probable cause. Probable cause to order pretrial confinement exists when there is a reasonable belief that:

(1) An offense triable by court-martial has been committed;

(2) The person confined committed it; and

(3) Confinement is required by the circumstances.

(e) *Advice to the accused upon confinement.* Each person confined shall be promptly informed of: (1) The nature of the offenses for which held;

(2) The right to remain silent and that any statement made by the person may be used against the person;

(3) The right to retain civilian counsel at no expense to the United States, and the right to request assignment of military counsel; and

(4) The procedures by which pretrial confinement will be reviewed.

(f) *Notification to Special Trial Counsel.* If a person who is alleged to have committed a covered offense is ordered into or released from pretrial confinement, the individual ordering confinement or authorizing release shall immediately notify a special trial counsel in accordance with regulations prescribed by the Secretary concerned.

(g) *Military counsel.* If requested by the confinee and such request is made known to military authorities, military counsel shall be provided to the confinee before the initial review under R.C.M. 305(j) or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the confinee shall be so informed. Unless otherwise provided by regulations of the Secretary concerned, a confinee does not have a right under this rule to have military counsel of the confinee's own selection.

(h) *Who may direct release from confinement.* Any commander of a confinee, an officer appointed under regulations of the Secretary concerned to conduct the review under R.C.M. 305(j) or (k), or, once charges have been referred, a military judge detailed to the court-martial to which the charges against the accused have been referred, may direct release from pretrial confinement. For purposes of this subsection (R.C.M. 305(h)), "any commander" includes the immediate or higher commander of the confinee and the commander of the installation on which the confinement facility is located.

(i) *Notification and action by commander.*

(1) *Report.* Unless the commander of the confinee ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer into whose charge the confinee was committed shall, within 24 hours after that commitment, cause a report to be made to the commander that shall contain the name of the confinee, the offenses charged against the confinee, and the name of the person who ordered or authorized confinement.

(2) *Action by commander.*

(A) *Decision.* Not later than 72 hours after the commander's ordering of a confinee into pretrial confinement or, after receipt of a report that a member of the commander's unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander's compliance with this paragraph (R.C.M. 305(i)(2)) may also satisfy the 48-hour probable cause determination of R.C.M. 305(j)(1), provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under military control. Nothing in R.C.M. 305(d), this subparagraph (R.C.M. 305(i)(2)(A)), or R.C.M. (j)(1) prevents a neutral and detached

commander from completing the 48-hour probable cause determination and the 72-hour commander's decision immediately after an accused is ordered into pretrial confinement.

(B) *Requirements for confinement.* The commander shall direct the confinee's release from pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(i) An offense triable by a court-martial has been committed;

(ii) The confinee committed it;

(iii) Confinement is necessary because it is foreseeable that:

(a) The confinee will not appear at trial, pretrial hearing, or preliminary hearing, or

(b) The confinee will engage in serious criminal misconduct; and

(iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, serious injury of others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, "national security" means the national defense and foreign relations of the United States and specifically includes: a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(C) *72-hour memorandum.* If continued pretrial confinement is approved, the commander shall prepare a written memorandum that states the reasons for the conclusion that the requirements for confinement in R.C.M. 305(i)(2)(B) have been met. This memorandum may

include hearsay and may incorporate by reference other documents, such as witness statements, investigative reports, or official records. This memorandum shall be forwarded to the 7-day reviewing officer under R.C.M. 305(j)(2). If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared; however, additional information may be added to the memorandum at any time.

(j) *Procedures for review of pretrial confinement.*

(1) *48-hour probable cause determination.* Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control. If the confinee is apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the confinee under military control in a timely fashion.

(2) *7-day review of pretrial confinement.* Within 7 days of the imposition of confinement, a neutral and detached officer appointed in accordance with regulations prescribed by the Secretary concerned shall review the probable cause determination and necessity for continued pretrial confinement. In calculating the number of days of confinement for purposes of this rule, the initial date of confinement under military control shall count as one day and the date of the review shall also count as one day.

(A) *Nature of the 7-day review.*

(i) *Matters considered.* The review under this clause (R.C.M. 305(j)(2)(A)(i)) shall include a review of the memorandum submitted by the confinee's commander under R.C.M. 305(i)(2)(C). Additional written matters may be considered, including any submitted by the confinee. The confinee and the confinee's counsel, if any, shall be allowed to appear before the 7-day reviewing officer and make a statement, if practicable. A

representative of the command may also appear before the reviewing officer to make a statement.

(ii) *Rules of evidence.* Except for Mil. R. Evid., Section V (Privileges) and Mil. R. Evid. 302 and 305, the Military Rules of Evidence shall not apply to the matters considered.

(iii) *Standard of proof.* The requirements for confinement under R.C.M. 305(h)(2)(B) must be proved by a preponderance of the evidence.

(iv) *Victim's right to be reasonably heard.* A victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the 7-day review; the right to confer with the representative of the command and counsel for the Government, if any; and the right to be reasonably heard during the review. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel and the right to be reasonably protected from the confinee during the 7-day review. Notice of these rights shall be given to the victim, or victim's counsel, if any, in accordance with regulations of the Secretary concerned

(B) *Extension of time limit.* The 7-day reviewing officer may, for good cause, extend the time limit for completion of the review to 10 days after the imposition of pretrial confinement.

(C) *Action by 7-day reviewing officer.* Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release. If the reviewing officer orders immediate release, a victim of an alleged offense committed by the confinee has the right to reasonable, accurate, and timely notice of the release, unless such notice may endanger the safety of any person.

(D) *Memorandum.* The 7-day reviewing officer's conclusions, including the factual findings on which they are based, shall be set forth in a written memorandum. The memorandum shall also state whether the victim was represented by counsel, whether the victim was notified of the review, was given the opportunity to confer with the representative of the command or counsel for the Government and was given a reasonable opportunity to be heard. A copy of the memorandum and all documents considered by the 7-day reviewing officer shall be maintained in accordance with regulations prescribed by the Secretary concerned and provided to the accused or the Government on request.

(E) *Reconsideration of approval of continued confinement.* The 7-day reviewing officer shall upon request, and after notice to the parties, reconsider the decision to confine the confinee based upon any significant information not previously considered.

(k) *Review by military judge*. Once the charges for which the accused has been confined are referred to trial, or in a pre-referral proceeding conducted in accordance with R.C.M. 309, the military judge shall review the propriety of pretrial confinement upon motion for appropriate relief.

(1) *Release.* The military judge shall order release from pretrial confinement only if:

(A) The 7-day reviewing officer's decision was an abuse of discretion, and there is not sufficient information presented to the military judge justifying continuation of pretrial confinement under R.C.M. 305(i)(2)(B);

(B) Information not presented to the 7-day reviewing officer establishes that the confinee should be released under R.C.M. 305(i)(2)(B); or

(C) The provisions of R.C.M. 305(j)(1) or (2) have not been complied with and information presented to the military judge does not establish sufficient grounds for continued confinement under R.C.M. 305(i)(2)(B).

(2) *Credit.* Upon sentencing, the military judge shall order administrative credit under R.C.M. 305(l) for any pretrial confinement served as a result of an abuse of discretion or failure to comply with the provisions of R.C.M. 305(g), (i), or (j).

(l) *Remedy.* The remedy for noncompliance with R.C.M. 305(g), (i), (j), or (k) shall be an administrative credit against the sentence adjudged for any confinement served as the result of such noncompliance. Such credit shall be computed at the rate of 1 day credit for each day of confinement served as a result of such noncompliance. The military judge may order additional credit for each day of pretrial confinement that involves an abuse of discretion or unusually harsh circumstances. This credit is to be applied in addition to any other credit to which the accused may be entitled as a result of pretrial confinement served. This credit shall be applied first against any confinement adjudged. If no confinement is adjudged, or if the confinement adjudged is insufficient to offset all the credit to which the accused is entitled, the credit shall be applied against hard labor without confinement using the conversion formula under R.C.M. 1003(b)(6), restriction, fine, and forfeiture of pay, in that order. For purposes of R.C.M. 305(l), 1 day of confinement shall be equal to 1 day of total forfeiture or a like amount of fine. The credit shall not be applied against any other form of punishment.

(m) *Confinement after release.* No person whose release from pretrial confinement has been directed by a person authorized in R.C.M. 305(h) may be confined again before completion of trial except upon discovery, after the order of release, of evidence or of misconduct which, either

alone or in conjunction with all other available evidence, meets the criteria for confinement under R.C.M. 305(i)(2)(B)..

(n) *Exceptions.*

(1) *Operational necessity.* The Secretary of Defense may suspend application of R.C.M. 305(e)(3), (e)(4), (g), (i)(2)(A) or (C), or (j) to specific units or in specified areas when operational requirements of such units or in such areas would make application of such provisions impracticable.

(2) *At sea.* R.C.M. 305(e)(3), (e)(4), (g), (i)(2)(C), and (j) shall not apply in the case of a person on board a vessel at sea. In such situations, confinement on board the vessel at sea may continue only until the person can be transferred to a confinement facility ashore. Such transfer shall be accomplished at the earliest opportunity permitted by the operational requirements and mission of the vessel. Upon such transfer, the memorandum required by R.C.M. 305(i)(2)(C) shall be transmitted to the reviewing officer under R.C.M. 305(j) and shall include an explanation of any delay in the transfer.

(o) *Notice to victim of escaped confinee.* Reasonable, accurate, and timely notice of the escape of the prisoner shall be provided to the victim of an alleged offense committed by the confinee for which the confinee has been placed in pretrial confinement or such victim's counsel, if any, unless such notice may endanger the safety of any person."

(n) The title of R.C.M. 306 is amended to read as follows:

"**Rule 306. Initial disposition of offenses over which special trial counsel does not exercise authority**".

(o) R.C.M. 306(a) is amended to read as follows

"(a) *Who may dispose of offenses*.

(1) Except for offenses over which a special trial counsel has exercised authority and has not deferred, each commander has discretion to dispose of offenses by members of that command in accordance with this rule.

(2) Ordinarily the immediate commander of a person accused or suspected of committing offenses over which a special trial counsel has not exercised authority or has deferred initially determines how to dispose of those offenses. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld."

(p) R.C.M. 306(c) is amended to read as follows:

"(c) *Disposition of offenses.* Within the limits of the commander's authority and subject to R.C.M. 306A, a commander may take the actions set forth in this subsection (R.C.M. 306(c)) to initially dispose of a charge or suspected offense.

(1) *No action.* A commander may decide to take no action.

(2) *Administrative action.* A commander may take or initiate administrative action, in addition to or instead of other action taken under this rule, subject to regulations of the Secretary concerned.

(3) *Nonjudicial punishment.* A commander may consider the matter pursuant to Article 15, nonjudicial punishment. *See* Part V.

(4) *Disposition of charges.* Charges may be disposed of in accordance with R.C.M. 401.

(5) *Forwarding for disposition.* A commander may forward a report of suspected offenses or charges to a superior or subordinate authority for disposition."

(q) R.C.M. 306(e)(1) is amended to read as follows:

"(1) For purposes of this subsection (R.C.M. 306(e)), a "sex-related offense" means any allegation of a violation of Article 120, 120b, 120c, or 130, or any attempt thereof under Article 80, occurring on or before December 27, 2023."

(r) A new R.C.M. 306A is inserted immediately after R.C.M. 306 to read as follows:

"**Rule 306A. Initial disposition of offenses over which a special trial counsel exercises authority**

(a) *Disposition of offenses that are not the subject of preferred charges.* Once a special trial counsel has exercised authority over an offense, only a special trial counsel may dispose of that offense, unless a special trial counsel defers the offense. For each offense over which a special trial counsel has exercised authority that is not the subject of a preferred charge, a special trial counsel shall:

(1) Prefer, or cause to be preferred, a charge; or

(2) Defer the offense by electing not to prefer a charge. If a special trial counsel defers the offense, the special trial counsel shall promptly forward the offense to a commander or convening authority for disposition, and the commander or convening authority shall dispose of the offense pursuant to R.C.M. 306.

(b) *Disposition of a preferred specification.* A special trial counsel shall dispose of each preferred specification in accordance with R.C.M. 401A.

(c) *National security matters.* If a commander believes trial would be detrimental to the prosecution of a war or harmful to national security, the matter shall be forwarded to the Secretary concerned for action.

(d) *Sex-related offenses.*

(1) For purposes of this subsection (R.C.M. 306A(d)), "sex-related offense" means any allegation of a violation of Article 120, 120b, 120c, or 130, or any attempt thereof under Article 80.

(2) Under such regulations as the Secretary concerned may prescribe, for alleged sex-related offenses committed in the United States, the victim of the sex-related offense shall be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. A special trial counsel shall consider the victim's preference for jurisdiction, if available, prior to making an initial disposition decision. For purposes of this rule, "victim" is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an alleged sex-related offense as defined in R.C.M. 306A(d)(1).

(3) Under such regulations as the Secretary concerned may prescribe, if the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, a special trial counsel shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution. If a special trial counsel learns of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court, the special trial counsel shall ensure the victim, or victim's counsel, if any, is notified."

(s) R.C.M. 307(a) is amended to read as follows:

"(a) *In general.* In accordance with R.C.M. 307(b), preferral is the act by which a person subject to the UCMJ formally accuses another person subject to the UCMJ of an offense. Any person subject to the UCMJ may prefer charges."

(t) R.C.M. 308 is revised to read as follows:

"Rule 308. Notification to accused of charges and required disclosures

(a) *Immediate commander.* The immediate commander of the accused shall cause the accused to be informed of the charges preferred against the accused, and the name of the person who preferred the charges and of any person who ordered the charges to be preferred, if known, as soon as practicable.

(b) *Commanders at higher echelons.* When the accused has not been informed of the charges, commanders at higher echelons to whom the preferred charges are forwarded shall cause the accused to be informed of the matters required under R.C.M. 308(a) as soon as practicable.

(c) *Disclosures generally.* Except as otherwise provided in R.C.M. 308(d) and as soon as practicable after notification to the accused of preferred charges, counsel for the Government shall provide the defense with copies of the charges and any books, papers, documents, data, photographs, or tangible objects that accompanied the charge or charges when preferred. If extraordinary circumstances make it impracticable to provide copies, counsel for the Government shall permit the defense to inspect these items.

(d) *Information not subject to disclosure.*

(1) *Military Rules of Evidence.* Nothing in this rule shall be construed to require the disclosure of information protected from disclosure by the Military Rules of Evidence.

(2) *Work Product.* Nothing in this rule shall require the disclosure or production of notes, memoranda, or similar working papers prepared by counsel or counsel's assistants and representatives.

(3) *Contraband.* If items covered by R.C.M. 308(c) are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the preliminary hearing.

(4) *Privilege.* If items covered by R.C.M. 308(c) are privileged, classified, or otherwise protected under Section V of Part III, the Military Rules of Evidence, no disclosure of those items is required under this rule. However, counsel for the Government may disclose privileged, classified, or otherwise protected information covered by R.C.M. 308(a) if authorized by the holder of the privilege or, in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(5) *Protective order if privileged information is disclosed.* If the Government agrees to disclose to the accused information to which the protections afforded by Section V of the Military Rules of Evidence may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)–(6) or 506(g)(2)–(5). (e) *Remedy.* The sole remedy for violation of this rule is a continuance or recess of sufficient length to permit the accused to adequately prepare a defense, and no relief shall be granted upon a failure to comply with this rule unless the accused demonstrates that the accused has been hindered in the preparation of a defense."

(u) R.C.M. 309(a)(2) is amended to read as follows:

"(2) The matters that may be considered and ruled upon by a military judge under this rule are limited to those matters specified in R.C.M. 309(b)."

(v) R.C.M. 309(b)(3) is amended to read as follows:

"(3) *Requests for relief from subpoena or other process.* A person in receipt of a pre-referral investigative subpoena under R.C.M. 703(g)(3)(C), a victim named in a specification

whose personal and confidential information has been subpoenaed under R.C.M. 703(g)(3)(C)(ii), a service provider in receipt of a warrant or court order to disclose information about wire or electronic communications under R.C.M. 703A(a), or a person ordered to sit for a deposition under R.C.M. 702(b)(2) may request relief on grounds that compliance with the subpoena, warrant, or order is unreasonable, oppressive, or prohibited by law. The military judge shall review the request and shall either order the person or service provider to comply with the subpoena, warrant, or order, or modify or quash the subpoena, warrant, or order, as appropriate. In a proceeding under this paragraph, the United States shall be represented by an authorized counsel for the Government."

(w) R.C.M. 309(b)(6) is amended to read as follows:

"(6) *Pretrial confinement of an accused.* After action by the 7-day reviewing officer under R.C.M. 305(j)(2)(C), a military judge may, upon application of an accused for appropriate relief, review the propriety of pretrial confinement. A military judge may order release from pretrial confinement under the provisions of R.C.M. 305(k)(1)."

(x) A new R.C.M. 309(b)(10) is inserted immediately after (b)(9) to read as follows:

"(10) *Pre-referral depositions.* A military judge may, upon application by a party, consider whether to order a pre-referral deposition under R.C.M. 702(c)(2)."

(y) R.C.M. 309(e) is amended to read as follows:

"(e) *Record.* A separate record of any proceeding under this rule shall be prepared and forwarded to the convening authority, special trial counsel, or any combination thereof, with authority to dispose of the charges or offenses in the case. If charges are referred to trial in the case, such record shall be included in the record of trial."

(z) R.C.M. 401(a) is revised to read as follows:

"(a) *Who may dispose of charges.* Only persons authorized to convene courts-martial or to administer nonjudicial punishment under Article 15 may dispose of charges, except for those charges over which a special trial counsel has exercised authority and which must be disposed of in accordance with R.C.M. 401A. A superior competent authority may withhold the authority of a subordinate to dispose of charges in individual cases, types of cases, or generally."

(aa) A new R.C.M. 401A is inserted immediately after R.C.M. 401 to read as follows:

"**Rule 401A. Disposition of charges over which a special trial counsel exercises authority and has not deferred**

(a) *Who may dispose of preferred specifications.* Regardless of who preferred a specification, only a special trial counsel may dispose of a specification alleging a covered offense or another offense over which a special trial counsel has exercised authority and has not deferred. A superior competent authority may withhold the authority of a subordinate special trial counsel to dispose of offenses charged in individual cases, types of cases, or generally.

(b) *Prompt determination.* Special trial counsel shall promptly determine what disposition will be made in the interest of justice and discipline.

(c) *Disposition of preferred specifications.*

(1) *Referral.* For those offenses over which a special trial counsel has exercised authority and not deferred, a special trial counsel may refer a charge and any specification thereunder to a special or general court-martial. If a preliminary hearing in accordance with Article 32 and R.C.M. 405 is required, a special trial counsel shall request a hearing officer and a hearing officer shall be provided by the convening authority.

(2) *Dismissal.* For those offenses over which a special trial counsel has exercised authority and not deferred, a special trial counsel may dismiss any charge or specification

thereunder. A dismissal may be accompanied by a deferral as defined in this rule. Further disposition by a special trial counsel in accordance with this rule or by a convening authority pursuant to RCM 306(c) is not barred.

(3) *Deferral.*

(A) *Pre-referral.* A special trial counsel may defer a charged offense by electing not to refer the charged offense to a special or general court-martial. Upon such a determination, the special trial counsel shall promptly forward the matter to the commander or convening authority for disposition. The commander or convening authority shall dispose of the offense pursuant to R.C.M. 306 or the charged offense pursuant to R.C.M. 401, as applicable. The commander or convening authority may dismiss a charge preferred by a special trial counsel. However, a convening authority may not refer a charge alleging a covered offense to a special or general court-martial.

(B) *Post-referral.* After referral, a charge referred to a general or special court-martial by a special trial counsel must be withdrawn before the offense alleged by that charge may be deferred."

(bb) R.C.M. 402 is amended to read as follows:

"Rule 402. Action by commander not authorized to convene courts-martial

Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander authorized to administer nonjudicial punishment but not authorized to convene courts-martial may:

(1) Dismiss any charge; or

(2) Forward any charge to a superior commander for disposition."

(cc) R.C.M. 403 is amended to read as follows:

"Rule 403. Action by commander exercising summary court-martial jurisdiction.

(a) *Recording receipt.* Immediately upon receipt of sworn charges, an officer exercising summary court-martial jurisdiction over the command shall cause the hour and date of receipt to be entered on the charge sheet. After recording receipt of charges over which a special trial counsel has exercised authority and has not deferred, the charge sheet shall be returned to the special trial counsel.

(b) *Disposition.* Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander exercising summary court-martial jurisdiction may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing a charge, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 601(d) and 1301(c), refer any charge to a summary court-martial for trial; or

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition."

(dd) R.C.M. 404 is amended to read as follows:

"Rule 404. Action by commander exercising special court-martial jurisdiction

Except for covered offenses and other charges over which a special trial counsel has exercised authority and has not deferred, when in receipt of charges, a commander exercising special court-martial jurisdiction may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing a charge, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer any charge to a summary court-martial or to a special court-martial for trial; or

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition."

(ee) R.C.M. 404A is deleted.

(ff) R.C.M. 405 is amended to read as follows:

"Rule 405. Preliminary hearing.

(a) *In general.* Except as provided in R.C.M. 405(n), no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. The issues for determination at a preliminary hearing are limited to the following: whether each specification alleges an offense; whether there is probable cause to believe that the accused committed the offense or offenses charged; whether the convening authority has court-martial jurisdiction over the accused and over the offense; and to recommend the disposition that should be made of the case. Failure to comply with this rule shall have no effect on the disposition of any charge if the charge is not referred to a general court-martial.

(b) *Earlier preliminary hearing.* If a preliminary hearing on the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the

preliminary hearing and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further preliminary hearing is required.

(c) *Who may direct a preliminary hearing.*

(1) Subject to R.C.M. 405(c)(2), unless prohibited by regulations of the Secretary concerned, a preliminary hearing may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent with these rules.

(2) For charges and specifications over which a special trial counsel has exercised authority, the special trial counsel shall determine whether a preliminary hearing is required. If a special trial counsel determines that a hearing is required, the special trial counsel shall request that a convening authority provide a preliminary hearing officer. Upon such a request, the convening authority shall provide a preliminary hearing officer and direct a preliminary hearing in accordance with this rule. If a special trial counsel determines a previous preliminary hearing is required to be reopened, the convening authority shall direct the preliminary hearing to be reopened.

(d) *Disclosures after direction of a preliminary hearing.*

(1) As soon as practicable but no later than five days after direction of an Article 32 preliminary hearing, counsel for the Government shall provide the defense with copies of, or, if impracticable, permit the defense to inspect:

(A) the order directing the Article 32 preliminary hearing pursuant to this rule (R.C.M. 405);

(B) statements, within the control of military authorities, of witnesses that counsel for the Government intends to call at the preliminary hearing;

(C) evidence counsel for the Government intends to present at the preliminary hearing; and

(D) any matters provided to the convening authority when deciding to direct the preliminary hearing.

(2) *Contraband.* If items covered by R.C.M. 405(d)(1) are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the preliminary hearing.

(3) *Privilege.* If items covered by R.C.M. 405(d)(1) are privileged, classified, or otherwise protected under Section V of Part III, the Military Rules of Evidence, no disclosure of those items is required under this rule. However, counsel for the Government may disclose privileged, classified, or otherwise protected information covered by R.C.M. 405(d)(1) if authorized by the holder of the privilege, or, in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(4) *Protective order if privileged information is disclosed.* If the Government agrees to disclose to the accused information to which the protections afforded by Section V of Part III may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)–(6) or 506(g)(2)–(5).

(e) *Personnel.*

(1) Preliminary hearing officer.

(A) The convening authority directing the preliminary hearing shall detail an impartial judge advocate, not the accuser, who is certified under Article 27(b)(2) to conduct the hearing. When it is impracticable to appoint a judge advocate certified under Article 27(b)(2) due to exceptional circumstances:

(i) The convening authority may detail an impartial commissioned officer as the preliminary hearing officer, and

(ii) An impartial judge advocate certified under Article 27(b)(2) shall be available to provide legal advice to the detailed preliminary hearing officer.

(B) Whenever practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the Government at the preliminary hearing.

(C) The Secretary concerned may prescribe additional limitations on the detailing of preliminary hearing officers.

(D) The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity.

(2) *Counsel for the Government.*

(A) Subject to R.C.M. 405(e)(2)(B), a judge advocate, not the accuser, shall serve as counsel to represent the Government.

(B) For preliminary hearings requested by a special trial counsel, the special trial counsel shall detail counsel for the Government consistent with regulations prescribed by the Secretary concerned. Any determination by a special trial counsel to prefer or refer charges shall not act to disqualify that special trial counsel as an accuser.

(3) *Defense counsel.*

(A) *Detailed counsel.* Military counsel certified in accordance with Article 27(b) shall be detailed to represent the accused.

(B) *Individual military counsel.* The accused may request to be represented by individual military counsel. Such requests shall be acted on in accordance with R.C.M. 506(b).

(C) *Civilian counsel.* The accused may be represented by civilian counsel at no expense to the Government. Upon request, the accused is entitled to a reasonable time to obtain civilian counsel and to have such counsel present for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for this purpose. Representation by civilian counsel shall not limit the rights to military counsel under R.C.M. 405(e)(3)(A) or (B).

(4) *Others.* The convening authority who directed the preliminary hearing may also detail or request an appropriate authority to detail a reporter, an interpreter, or both.

(f) *Scope of preliminary hearing.*

(1) The preliminary hearing officer shall limit the inquiry to the examination of evidence, including witnesses, relevant to the issues for determination under R.C.M. 405(a).

(2) If evidence adduced during the preliminary hearing indicates that the accused committed any uncharged offense, the preliminary hearing officer may examine evidence and hear witnesses presented by the parties relating to the subject matter of such offense and make the determination specified in R.C.M. 405(a) regarding such offense without the accused first having been charged with the offense. The rights of the accused under R.C.M. 405(g), and, where it would not cause undue delay to the proceedings, the procedure applicable for production of witnesses and other evidence under R.C.M. 405(i), are the same with regard to both charged and uncharged offenses. When considering uncharged offenses identified during

the preliminary hearing, the preliminary hearing officers shall inform the accused of the general nature of each offense considered and otherwise afford the accused the same opportunity for representation, cross-examination, and presentation afforded during the preliminary hearing of any charged offense.

(3) If evidence adduced during the preliminary hearing indicates that the accused committed any uncharged covered offense and the preliminary hearing was not requested by special trial counsel, the preliminary hearing officer shall provide prompt notice to the convening authority and a special trial counsel and shall submit a copy of the preliminary hearing report to a special trial counsel.

(g) *Rights of the accused.* At any preliminary hearing under this rule the accused shall have the right to:

(1) Be advised of the charges and uncharged misconduct under consideration;

(2) Be represented by counsel;

(3) Be informed of the purpose of the preliminary hearing;

(4) Be informed of the right against self-incrimination under Article 31;

(5) In accordance with the terms of R.C.M. 405(k)(4), be present throughout the taking of evidence;

(6) Cross-examine witnesses on matters relevant to the issues for determination under R.C.M. 405(a);

(7) Present matters relevant to the issues for determination under R.C.M. 405(a); and

(8) Make a sworn or unsworn statement relevant to the issues for determination under R.C.M. 405(a).

(h) *Notice to and presence of victim.*

(1) For the purposes of this rule, a "victim" is an individual who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.

(2) A victim of an offense under the UCMJ or the victim's counsel, if any, shall receive reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense and a reasonable opportunity to confer with counsel for the Government.

(3) A victim has the right not to be excluded from any public proceeding of the preliminary hearing, except to the extent a similarly situated victim would be excluded at trial.

(i) *Notice, Production of Witnesses, and Production of Other Evidence.*

(1) *Notice.* Prior to any preliminary hearing under this rule, the parties shall, in accordance with timelines set by the preliminary hearing officer, provide to the preliminary hearing officer and the opposing party the following notices:

(A) Notice of the name and contact information for each witness the party intends to call at the preliminary hearing;

(B) Notice of any other evidence that the party intends to offer at the preliminary hearing; and

(C) Notice of any additional information the party intends to submit under R.C.M. 405(l).

(2) *Production of Witnesses.*

(A) *Military Witnesses.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government the names of proposed military witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested

form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the Government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available, and if so, whether the witness will testify in person, by video teleconference, by telephone, or by similar means of remote testimony, based on operational necessity or mission requirements. If the commanding officer determines that the military witness is available, counsel for the Government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final.

(iv) A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing.

(B) *Civilian Witnesses.*

(i) Defense counsel shall provide to counsel for the Government the names of proposed civilian witnesses whom the accused requests that the Government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the Government shall respond that either (1) the Government agrees that the witness' testimony is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and will seek to secure the witness' testimony for the hearing; or (2) the Government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness' testimony is relevant, not cumulative, and necessary, counsel for the Government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for the witness's testimony. If expense to the Government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony.

(3) *Production of other evidence.*

(A) *Evidence under the control of the Government.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence under the control of the Government the accused requests the Government produce to the defense for introduction at the preliminary hearing. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and shall make reasonable efforts to obtain the evidence; or (2) the Government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(ii) If the Government objects to the production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a). If the preliminary hearing officer determines that the evidence shall be produced, counsel for the Government shall make reasonable efforts to obtain the evidence.

(iii) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

(B) *Evidence not under the control of the Government.*

(i) Evidence not under the control of the Government may be obtained through noncompulsory means or by a pre-referral investigative subpoena issued by a military judge under R.C.M. 309 or counsel for the Government in accordance with the process established by R.C.M. 703(g)(3)(C).

(ii) Prior to the preliminary hearing, defense counsel shall provide to counsel for the Government a list of evidence not under the control of the Government that the accused requests the Government obtain. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the Government shall respond that either (1) the Government agrees that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and shall issue a pre-referral investigative subpoena for the evidence; or (2) the Government objects to the production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary to a determination of the issues under R.C.M. 405(a).

(iii) If the Government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary to a determination of the issues under R.C.M. 405(a) and that the issuance of a pre-referral investigative subpoena would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the Government to seek a pre-referral investigative subpoena for the defense-requested evidence from a military judge in accordance with R.C.M. 309 or authorization from the general court-martial convening authority to issue an investigative subpoena. If counsel for the Government refuses or is unable to obtain an investigative subpoena, the counsel shall set forth the reasons why the investigative subpoena was not obtained in a written statement that shall be included in the preliminary hearing report under R.C.M. 405(m).

(iv) The preliminary hearing officer may not order the production of any privileged matters; however, when a party offers evidence that an opposing party claims is privileged, the preliminary hearing officer may rule on whether a privilege applies.

(j) *Military Rules of Evidence.*

(1) *In general.*

(A) Only the following Military Rules of Evidence apply to preliminary hearings:

(i) Mil. R. Evid. 301-303 and 305.

(ii) Mil. R. Evid. 412(a), except as provided in R.C.M. 405(j)(2).

(iii) Mil. R. Evid., Section V, Privileges, except that Mil. R. Evid. 505(f)-(h) and (j); 506(f)-(h), (j), (k), and (m); and 514(d)(6) shall not apply.

(B) In applying the rules to a preliminary hearing in accordance with R.C.M. 405(j)(1)(A), the term "military judge," as used in such rules, means the preliminary hearing officer, who shall assume the military judge's authority to exclude evidence from the preliminary hearing, and who shall, in discharging this duty, follow the procedures set forth in such rules. Evidence offered in violation of the procedural requirements of the rules in R.C.M. 405(j)(1)(A) shall be excluded from the preliminary hearing, unless good cause is shown.

(2) *Sex-offense cases.*

(A) *Inadmissibility of certain evidence.* In a case of an alleged sexual offense, as defined under Mil. R. Evid. 412(d), evidence offered to prove that any alleged victim engaged in other sexual behavior or evidence offered to prove any alleged victim's sexual predisposition is not admissible at a preliminary hearing unless—

(i) the evidence would be admissible at trial under Mil. R. Evid. 412(b)(1) or (2); and

(ii) the evidence is relevant, not cumulative, and is necessary to a determination of the issues under R.C.M. 405(a).

(B) *Initial procedure to determine admissibility.* A party intending to offer evidence under R.C.M. 405(j)(2)(A) shall, no later than five days before the preliminary hearing begins, submit a written motion specifically describing the evidence and stating why the evidence is admissible. The preliminary hearing officer may permit a different filing time, but any motion shall be filed prior to the beginning of the preliminary hearing. The moving party shall serve the motion on the opposing party, who shall have the opportunity to respond in writing. Counsel for the Government shall cause the motion and any written responses to be served on the victim, or victim's counsel, if any, or, when appropriate, the victim's guardian or representative. After reviewing the motion and any written responses, the preliminary hearing officer shall either—

(i) deny the motion on the grounds that the evidence does not meet the criteria specified in R.C.M. 405(j)(2)(A)(i) or (ii); or

(ii) conduct a hearing to determine the admissibility of the evidence.

(C) *Admissibility hearing.* If the preliminary hearing officer conducts a hearing to determine the admissibility of the evidence, the admissibility hearing shall be closed and should ordinarily be conducted at the end of the preliminary hearing, after all other evidence offered by the parties has been admitted. At the admissibility hearing, the parties may call witnesses and offer relevant evidence. The victim shall be afforded a reasonable opportunity to attend and be heard, to include being heard through counsel. If the preliminary hearing officer determines that the evidence should be admitted, the victim may directly petition the Court of Criminal Appeals for a writ of mandamus pursuant to Article 6b.

(D) *Sealing.* The motions, related papers, and the record of an admissibility hearing shall be sealed and remain under seal in accordance with R.C.M. 1113.

(k) *Preliminary hearing procedure.*

(1) *Generally*. The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused's rights under R.C.M. 405(g). Counsel for the Government will then present evidence. Upon the conclusion of counsel for the Government's presentation of evidence, defense counsel may present matters. Both counsel for the Government and defense counsel shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is necessary for a determination of the issues under R.C.M. 405(a), the preliminary hearing officer may provide the parties an opportunity to present additional testimony or evidence. Except as provided in R.C.M. 405(m)(2)(J), the preliminary hearing officer shall not consider evidence not presented at the preliminary hearing in making the determination under R.C.M. 405(a). The preliminary hearing officer shall not call witnesses *sua sponte*.

(2) *Presentation of evidence.*

(A) *Testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the accused may make an unsworn statement. The preliminary hearing officer shall only consider testimony that is relevant to the issues for determination under R.C.M. 405(a).

(B) *Other evidence.* If relevant to the issues for determination under R.C.M. 405(a) and not cumulative, a preliminary hearing officer may consider other evidence offered by

either counsel for the Government or defense counsel, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, that the preliminary hearing officer determines is reliable. This other evidence need not be sworn.

(3) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible, whether conducted in person or via remote means. If there is an overriding interest that outweighs the value of an open preliminary hearing, the convening authority or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings. Any restriction or closure must be narrowly tailored to protect the overriding interest involved. Before ordering any restriction or closure, a convening authority or preliminary hearing officer must determine whether any reasonable alternatives to such restriction or closure exist, or if some lesser means can be used to protect the overriding interest in the case. The convening authority or preliminary hearing officer shall make specific findings of fact in writing that support the restriction or closure. The written findings of fact shall be included in the preliminary hearing report.

(4) *Presence of accused.* The accused shall be present for the preliminary hearing.

(A) *Remote presence of the accused.* The convening authority that directed the preliminary hearing may authorize the use of audio-visual technology between the parties and the preliminary hearing officer. In such circumstances, the "presence" requirement of the accused is met only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused shall be considered to have waived the right to be present at the preliminary hearing if the accused:

(i) After being notified of the time and place of the proceeding is voluntarily absent; or

(ii) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct which is such as to justify exclusion from the proceeding.

(5) *Recording of the preliminary hearing.* Counsel for the Government shall ensure that the preliminary hearing is recorded by a suitable recording device. A victim named in a specification under consideration may request access to, or a copy of, the recording of the proceedings. Upon request, counsel for the Government shall provide the requested access to, or a copy of, the recording or, at the Government's discretion, a transcript, to the victim or victim's counsel, if any, not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of rereferral, or court-martial adjournment. This rule does not entitle the victim to classified information or sealed materials consistent with an order issued in accordance with R.C.M. 1113(a).

(6) *Recording and broadcasting prohibited.* Video and audio recording, broadcasting, and the taking of photographs—except as required in R.C.M. 405(k)(5)—are prohibited. The convening authority may, as a matter of discretion, permit contemporaneous closed-caption video or audio transmission to permit viewing or hearing by an accused removed under R.C.M. 405(k)(4) or by spectators when the facilities are inadequate to accommodate a reasonable number of spectators.

(7) *Objections.* Any objection alleging a failure to comply with this rule, other than an objection under R.C.M. 405(m), shall be made to the preliminary hearing officer promptly upon discovery of the alleged error. The preliminary hearing officer is not required to rule on any objection. An objection shall be noted in the preliminary hearing report if the person objecting so requests. The preliminary hearing officer may require a party to file any objection in writing.

(8) *Sealed exhibits and proceedings.* The preliminary hearing officer has the authority to order exhibits, recordings of proceedings, or other matters sealed as described in R.C.M. 1113.

(l) *Supplementary information.*

(1) No later than 24 hours from the closure of the preliminary hearing, counsel for the Government, defense counsel, and any victim named in a specification under consideration (or, if applicable, counsel for such a victim) may submit to the preliminary hearing officer, counsel for the Government, and defense counsel additional information that the submitter deems relevant to the disposition of the charges and specifications.

(2) Defense counsel may submit additional matters that rebut the submissions of counsel for the Government or any victim provided under R.C.M. 405(l)(1). Such matters must be provided to the preliminary hearing officer and to the counsel for the Government within 5 days of the closure of the preliminary hearing.

(3) The preliminary hearing officer shall examine all supplementary information submitted under R.C.M. 405(l) and shall seal, in accordance with R.C.M. 1113, any matters the preliminary hearing officer deems privileged or otherwise not subject to disclosure.

(A) The preliminary hearing officer shall provide a written summary and an analysis of the supplementary information submitted under R.C.M. 405(l) that is not sealed and

is relevant to disposition for inclusion in the report to the convening authority or special trial counsel, as applicable, under R.C.M. 405(m).

(B) If the preliminary hearing officer seals any supplementary information submitted under R.C.M. 405(l), the preliminary hearing officer shall provide an analysis of those materials. The analysis of the sealed materials shall be sealed. Additionally, the preliminary hearing officer shall generally describe those matters and detail the basis for sealing them in a separate cover sheet. This cover sheet shall accompany the sealed matters and shall not contain privileged information or be sealed.

(4) The supplementary information and any summary and analysis provided by the preliminary hearing officer, and any sealed matters and cover sheets, as applicable, shall be forwarded to the convening authority or special trial counsel, as applicable, for consideration in making a disposition determination.

(5) Submissions under R.C.M. 405(l) shall be maintained as an attachment to the preliminary hearing report provided under R.C.M. 405(m).

(m) *Preliminary hearing report.*

(1) *In general.* The preliminary hearing officer shall make a timely written report of the preliminary hearing to the convening authority or, for hearings requested by a special trial counsel, to the special trial counsel. This report is advisory and does not bind the staff judge advocate, convening authority, or special trial counsel, as applicable.

(2) *Contents.* The preliminary hearing report shall include:

(A) A statement of names and organizations or addresses of counsel for the Government and defense counsel and, if applicable, a statement of why either counsel was not present at any time during the proceedings;

(B) The recording of the preliminary hearing under R.C.M. 405(k)(5);

(C) For each specification, the preliminary hearing officer's reasoning and conclusions with respect to the issues for determination under R.C.M. 405(a), including a summary of relevant witness testimony and documentary evidence presented at the hearing and any observations concerning the testimony of witnesses and the availability and admissibility of evidence at trial;

(D) If applicable, a statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the Government refused to issue a pre-referral investigative subpoena that was directed by the preliminary hearing officer and the counsel's statement of the reasons for such refusal;

(G) Recommendations for any necessary modifications to the form of the charges and specifications;

(H) A statement of whether the preliminary hearing officer examined evidence or heard witnesses relating to any uncharged offenses in accordance with R.C.M. 405(f)(2), and, for each such offense, the preliminary hearing officer's reasoning and conclusions as to whether there is probable cause to believe that the accused committed the offense and whether the convening authority would have court-martial jurisdiction over the offense if it were charged;

(I) A notation of any objections if required under R.C.M. 405(k)(7);

(J) The recommendation of the preliminary hearing officer as to the disposition that should be made of the charges and specifications in the interest of justice and discipline. In

making this disposition recommendation, the preliminary hearing officer may consider any evidence admitted during the preliminary hearing and matters submitted under R.C.M. 405(l);

(K) The written summary and analysis required by R.C.M. 405(l)(3)(A); and

(L) A notation as to whether the parties or the preliminary hearing officer considered any offense to be a covered offense.

(3) *Sealed exhibits and proceedings.* If the preliminary hearing report contains exhibits, proceedings, or other matters ordered sealed by the preliminary hearing officer in accordance with R.C.M. 1113, counsel for the Government shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure.

(4) *Distribution of preliminary hearing report.* The preliminary hearing officer shall promptly cause the preliminary hearing report to be delivered to the convening authority or, for hearings requested by a special trial counsel, to the special trial counsel. Counsel for the Government shall promptly cause a copy of the report to be delivered to each accused. The convening authority or, for hearings requested by a special trial counsel, the special trial counsel shall promptly determine what disposition will be made in the interest of justice and discipline in accordance with R.C.M. 401 or R.C.M. 401A.

(5) *Objections to the preliminary hearing officer's report.* Upon receipt of the report, the parties shall have five days to submit objections to the preliminary hearing officer. Any objection to the preliminary hearing report shall be made to the convening authority who directed the preliminary hearing, via the preliminary hearing officer. The objection shall be served upon the opposing party, and government counsel must provide notice of the objection to any named victim or named victim's counsel, if any. The preliminary hearing officer will forward the objections to the convening authority as soon as practicable. The convening authority may direct

that the preliminary hearing be reopened or take other action, as appropriate. For cases where a special trial counsel has exercised authority, the special trial counsel may request the convening authority reopen the preliminary hearing. Upon such request, the convening authority shall reopen the preliminary hearing. This paragraph does not prohibit a convening authority or special trial counsel from taking other action prior to the expiration of five days allotted for submitting objections. Failure to make a timely objection under this rule shall constitute waiver of the objection.

(n) *Waiver*. The accused may waive a preliminary hearing. However, the preliminary hearing may still be conducted notwithstanding the waiver. Relief from the waiver may be granted by the convening authority, a superior convening authority, or the military judge, as appropriate, for good cause shown. For offenses over which a special trial counsel has exercised authority, a special trial counsel may grant relief from the waiver. If a special trial counsel declines to grant relief from the waiver and the case is referred, the accused may request relief from the military judge."

(gg) R.C.M. 406 is amended to read as follows:

"Rule 406. Pretrial advice and special trial counsel determinations

(a) *Pretrial Advice by the Staff Judge Advocate.*

(1) *General court-martial.* Except as provided by R.C.M. 406(b), before any charge may be referred for trial by a general court-martial, it shall be submitted to the staff judge advocate of the convening authority for consideration and advice. The advice of the staff judge advocate shall include a written and signed statement which sets forth the staff judge advocate's:

(A) Conclusion with respect to whether each specification alleges an offense under the UCMJ;

(B) Conclusion with respect to whether there is probable cause to believe that the accused committed the offense charged in the specification;

(C) Conclusion with respect to whether a court-martial would have jurisdiction over the accused and the offense; and

(D) Recommendation as to the disposition that should be made of the charges and specifications by the convening authority in the interest of justice and discipline.

(2) *Special-court martial.* Subject to R.C.M. 406(b), before any charge may be referred for trial by a special court-martial, the convening authority shall consult a judge advocate on relevant legal issues. Such issues may include:

(A) Whether each specification alleges an offense under the UCMJ;

(B) Whether there is probable cause to believe the accused committed the offense(s) charged;

(C) Whether a court-martial would have jurisdiction over the accused and the offense;

(D) The form of the charges and specifications and any necessary modifications; and

(E) Any other factors relating to disposition of the charges and specifications in the interest of justice and discipline.

(b) *Special trial counsel determinations.* For all charges alleging covered offenses, and other charges over which special trial counsel has exercised authority and has not deferred, referral to a special or general court-martial may be made only by a special trial counsel and the referral must be accompanied by a special trial counsel's written determination that:

(1) each specification under a charge alleges an offense under the UCMJ;

(2) there is probable cause to believe that the accused committed the offense charged; and

(3) a court-martial would have jurisdiction over the accused and the offense.

(c) *Distribution.*

(1) Subject to R.C.M. 406(c)(2), a copy of the written advice of the staff judge advocate shall be provided to the defense if charges are referred for trial by general court-martial.

(2) For those cases over which special trial counsel exercises exclusive authority, a copy of the written determination by special trial counsel shall be provided to the defense if charges are referred for trial by general or special court-martial."

(hh) R.C.M. 406A is deleted.

(ii) R.C.M. 407(a)(1) is amended to read as follows:

"(a) *Disposition.* Except for covered offenses and any other charges over which a special trial counsel has exercised authority and has not deferred, a commander exercising general court-martial jurisdiction, when in receipt of charges, may:

(1) Dismiss any charge;

(2) Forward any charge (or, after dismissing charges, the matter) to a subordinate commander for disposition;

(3) Forward any charge to a superior commander for disposition;

(4) Subject to R.C.M. 201(f)(2)(D) and (E), 601(d), and 1301(c), refer any charge to a summary court-martial or to a special court-martial for trial;

(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, after which additional action under this rule may be taken;

(6) Subject to R.C.M. 601(d), refer any charge to a general court-martial."

(jj) R.C.M. 407(b) is amended to read as follows:

"(b) *National security matters.*

(1) Subject to R.C.M. 407(b)(2), when in receipt of charges the trial of which the commander exercising general court-martial jurisdiction finds would probably be detrimental to the prosecution of a war or harmful to national security, that commander, unless otherwise prescribed by regulations of the Secretary concerned, shall determine whether trial is warranted and, if so, whether the security considerations involved are paramount to trial. As the commander finds appropriate, the commander may dismiss the charges, authorize trial of them, or forward them to a superior authority.

(2) For charges and specifications over which a special trial counsel has exercised authority and has not deferred and a commander believes trial would be detrimental to the prosecution of a war or harmful to national security, the matter shall be forwarded to the Secretary concerned.

(kk) A new R.C.M. 502(d)(1)(C) is inserted immediately after R.C.M. 502(d)(1)(B) to read as follows:

"(C) *Qualifications of special trial counsel.* Only judge advocates qualified, certified, and assigned as special trial counsel may be detailed as special trial counsel in general and special courts-martial. In accordance with regulations prescribed by the Secretary concerned, a special trial counsel shall be a judge advocate who is a member of the bar of a Federal court or a member of the bar of the highest court of a State; and is certified to be qualified, by reason of education, training, experience, and temperament, for duty as a special trial counsel by the Judge Advocate General of the armed force of which the officer is a member or, in the case of the Marine Corps, the Staff Judge Advocate to the Commandant of the Marine Corps. Special trial

counsel shall be well-trained, experienced, highly-skilled and competent in handling cases involving covered offenses."

(ll) R.C.M. 502(d)(3)(A) is amended to read as follows:

"(A) The accuser, except that any determination by a special trial counsel to prefer or refer charges shall not disqualify that special trial counsel;".

(mm) R.C.M. 503(a) is amended to read as follows:

"(a) *Members.*

(1) *In general.* The convening authority shall—

(A) detail qualified persons as members for courts-martial in accordance with the criteria described in Article 25;

(B) state whether the military judge is—

(i) authorized to impanel a specified number of alternate members; or

(ii) authorized to impanel alternate members only if, after the exercise of all challenges, excess members remain; and

(C) provide a list of the detailed members to the military judge to randomize in accordance with R.C.M. 911."

(nn) R.C.M. 503(c)(1) is amended to read as follows:

"(1) *By whom detailed.* Trial and defense counsel, assistant trial and defense counsel, and associate defense counsel shall be detailed in accordance with these rules and the regulations of the Secretary concerned. If authority to detail counsel has been delegated to a person, that person may detail himself or herself as counsel for a court-martial. For each general and special court-martial for which charges and specifications were referred by special trial counsel, a special trial counsel shall be detailed as trial counsel, and, in accordance with regulations prescribed by the

Secretary concerned, a special trial counsel may detail other trial counsel who are judge advocates. In a capital case, counsel learned in the law applicable to such cases under R.C.M. 502(d)(2)(C) shall be assigned in accordance with regulations of the Secretary concerned."

(oo) R.C.M. 504(b)(1) is amended to read as follows:

"(1) *General courts-martial.* Unless otherwise limited by superior competent authority, general courts-martial may be convened by persons occupying positions designated in Article 22(a) and by any commander designated by the Secretary concerned or empowered by the President. A commanding officer shall not be considered an accuser solely due to the role of the commanding officer in convening a special or general court-martial to which charges and specifications were referred by a special trial counsel."

(pp) R.C.M. 504(b)(2)(B)(i) is amended to read as follows:

"(i) In the Army, Air Force, or Space Force, by the officer exercising general court-martial jurisdiction over the command; or".

(qq) R.C.M. 505(c)(1)(A) is amended to read as follows:

"(A) *By convening authority.* Before the court-martial is assembled, the convening authority may change the members detailed to the court-martial without showing cause. New members shall be detailed in accordance with R.C.M. 503(a)."

(rr) R.C.M. 505(c)(2)(B) is amended to read as follows:

"(B) *New members.* In accordance with R.C.M. 503(a), new members may be detailed after assembly only when, as a result of excusals under R.C.M. 505(c)(2)(A), the number of members of the court-martial is reduced below the number of members required under R.C.M. 501(a), or the number of enlisted members, when the accused has made a timely written request for enlisted members, is reduced below one-third of the total membership."

(ss) R.C.M. 601 is amended to read as follows:

"Rule 601. Referral

(a) *In general.* Referral is the order of a convening authority or a special trial counsel that one or more charges and specifications against an accused will be tried by a specified court-martial.

(b) *Who may refer.*

(1) Except as provided in R.C.M. 601(b)(2), any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do so has been withheld by superior competent authority.

(2) For charges over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may refer charges to a court-martial.

(c) *Disqualification.*

(1) Except as provided in R.C.M. 601(c)(2), an accuser may not refer charges to a general or special court-martial.

(2) A special trial counsel shall not be disqualified from referring charges to a general or special court-martial as a result of having preferred charges or having caused charges to be preferred.

(d) *When charges may be referred.*

(1) *Basis for referral.*

(A) Except as provided in R.C.M. 601(d)(1)(B), if the convening authority finds or is advised by a judge advocate that there is probable cause to believe that an offense triable by a court-martial has been committed and that the accused committed it, and that the specification alleges an offense, the convening authority may refer it. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any

source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general or special court-martial except in compliance with R.C.M. 601(d)(2) or (d)(3). The convening authority or judge advocate shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.

(B) For offenses over which a special trial counsel has exercised authority and has not deferred, if a special trial counsel makes a written determination that each specification under a charge alleges an offense under the UCMJ, there is probable cause to believe that the accused committed the offense charged, and the court-martial would have jurisdiction over the accused and the offense, a special trial counsel may refer it. The finding may be based on hearsay in whole or in part. A special trial counsel may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general court-martial except in compliance with R.C.M. 601(d)(2) or (d)(3). A special trial counsel shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.

(2) *Consideration.* Referral authorities shall consider whether the admissible evidence will probably be sufficient to obtain and sustain a conviction.

(3) *General courts-martial.* Charges may not be referred to a general court-martial unless there has been substantial compliance with the preliminary hearing requirements of R.C.M. 405 and:

(A) The convening authority has received the advice of the staff judge advocate required under R.C.M. 406(a)(1) and Article 34(a); or

(B) A special trial counsel has made a written determination as required under R.C.M. 406(b) and Article 34(c).

(4) *Special courts-martial.* Charges may not be referred to a special court-martial unless:

(A) The convening authority has consulted with a judge advocate as required under R.C.M. 406(a)(2) and Article 34(b); or

(B) A special trial counsel has made a written determination as required under R.C.M. 406(b) and Article 34(c).

(e) *How charges shall be referred.*

(1) *Order, instructions.* Referral shall be by the personal order of the referral authority.

(A) *Capital cases.* If a case is to be tried as a capital case, the referral authority shall so indicate by including a special instruction on the charge sheet in accordance with R.C.M. 1004(b)(1).

(B) *Special court-martial consisting of a military judge alone.* If a case is to be tried as a special court-martial consisting of a military judge alone under Article 16(c)(2)(A), the referral shall so indicate by including a special instruction on the charge sheet prior to arraignment.

(C) *Other instructions.* The referral authority may include any other additional instructions in the order as may be required.

(2) *Joinder of offenses.* In the discretion of the referral authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious or minor offenses or both, regardless of whether the offenses are connected. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements concerning the additional charges have been complied with. After

arraignment of the accused upon charges, no additional charges may be referred to the same trial without consent of the accused.

(3) *Joinder of accused.* Allegations against two or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such accused may be charged in one or more specifications together or separately, and every accused need not be charged in each specification. Related allegations against two or more accused which may be proved by substantially the same evidence may be referred to a common trial.

(f) *Superior convening authorities.* Except as otherwise provided in these rules, a superior competent authority may cause charges, whether or not referred, to be transmitted to the authority for further consideration, including, if appropriate, referral.

(g) *Parallel convening authorities.*

(1) Except as provided in R.C.M. 601(g)(2), if it is impracticable for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if referred, to be transmitted to a parallel convening authority. This transmittal must be in writing and in accordance with such regulations as the Secretary concerned may prescribe. Subsequent actions taken by the parallel convening authority are within the sole discretion of that convening authority.

(2) For offenses over which a special trial counsel has exercised authority and has not deferred, a convening authority seeking to transfer charges to a parallel convening authority may do so in accordance with these rules and such regulations prescribed by the Secretary concerned."

(tt) R.C.M. 603(a) is amended to read as follows:

"(a) *In general.* Any person forwarding, acting upon, or prosecuting charges on behalf of the United States, except a preliminary hearing officer appointed under R.C.M. 405, may make major and minor changes to charges or specifications in accordance with this rule. For charges over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may make or cause to be made major and minor changes to charges or specifications in accordance with this rule."

(uu) R.C.M. 604(a) is amended to read as follows:

"(a) *Withdrawal.*

(1) Except as provided in R.C.M. 604(a)(2), the convening authority or a superior competent authority may for any reason cause any charge or specification to be withdrawn from a court-martial at any time before findings are announced.

(2) For charges over which a special trial counsel has exercised authority and has not deferred, only a special trial counsel may withdraw or cause to be withdrawn any charge or specification from the court-martial at any time before findings are announced."

(vv) R.C.M. 701(a) is amended to read as follows:

"(a) *Disclosure by trial counsel.* Except as otherwise provided in R.C.M. 701(f) and (g)(2), and unless previously disclosed to the defense, trial counsel shall provide the following to the defense:

(1) *Papers accompanying charges; convening orders; statements.* As soon as practicable after service of charges under R.C.M. 602, the trial counsel shall provide the defense with copies of, or, if extraordinary circumstances make it impracticable to provide copies, permit the defense to inspect:

(A) All papers that accompanied the charges presented to the convening authority;

(B) Any written determination made by a special trial counsel pursuant to Article 34;

(C) Any written recommendation from a commander as to disposition;

(D) Any papers sent with charges upon a rehearing or new trial;

(E) The convening order and any amending orders; and

(F) Any sworn or signed statement relating to an offense charged in the case that is in the possession of trial counsel.

(2) *Documents, tangible objects, reports.*

(A) After service of charges, upon request of the defense, the Government shall permit the defense to inspect any books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies of portions of these items, if the item is within the possession, custody, or control of military authorities and—

(i) the item is relevant to defense preparation;

(ii) the Government intends to use the item in the case-in-chief at trial;

(iii) the Government anticipates using the item in rebuttal; or

(iv) the item was obtained from or belongs to the accused.

(B) After service of charges, upon request of the defense, the Government shall permit the defense to inspect the results or reports of physical or mental examinations, and of any scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of military authorities, the existence of which is known or by the exercise of due diligence may become known to the trial counsel if

(i) the item is relevant to defense preparation;

(ii) the Government intends to use the item in the case-in-chief at trial; or

(iii) the Government anticipates using the item in rebuttal.

(3) *Witnesses.* Before the beginning of trial on the merits, trial counsel shall notify the defense of the names and contact information of the witnesses the trial counsel intends to call:

(A) In the prosecution case-in-chief; and

(B) To rebut a defense of alibi, innocent ingestion, or lack of mental responsibility, when the trial counsel has received timely notice under R.C.M. 701(b)(1) or (2).

(4) *Prior convictions of accused offered on the merits.* Before arraignment, the trial counsel shall notify the defense of any records of prior civilian or court-martial convictions of the accused of which the trial counsel is aware and which the trial counsel may offer on the merits for any purpose, including impeachment, and shall permit the defense to inspect such records when they are in the trial counsel's possession.

(5) *Information to be offered at sentencing.* Upon request of the defense, the trial counsel shall:

(A) Permit the defense to inspect such written material as will be presented by the prosecution at the presentencing proceedings; and

(B) Notify the defense of the names and contact information of the witnesses the trial counsel intends to call at the presentencing proceedings under R.C.M. 1001(b).

(6) *Evidence favorable to the defense.* The trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence known to the trial counsel which reasonably tends to—

(A) Negate the guilt of the accused of an offense charged;

(B) Reduce the degree of guilt of the accused of an offense charged;

(C) Reduce the punishment; or

(D) Adversely affect the credibility of any prosecution witness or evidence."

(ww) R.C.M. 701(b)(4) is amended to read as follows:

"(4) *Reports of examination and tests.* If the defense requests disclosure under R.C.M. 701(a)(2)(B), upon compliance with such request by the Government, the defense, on request of the trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302, and Mil. R. Evid. 513) permit the trial counsel to inspect the results or reports, or copies thereof, of any physical or mental examinations and of any scientific tests or experiments made in connection with the particular case if the item is within the possession, custody, or control of the defense; and—

(A) the defense intends to use the item in the defense case-in-chief at trial; or

(B) the item was prepared by a witness whom the defense counsel intends to call at trial and the results or reports relate to that witness' testimony."

(xx) R.C.M. 702(b) is amended to read as follows:

"(b) *Who may order.* Upon request of a party:

(1) Subject to R.C.M. 702(b)(2), before referral, a convening authority, or, after referral, the convening authority or the military judge, may order a deposition.

(2) For offenses over which special trial counsel exercises authority:

(i) Before referral, only a military judge may order a deposition, pursuant to R.C.M. 309(b)(3).

(ii) After referral, only a military judge may order a deposition."

(yy) R.C.M. 703(a) is amended to read as follows:

"(a) *In general.* The prosecution, defense, and court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in R.C.M. 701, including the benefit of compulsory process."

(zz) R.C.M. 703(d) is amended to read as follows:

"(d) *Employment of expert witnesses and consultants.*

(1) *Funding experts for the prosecution.* When the employment of a prosecution expert witness or consultant is considered necessary, counsel for the Government shall, in advance of employment of the expert, and with notice to the defense, submit a request for funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(2) *Funding experts for the defense.* When the appointment or employment of a defense expert witness or consultant is considered necessary, the defense may submit a request for the appointment or funding of the expert in accordance with regulations prescribed by the Secretary concerned.

(A) After referral of charges, a defense request for an expert witness or consultant may be raised before the military judge. Motions for expert consultants may be raised *ex parte*. The military judge shall determine:

(i) in the case of an expert witness, whether the testimony is relevant and necessary;

(ii) in the case of an expert consultant, whether the assistance is necessary for an adequate defense.

(B) If the military judge grants a motion for the appointment or employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute, shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under R.C.M. 207(g)(3)(E).

(3) *Notice of expert witnesses.*

(A) *Expert witnesses.*

(i) *Government.* In addition to the requirements of R.C.M. 701(a)(3), the Government shall provide the defense a written summary of the expected testimony from the expert witness.

(ii) *Defense.* After referral of charges, in addition to the requirements of R.C.M. 701(b)(1), the defense shall provide the Government a written summary of the expected testimony from the expert witness.

(B) *Timing.* The military judge shall set a date upon which notices under R.C.M. 703(d)(3)(A) are due to the opposing party.

(C) *Failure to comply.* If at any time it is brought to the attention of the military judge that a party has failed to comply with this rule, the military judge may take one or more of the following actions:

(i) Order the required notice;

(ii) Order the party to permit discovery;

(iii) Grant a continuance;

(iv) Prohibit the party from introducing evidence, calling a witness, or raising a defense not disclosed; and

(v) Enter such other order as is just under the circumstances."

(aaa) R.C.M. 703(g)(3) is amended to read as follows:

"(3) *Civilian witnesses and evidence not under the control of the Government—subpoenas.*

(A) *In general.* The presence of witnesses not on active duty and evidence not under control of the Government may be obtained by subpoena.

(B) *Contents.* A subpoena shall state the command by which the proceeding or investigation 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, or to produce evidence—including books, papers, documents, data, writings, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena shall not command any person to attend or give testimony at an Article 32 preliminary hearing.

(C) *Investigative subpoenas.*

(i) *In general.* In the case of a subpoena issued before referral for the production of evidence for use in an investigation, the subpoena shall command each person to whom it is directed to produce the evidence requested for inspection by the Government counsel who issued the subpoena or for inspection in accordance with an order issued by the military judge under R.C.M. 309(b).

(ii) *Subpoenas for personal or confidential information about a victim.* After preferral, a subpoena requiring the production of personal or confidential information about a victim named in a specification may be served on an individual or organization by those authorized to issue a subpoena under R.C.M. 703(g)(3)(E) or with the consent of the victim. Before issuing a subpoena under this provision and unless there are exceptional circumstances, the victim must be given notice so that the victim can move for relief under R.C.M 703(g)(3)(I) or otherwise object.

(D) *Ex parte request by defense.* Upon request by the defense after referral, including an *ex parte* request, the military judge shall issue a subpoena to compel the production of witnesses if the witness's testimony is determined to be relevant and necessary.

(E) *Who may issue.* A subpoena may be issued by:

(i) the military judge, after referral;

(ii) the summary court-martial;

(iii) the trial counsel of a general or special court-martial;

(iv) the president of a court of inquiry;

(v) an officer detailed to take a deposition; or

(vi) in the case of a pre-referral investigative subpoena, a military judge or, when issuance of the subpoena is authorized by a general court-martial convening authority, the detailed trial counsel or counsel for the Government.

(F) *Notice.* Notice shall be given to all parties for any subpoena issued for a witness post-referral unless, for good cause, the military judge issues a protective order.

(G) *Service.* A subpoena may be served by the person authorized by this rule to issue it, a United States Marshal, or any other person who is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named and, in the case of a subpoena of an individual to provide testimony, by providing to the person named travel orders and a means for reimbursement for fees and mileage as may be prescribed by the Secretary concerned, or in the case of hardship resulting in the subpoenaed witness's inability to comply with the subpoena absent initial Government payment, by providing to the person named travel orders, fees, and mileage sufficient to comply with the subpoena in rules prescribed by the Secretary concerned.

(H) *Place of service.*

(i) *In general.* A subpoena may be served at any place within the United States, its Territories, Commonwealths, or possessions.

(ii) *Foreign territory.* In foreign territory, the attendance of civilian witnesses and evidence not under the control of the Government may be obtained in accordance with existing agreements or, in the absence of agreements, with principles of international law.

(iii) *Occupied territory.* In occupied enemy territory, the appropriate commander may compel the attendance of civilian witnesses located within the occupied territory.

(I) *Relief.* If a person subpoenaed requests relief on grounds that compliance is unreasonable, oppressive, or prohibited by law, the military judge or, if before referral, a military judge detailed under Article 30a, shall review the request and shall—

(i) order that the subpoena be modified or quashed, as appropriate; or

(ii) order the person to comply with the subpoena.

(J) *Neglect or refusal to appear or produce evidence.*

(i) *Issuance of warrant of attachment.* If the person subpoenaed neglects or refuses to appear or produce evidence, the military judge or, if before referral, a military judge detailed under Article 30a or a general court-martial convening authority, may issue a warrant of attachment to compel the attendance of a witness or the production of evidence, as appropriate.

(ii) *Requirements.* A warrant of attachment may be issued only upon probable cause to believe that the witness or evidence custodian was duly served with a subpoena, that the subpoena was issued in accordance with these rules, that a means of reimbursement of fees and mileage, if applicable, was provided to the witness or advanced to the

witness in cases of hardship, that the witness or evidence is material, that the witness or evidence custodian refused or willfully neglected to appear or produce the subpoenaed evidence at the time and place specified on the subpoena, and that no valid excuse is reasonably apparent for the witness' failure to appear or produce the subpoenaed evidence.

(iii) *Form.* A warrant of attachment shall be written. All documents in support of the warrant of attachment shall be attached to the warrant, together with the charge sheet and convening orders.

(iv) *Execution.* A warrant of attachment may be executed by a United States Marshal or such other person who is not less than 18 years of age as the authority issuing the warrant may direct. Only such non-deadly force as may be necessary to bring the witness before the court-martial or other proceeding or to compel production of the subpoenaed evidence may be used to execute the warrant. A witness attached under this rule shall be brought before the court-martial or proceeding without delay and shall testify or provide the subpoenaed evidence as soon as practicable and be released.

(v) *Definition.* For purposes of R.C.M. 703(g)(3)(J)(i), "military judge" does not include a summary court-martial."

(bbb) R.C.M. 704(c) is amended to read as follows:

"(c) *Authority to grant immunity.*

(1) Except as provided in R.C.M. 704(c)(2), a general court-martial convening authority, or designee, may grant immunity, and may do so only in accordance with this rule.

(2) For offenses over which a special trial counsel has exercised authority and has not deferred, a special trial counsel designated by the Secretary concerned, or that designated special trial counsel's designee, may grant immunity, and may do so only in accordance with this rule.

(3) *Persons subject to the UCMJ.* A general court-martial convening authority, a special trial counsel designated by the Secretary concerned, or their designees, may grant immunity to a person subject to the UCMJ. However, they may grant immunity to a person subject to the UCMJ extending to a prosecution in a United States District Court only when specifically authorized to do so by the Attorney General of the United States or other authority designated under chapter 601 of title 18 of the U.S. Code.

(4) *Persons not subject to the UCMJ.* A general court-martial convening authority, a special trial counsel designated by the Secretary concerned, or their designees, may grant immunity to persons not subject to the UCMJ only when specifically authorized to do so by the Attorney General of the United States or other authority designated in chapter 601 of title 18 of the U.S. Code.

(5) *Limitations on delegation.*

(A) Subject to Service regulations, the authority to grant immunity under this rule may be delegated in writing at the discretion of the general court-martial convening authority to a subordinate special court-martial convening authority. Further delegation is not permitted. The authority to grant immunity or delegate the authority to grant immunity may be limited by superior authority.

(B) Subject to Service regulations, the authority to grant immunity under this rule may be delegated at the discretion of a special trial counsel designated by the Secretary concerned to a subordinate special trial counsel. The authority to grant immunity or delegate the authority to grant immunity may be limited by superior authority. Any delegation shall be in writing."

(ccc) R.C.M. 704(d) is amended to read as follows:

"(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

(E) Limit the sentence that may be adjudged by the court-martial for one or more charges and specifications in accordance with R.C.M. 705(d); or

(3) A promise by either the convening authority or special trial counsel to take other action within their authority."

(ggg) R.C.M. 705(c)(2) is amended to read as follows:

"(2) *Permissible terms and conditions.* R.C.M. 705(c)(1)(A) and (1)(B) do not prohibit the convening authority, special trial counsel, or the accused from proposing the following additional conditions:

(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty or to which a confessional stipulation will be entered;

(B) A promise to testify as a witness in the trial of another person;

(C) A promise to provide restitution;

(D) A promise to conform the accused's conduct to certain conditions of probation before action by the convening authority in a summary court-martial or before entry of judgment in a general or special court-martial as well as during any period of suspension of the sentence, provided that the requirements of R.C.M. 1108 must be complied with before an alleged violation of such terms may relieve the Government of the obligation to fulfill the agreement;

(E) A promise to waive procedural requirements such as the Article 32 preliminary hearing, the right to trial by a court-martial composed of members, the right to request trial by military judge alone, the right to elect sentencing by members if applicable, or the opportunity to obtain the personal appearance of witnesses at presentencing proceedings;

(F) When applicable, a provision requiring that the sentences to confinement adjudged by the military judge for two or more charges or specifications be served concurrently or consecutively. Such an agreement shall identify the charges or specifications that will be served concurrently or consecutively; and

(G) Any other term or condition that is not contrary to or inconsistent with this rule."

(hhh) R.C.M. 705(e)(3) is amended to read as follows:

"(3) *Acceptance by the convening authority or special trial counsel.*

(A) *In general.* The convening authority or special trial counsel, as applicable, may either accept or reject an offer of the accused to enter into a plea agreement or may propose by counteroffer any terms or conditions not prohibited by law or public policy. The decision whether to accept or reject an offer is within the sole discretion of the convening authority or special trial counsel, as applicable. When the convening authority has accepted a plea agreement, the agreement shall be signed by the convening authority or by a person, such as the staff judge advocate or trial counsel, who has been authorized by the convening authority to sign. When special trial counsel has accepted a plea agreement, the agreement shall be signed by special trial counsel.

(B) *Victim consultation.* Prior to the convening authority or special trial counsel, as applicable, accepting a plea agreement, the convening authority or special trial counsel shall make the convening authority's or special trial counsel's best efforts to provide the victim an opportunity to submit views concerning the plea agreement terms and conditions in accordance with regulations prescribed by the Secretary concerned. The convening authority or special trial counsel, as applicable, shall consider any such views provided prior to accepting a plea

agreement. For purposes of this rule, a "victim" is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration."

(iii) R.C.M. 705(e)(4) is amended to read as follows:

"(4) *Withdrawal.*

(A) *By accused.* The accused may withdraw from a plea agreement at any time prior to the sentence being announced. If the accused elects to withdraw from the plea agreement after the acceptance of the plea agreement but before the sentence is announced, the military judge shall permit the accused to withdraw only for good cause shown. Additionally, the accused may withdraw a plea of guilty or a confessional stipulation entered pursuant to a plea agreement only as provided in R.C.M. 910(h) or 811(d).

(B) *By convening authority or special trial counsel.* The convening authority or special trial counsel, as applicable, may withdraw from a plea agreement at any time:

(i) before substantial performance by the accused of promises contained in the agreement;

(ii) upon the failure by the accused to fulfill any material promise or condition in the agreement;

(iii) when inquiry by the military judge discloses a disagreement as to a material term in the agreement; or

(iv) if findings are set aside because a plea of guilty entered pursuant to the agreement is held improvident on appellate review."

(jjj) R.C.M. 706(b)(1) is amended to read as follows:

"(1) *Before referral.* Before referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by any applicable convening authority, or by a military judge or magistrate in a proceeding conducted in accordance with R.C.M. 309."

(kkk) R.C.M. 706(b)(2) is amended to read as follows:

"(2) *After referral.* After referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the military judge. The convening authority may order such an inquiry after referral of charges but before beginning of the first session of the court-martial (including any Article 39(a) session) when the military judge is not reasonably available. The military judge may order a mental examination of the accused regardless of any earlier determination by any authority."

(lll) R.C.M. 707(b)(3)(D) is amended to read as follows:

"(D) *Rehearings.* If a rehearing is ordered or authorized by an appellate court, a new 120-day time period under this rule shall begin on the date that the responsible convening authority or, for charges and specifications referred by a special trial counsel, the special trial counsel receives the record of trial and the opinion authorizing or directing a rehearing. An accused is brought to trial within the meaning of this rule at the time of arraignment under R.C.M. 904 or, if arraignment is not required (such as in the case of a sentence-only rehearing), at the time of the first session under R.C.M. 803."

(mmm) R.C.M. 707(c)(1) is amended to read as follows:

"(1) *Procedure.* Prior to referral, all requests for pretrial delay, together with supporting reasons and with notice to the defense, will be submitted to a convening authority with authority over the accused for resolution. The convening authority may delegate this authority to an

Article 32 preliminary hearing officer. After referral, such requests for pretrial delay will be submitted to the military judge for resolution."

(nnn) R.C.M. 707(d)(1) is amended to read as follows:

"(1) *Dismissal.* Dismissal will be with or without prejudice to the Government's right to reinstitute court-martial proceedings against the accused for the same offense at a later date. The charges must be dismissed with prejudice where the accused has been deprived of his or her constitutional right to a speedy trial. In determining whether to dismiss charges with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case that lead to dismissal; the impact of a re-prosecution on the administration of justice; and any prejudice to the accused resulting from the denial of a speedy trial."

(ooo) R.C.M. 707(f) is amended as follows:

"(f) *Priority.* When considering the disposition of charges and the ordering of trials, a convening authority or special trial counsel shall give priority to cases in which the accused is held under those forms of pretrial restraint defined by R.C.M. 304(a)(3)-(4). Trial of or other disposition of charges against any accused held in arrest or confinement pending trial shall be given priority."

(ppp) R.C.M. 804 is amended to read as follows:

"Rule 804. Presence at court-martial proceedings

(a) *Accused.*

(1) *Presence required.* The accused shall be present at the arraignment, the time of the plea, every stage of the trial including sessions conducted under Article 39(a), voir dire and challenges of members, the return of the findings, presentencing proceedings, and post-trial sessions, if any, except as otherwise provided by this rule. Attendance at these proceedings shall

constitute the accused's appointed place of duty and, with respect to the accused's travel allowances, none of these proceedings shall constitute disciplinary action. This does not in any way limit authority to implement restriction, up to and including confinement, as necessary in accordance with R.C.M. 304 or R.C.M. 305.

(A) *Appearance.* The accused shall be properly attired in the uniform or dress prescribed by the military judge. An accused service member shall wear the insignia of grade and may wear any decorations, emblems, or ribbons to which the accused is entitled. The accused and defense counsel are responsible for ensuring that the accused is properly attired; however, upon request, the accused's commander shall render such assistance as may be reasonably necessary to ensure that the accused is properly attired.

(B) *Custody.* Responsibility for maintaining custody or control of an accused before and during trial may be assigned, subject to R.C.M. 304 and 305, and R.C.M. 804(c)(3), under such regulations as the Secretary concerned may prescribe.

(C) *Restraint.* Physical restraint shall not be imposed on the accused during open sessions of the court-martial unless prescribed by the military judge.

(2) *Continuation of proceeding without presence.* The further progress of the trial to and including the return of the findings and, if necessary, determination of a sentence shall not be prevented and the accused shall be considered to have waived the right to be present whenever an accused, initially present:

(A) Is voluntarily absent after arraignment (whether or not informed by the military judge of the obligation to remain during the trial); or

(B) After being warned by the military judge that disruptive conduct will cause the accused to be removed from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(3) *Remote presence of the accused.*

(A) Except as provided in R.C.M. 804(a)(3)(B), for Article 39(a) sessions, the military judge may order the accused be present via remote means through the use of audiovisual technology. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at the accused's location or when the accused consents to presence by remote means with the opportunity for confidential consultation with defense counsel during the proceeding. Such technology may include two or more remote sites as long as all parties can see and hear each other.

(B) The accused may be present via remote means through the use of audiovisual technology for a plea inquiry under R.C.M. 910(d), (e) and (f), and presentencing proceedings before a military judge under R.C.M. 1001, only when there are exceptional circumstances that interfere with the normal administration of military justice, as determined by the military judge. The accused must consent to the use of audiovisual technology and defense counsel must be physically present at the accused's location for the hearing.

(4) *Voluntary absence for limited purpose of child testimony.*

(A) *Election by accused.* Following a determination by the military judge that remote live testimony of a child is appropriate pursuant to Mil. R. Evid. 611(d)(3), the accused may elect to be voluntarily absent from the courtroom in order to preclude the use of procedures described in R.C.M. 914A.

(B) *Procedure.* The accused's absence will be conditional upon the accused being able to view the witness' testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused's image and voice into the courtroom from a remote location as well as transmission of the child's testimony from the courtroom to the accused's location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures.

(C) *Effect on accused's rights generally.* An election by the accused to be absent pursuant to R.C.M. 804(a)(4)(A) shall not otherwise affect the accused's right to be present at the remainder of the trial in accordance with this rule.

(b) *Military judge.*

(1) No court-martial proceeding, except the deliberations of the members, may take place in the absence of the military judge. The military judge may attend Article 39(a) sessions via remote means through the use of audiovisual technology.

(2) When a new military judge is detailed under R.C.M. 505(e)(2) after the presentation of evidence on the merits has begun in a trial before a military judge alone, trial may not proceed unless the accused requests, and the new military judge approves, trial by military judge alone, and a verbatim record of the testimony and evidence or a stipulation thereof is read to or played for the new military judge in the presence of the accused and counsel for both sides, or the trial proceeds as if no evidence had been presented.

(c) *Members.*

(1) Unless the accused is tried or sentenced by military judge alone, no court-martial proceeding may take place in the absence of any detailed member except: Article 39(a) sessions under R.C.M. 803; temporary excusal under R.C.M. 911(b); examination of members under R.C.M. 912(d); when the member has been excused under R.C.M. 505, 912(f), or 912A; as otherwise provided in R.C.M. 1104(d)(1); or as otherwise provided in this Manual.

(2) When after presentation of evidence on the merits has begun, a new member is impaneled under R.C.M. 912A, trial may not proceed unless the testimony and evidence previously admitted on the merits, if recorded verbatim, is read to or played for the new member in the presence of the military judge, the accused, and counsel for both sides, or, if not recorded verbatim, and in the absence of a stipulation as to such testimony and evidence, the trial proceeds as if no evidence has been presented.

(d) *Counsel.* As long as at least one qualified counsel for each party is present, other counsel for each party may be absent from a court-martial session. In the case of a court-martial requiring the detailing of a special trial counsel, the presence of a special trial counsel is required unless a special trial counsel determines otherwise and another trial counsel, who is qualified according to Article 27(b), is also present. An assistant counsel who lacks the qualifications necessary to serve as counsel for a party may not act at a session in the absence of such qualified counsel. For purposes of Article 39(a) sessions and subject to R.C.M. 804(a)(3), the presence of counsel may be satisfied via remote means through the use of audiovisual technology.

(e) *Victim and Victim's Counsel.* Subject to R.C.M. 914B, at the discretion of the military judge and for good cause, the victim and victim's counsel may be present through the use of audiovisual technology."

(qqq) R.C.M. 805 is amended to read as follows:

"Rule 805. [Reserved]".

(rrr) R.C.M. 810(a)(4) is amended to read as follows:

"(4) *Additional charges.* A referral authority may refer additional charges for trial together with charges as to which a rehearing has been directed."

(sss) R.C.M. 810(a)(5) is amended to read as follows:

"(5) *Rehearing impracticable.* If a rehearing was authorized on one or more findings, the convening authority, or in cases referred by a special trial counsel, a special trial counsel, may dismiss the affected charges if the referral authority determines that a rehearing is impracticable. If the referral authority dismisses such charges, a rehearing may proceed on any remaining charges not dismissed by the referral authority."

(ttt) R.C.M. 810(f)(1) is amended to read as follows:

"(1) *In general.* A Court of Criminal Appeals may order a remand for additional fact finding, or for other reasons, in order to address a substantial issue on appeal. A remand under this subsection is generally not appropriate to determine facts or investigate matters which could, through a party's exercise of reasonable diligence, have been investigated or considered at trial. Such orders shall be directed to the Chief Trial Judge. The Judge Advocate General, or the Judge Advocate General's delegate, shall designate a general court-martial convening authority who shall provide support for the hearing. In cases which were referred by a special trial counsel, a special trial counsel designated under regulations prescribed by the Secretary concerned shall be notified of any remand."

(uuu) R.C.M. 810(f)(3) is amended to read as follows:

"(3) *Remand impracticable.* If the general court-martial convening authority designated under R.C.M. 810(f)(1) or, in cases which were referred by a special trial counsel, a special trial

counsel determines that the remand is impracticable due to military exigencies or other reasons, a Government appellate attorney shall notify the Court of Criminal Appeals. Upon receipt of such notification, the Court of Criminal Appeals may take any action authorized by law that does not materially prejudice the substantial rights of the accused."

(vvv) R.C.M. 902(b)(3) is amended to read as follows:

"(3) Where the military judge has been or will be a witness in the same case; is the accuser; has forwarded charges in the case with a personal recommendation as to disposition; has referred charges in the case; or, except in the performance of duties as military judge in a previous trial of the same or a related case, has expressed an opinion concerning the guilt or innocence of the accused."

(www) R.C.M. 905(e)(2) is amended to read as follows:

"(2) Other motions, requests, defenses, or objections, except lack of jurisdiction, must be raised before the court-martial is adjourned for that case. Failure to raise such other motions, requests, defenses, or objections shall constitute forfeiture, absent an affirmative waiver."

(xxx) R.C.M. 906(b)(3) is amended to read as follows:

"(3) *Corrections.* Correction of defects in the Article 32 preliminary hearing, pretrial advice, or a written determination by special trial counsel."

(yyy) R.C.M. 906(b)(5) is amended to read as follows:

"(5) *Severance of specifications.* Severance of a duplicitous specification into two or more specifications."

(zzz) R.C.M. 906(b)(7) is amended to read as follows:

"(7) *Discovery and Production.* Discovery and production of evidence and witnesses."

(aaaa) R.C.M. 906(b)(9) is amended to read as follows:

"(9) *Severance of multiple accused.* Severance of multiple accused, if it appears that an accused or the Government is prejudiced by a joint or common trial. In a common trial, a severance shall be granted whenever any accused, other than the moving accused, faces charges unrelated to those charged against the moving accused."

(bbbb) R.C.M. 906(b)(13) is amended to read as follows:

"(13) *Admissibility.* Preliminary ruling on admissibility of evidence."

(cccc) R.C.M. 906(b)(14) is amended to read as follows:

"(14) *Mental capacity or responsibility.* Motions relating to mental capacity or responsibility of the accused."

(dddd) Rule 908(b)(6) is amended to read as follows:

"(6) *Forwarding.* Upon written notice to the military judge under R.C.M. 908(b)(3), the trial counsel shall promptly and by expeditious means forward the appeal to a representative of the Government designated by the Judge Advocate General. The matter forwarded shall include: a statement of the issues appealed; the record of the proceedings or, if preparation of the record has not been completed, a summary of the evidence; and such other matters as the Secretary concerned may prescribe."

(eeee) Rule 908(b)(7) is amended to read as follows:

"(7) *Appeal filed.*

(A) In cases over which a special trial counsel exercises authority, the decision to appeal shall be made by:

(i) if within the Department of Defense, a Lead Special Trial Counsel; or

(ii) if within the Coast Guard, a special trial counsel designated under regulations by the Secretary concerned.

(B) For all other cases, the person designated by the Judge Advocate General shall promptly decide whether to file the appeal with the Court of Criminal Appeals and notify trial counsel of that decision.

(C) If the United States elects to file an appeal, it shall be filed directly with the Court of Criminal Appeals, in accordance with the rules of that court.

(D) In all cases, a representative of the Government designated by the Judge Advocate General will be responsible for the substance and content of submissions to the Court of Criminal Appeals. For appeals in cases over which a special trial counsel exercises authority, the designated representative of the Government will consult with the special trial counsel who authorized the appeal or that special trial counsel's designee concerning the substance and content of appellate filings."

(ffff) R.C.M. 908(c)(3) is amended to read as follows:

"(3) *Action following decision of Court of Criminal Appeals.* After the Court of Criminal Appeals has decided any appeal under Article 62, the accused may petition for review by the Court of Appeals for the Armed Forces, or the Judge Advocate General may certify a case to the Court of Appeals for the Armed Forces. The parties shall be notified of the decision of the Court of Criminal Appeals promptly. If the decision is adverse to the accused, the accused shall be notified of the decision and of the right to petition the Court of Appeals for the Armed Forces for review within 60 days. Such notification shall be made orally on the record at the court-martial or in accordance with R.C.M. 1203(d). If the accused is notified orally on the record, trial counsel shall forward by expeditious means a certificate that the accused was so notified to the Judge Advocate General, who shall forward a copy to the clerk of the Court of Appeals for the Armed Forces when required by the Court. If the decision by the Court of Criminal Appeals

permits it, the court-martial may proceed as to the affected charges and specifications pending further review by the Court of Appeals for the Armed Forces or the Supreme Court, unless either court orders the proceedings stayed. Unless the case is reviewed by the Court of Appeals for the Armed Forces, it shall be returned to the military judge or the convening authority for appropriate action in accordance with the decision of the Court of Criminal Appeals. If the case is reviewed by the Court of Appeals for the Armed Forces, R.C.M. 1204 and 1205 shall apply.

(gggg) R.C.M. 909(c) is revised to read as follows:

"(c) *Determination before referral.*

(1) For offenses over which special trial counsel has not exercised authority or has deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally incompetent to stand trial, the convening authority before whom the charges are pending for disposition may disagree with the conclusion and take any action authorized under R.C.M. 401, including referral of the charges to trial. If that convening authority concurs with the conclusion, the convening authority shall forward the charges to the general court-martial convening authority. If, upon receipt of the charges, the general court-martial convening authority similarly concurs, then the general court-martial convening authority shall commit the accused to the custody of the Attorney General. If the general court-martial convening authority does not concur, that authority may take any action that he or she deems appropriate in accordance with R.C.M. 407, including referral of the charges to trial.

(2) For offenses over which special trial counsel has exercised authority and has not deferred, if an inquiry pursuant to R.C.M. 706 conducted before referral concludes that an accused is suffering from a mental disease or defect that renders him or her mentally

incompetent to stand trial, the general court-martial convening authority may disagree with the conclusion and notify special trial counsel who may take any action authorized under R.C.M. 401A, including referral of charges. If the general court-martial convening authority concurs with the conclusion, that authority shall notify special trial counsel and commit the accused to the custody of the Attorney General.

(3) Upon request of the Government or the accused, a military judge may conduct a hearing to determine the mental capacity of the accused in accordance with R.C.M. 309 and R.C.M. 909(e) at any time prior to referral."

(hhhh) R.C.M. 909(g) is amended to read as follows:

"(g) *Excludable delay.* All periods of commitment shall be excluded as provided by R.C.M. 707(c). The 120-day time period under R.C.M. 707 shall begin anew on the date the general court-martial convening authority takes custody of the accused at the end of any period of commitment. For offenses over which a special trial counsel has exercised authority and not deferred, the general court-martial convening authority shall immediately notify a special trial counsel in accordance with regulations prescribed by the Secretary concerned."

(iiii) R.C.M. 910(a) is amended to read as follows:

"(a) *Types of pleas.*

(1) *In general.* An accused may plead as follows:

(A) guilty;

(B) not guilty of an offense as charged, but guilty of a named lesser included offense;

(C) guilty with exceptions, with or without substitutions, not guilty of the exceptions, but guilty of the substitutions, if any; or

(D) not guilty."

(jjjj) R.C.M. 911 is amended to read as follows:

"Rule 911. Randomization and assembly of the court-martial panel

(a) Prior to assembly of the court-martial, at an open session of the court-martial, the military judge, or a designee thereof, shall randomly assign numbers to the members detailed by the convening authority.

(b) The military judge shall determine, after accounting for any excusals by the convening authority or designee, how many members detailed by the convening authority must be present at the initial session for which members are required. The required number of members shall be present, according to the randomly assigned order determined pursuant to R.C.M. 911(a). The military judge may temporarily excuse any member who has been detailed but is not required to be present.

(c) At the initial session for which members are required, the military judge shall cause the members who are present to be sworn, account on the record for any members who are temporarily excused, and then announce assembly of the court-martial.

(d) The military judge shall ensure any additional member is sworn at the first court session at which the member is present."

(kkkk) R.C.M. 912(f)(5) is deleted.

(llll) R.C.M. 912(g) is amended to read as follows:

"(g) *Peremptory challenges.*

(1) *Procedure.* Each party may challenge one member peremptorily. Any member so challenged shall be excused. No party may be required to exercise a peremptory challenge before the examination of members and determination of any challenges for cause have been completed.

Ordinarily, trial counsel shall enter any peremptory challenge before the defense. No member may be impaneled without being subject to peremptory challenge.

(2) *Additional Members.* If members not previously subject to peremptory challenge are required, the procedures in R.C.M. 912(g)(1) shall be followed with respect to such members.

(3) *Waiver.* Failure to exercise a peremptory challenge when properly called upon to do so shall waive the right to make such a challenge. The military judge may, for good cause shown, grant relief from the waiver, but a peremptory challenge may not be made after the presentation of evidence before the members has begun. However, nothing in this subsection shall bar the exercise of a peremptory challenge against a member newly detailed under R.C.M. 505(c)(2)(B), even if presentation of evidence on the merits has begun."

(mmmm) R.C.M. 912A is amended to read as follows:

"Rule 912A. Impaneling members and alternate members

(a) *In general.* After challenges for cause and peremptory challenges are exercised, the military judge of a general or special court-martial with members shall impanel the members based on the order assigned in R.C.M. 911(a), and, if authorized by the convening authority, alternate members, in accordance with the following numerical requirements:

(1) *Capital cases.* In a general court-martial in which the charges were referred with a special instruction that the case be tried as a capital case, the number of members impaneled, subject to R.C.M. 912A(a)(4), shall be twelve.

(2) *General courts-martial.* In a general court-martial other than as described in R.C.M. 912A(a)(1), the number of members impaneled, subject to R.C.M. 912A(a)(4), shall be eight.

(3) *Special courts-martial.* In a special court-martial, the number of members impaneled, subject to R.C.M. 912A(a)(4), shall be four.

(4) *Alternate members.* A convening authority may authorize the military judge to impanel alternate members. When authorized by the convening authority, the military judge shall designate which of the impaneled members are alternate members in accordance with these rules and consistent with the instructions of the convening authority. Alternate members shall not be notified that they are alternate members until they are excused prior to deliberations on findings.

(A) If the convening authority authorizes the military judge to impanel a specific number of alternate members, the number of members impaneled shall be the number of members required under R.C.M. 912A(a)(1), (2), or (3), as applicable, plus the number of alternate members specified by the convening authority. The military judge shall not impanel the court-martial until the specified number of alternate members has been identified. New members may be detailed in order to impanel the specified number of alternate members.

(B) If the convening authority does not authorize the military judge to impanel a specific number of alternate members, and instead authorizes the military judge to impanel alternate members only if, after the exercise of all challenges, excess members remain, the number of members impaneled shall be the number of members required under R.C.M. 912A(a)(1), (2), or (3) and no more than three alternate members. New members shall not be detailed in order to impanel alternate members.

(b) *Enlisted accused.* In the case of an enlisted accused, the members shall be impaneled under R.C.M. 912A(a) in such numbers and proportion that—

(1) If the accused elected to be tried by a court-martial composed of at least one-third enlisted members, the membership of the panel includes at least one-third enlisted members; and

(2) If the accused elected to be tried by a court-martial composed of all officer members, the membership of the panel includes all officer members.

(c) *Number of members insufficient.*

(1) If, after challenges or excusals, the number of detailed members directed to be present by the military judge in accordance with R.C.M. 911(b) is:

(A) fewer than the number of members required for the court-martial under R.C.M. 912A(a), the military judge shall, according to the randomly assigned order determined pursuant to R.C.M. 911(a), determine how many additional detailed members are required and shall direct their presence for member examination in accordance with R.C.M. 912(d).

(B) fewer than the number of members required for the court-martial under R.C.M. 912A(b), the military judge shall, according to the randomly assigned order determined pursuant to R.C.M. 911(a), determine how many additional detailed enlisted members are required and shall direct their presence for member examination in accordance with R.C.M. 912(d).

(2) If, after challenges or excusals, the number of detailed members remaining is fewer than the number of members required for the court-martial under R.C.M. 912A(a) and (b), the convening authority shall detail new members under R.C.M. 503.

(d) *Impaneling members following the exercise of all challenges.* The military judge shall use the following procedures to identify the members who will be impaneled—

(1) In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the military judge shall:

(A) first identify the one-third enlisted members required under R.C.M. 912A(a) and (b) in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 911(a); and

(B) then identify the remaining members required for the court-martial under

R.C.M. 912A(a) and (b), in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 911(a).

(2) For all other panels, the military judge shall identify the number of members required under R.C.M. 912A(a) and (b) in numerical order beginning with the lowest random number assigned pursuant to R.C.M. 911(a).

(3) If the convening authority:

(A) Authorizes the military judge to impanel a specific number of alternate members, the specified number of alternate members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 911(a), after first identifying members under R.C.M. 912A(d)(1) or (2).

(B) Does not authorize the military judge to impanel a specific number of alternate members, and instead authorizes the military judge to impanel alternate members only if, after the exercise of all challenges, excess members remain, alternate members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 911(a), after first identifying the members under 912A(d)(1) or (2). The military judge shall identify no more than three alternate members.

(C) In a case in which the accused has elected to be tried by a panel consisting of at least one-third enlisted members under R.C.M. 503(a)(2), the convening authority may instruct the military judge to prioritize impaneling a specific number of alternate enlisted members before impaneling alternate officer members. These members shall be identified in numerical order beginning with the lowest remaining random number assigned pursuant to R.C.M. 911(a), after first identifying members under 912A(d)(1).

(4) The military judge shall excuse any members not identified as members or alternate

members, if any.

(e) *Lowest number.* The lowest number is the number with the lowest numerical value.

(f) *Announcement.* After identifying the members to be impaneled in accordance with this rule, and after excusing any excess members, the military judge shall announce that the members are impaneled."

(nnnn) R.C.M. 912B(a) is amended to read as follows:

"(a) *In general.* Prior to the start of deliberations, a member who has been excused after impanelment shall be replaced in accordance with this rule. Alternate members excused after impanelment shall not be replaced."

(oooo) R.C.M. 912B(b) is amended to read as follows:

"(b) *Alternate members impaneled.* Prior to the start of deliberations, an excused member shall be replaced with an impaneled alternate member. The alternate member with the lowest random number assigned pursuant to R.C.M. 911(a) shall replace the excused member, unless in the case of an enlisted accused, the use of such member would be inconsistent with the specific panel composition established under R.C.M. 903. Alternate members who have not replaced impaneled members prior to deliberations on findings shall be excused at the time the court closes for deliberations."

(pppp) A new R.C.M. 912B(d) is inserted immediately after R.C.M. 912B(c) to read as follows:

"(d) *After the start of deliberations.* Once the military judge has closed the court for deliberations, if the number of members is reduced below the requirements of Article 29, trial may not proceed and the military judge shall declare a mistrial."

(qqqq) R.C.M. 914(e)(1) is amended to read as follows:

"(1) *Party refusal to comply.* If the other party elects not to comply with an order to deliver a statement to the moving party, the military judge shall order that the testimony of the witness be disregarded by the trier of fact and that the trial proceed, or, if it is the Government that elects not to comply, shall declare a mistrial if required in the interest of justice."

(rrrr) R.C.M. 914A(b) is amended to read as follows:

"(b) *Definition.* As used in this rule, "remote live testimony" includes, but is not limited to, testimony by video teleconference, closed circuit television, or similar technology."

(ssss) R.C.M. 914B(b) is amended to read as follows:

"(b) *Definition.* As used in this rule, testimony via "remote means" includes, but is not limited to, testimony by video teleconference, closed circuit television, telephone, or similar technology."

(tttt) R.C.M. 918(a)(1)(B) is amended to read as follows:

"(B) not guilty of an offense as charged, but guilty of a lesser included offense;".

(uuuu) R.C.M. 920(g) is amended to read as follows:

"(g) *Waiver.* Instructions on a lesser included offense shall not be given when both parties waive such an instruction. After receiving applicable notification of those lesser included offenses of which an accused may be convicted, the parties may waive a lesser included offense instruction. A written waiver is not required. The accused must affirmatively acknowledge that the accused understands the rights involved and affirmatively waive the instruction on the record. The accused's waiver must be made freely, knowingly, and intelligently. In the case of a joint or common trial, instructions on a lesser included offense shall not be given as to an individual accused when that accused and the Government agree to waive such an instruction."

(vvvv) R.C.M. 924(c)(2) is amended to read as follows:

"(2) the issue of the finding of guilty of the elements in a finding of not guilty only by reason of lack of mental responsibility at any time before announcement of sentence or, where there was no finding of guilty, entry of judgment."

(wwww) R.C.M. 1113(b)(1) is amended to read as follows:

"(1) *Prior to referral.* Prior to referral of charges, the following individuals may examine and disclose sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, this Manual, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening authority; a military judge detailed to an Article 30a proceeding; the general court-martial convening authority; and special trial counsel for the purposes of making a determination on referral."

(xxxx) R.C.M. 1202(c) is amended as follows:

"(c) *Counsel in capital cases.* To the greatest extent practicable, in any case in which death is adjudged, at least one appellate defense counsel shall, as determined by the Judge Advocate General, be learned in the law applicable to capital cases. Such counsel may, if necessary, be a civilian, and, if so, may be compensated in accordance with regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security, as applicable."

(yyyy) R.C.M. 1203(e) is amended to read as follows:

"(e) *Action on cases reviewed by a Court of Criminal Appeals.*

(1) *Forwarding by the Judge Advocate General to the Court of Appeals for the Armed Forces.* The Judge Advocate General may forward the decision of the Court of Criminal Appeals

to the Court of Appeals for the Armed Forces for review with respect to any matter of law. In such a case, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals and the order forwarding the case to be served on the accused and on appellate defense counsel. While a review of a forwarded case is pending, the Secretary concerned may defer further service of a sentence to confinement that has been ordered executed in such a case.

(2) *Action when findings are set aside.* In a case reviewed by the Court of Criminal Appeals under this rule in which it has set aside the findings and which is not forwarded to the Court of Appeals for the Armed Forces under R.C.M. 1203(e)(1), the Judge Advocate General shall instruct an appropriate authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has authorized a rehearing on findings, the record shall be sent to an appropriate referral authority.

(A) If the Court has authorized a rehearing, but the convening authority to whom the record is transmitted finds a rehearing impracticable, the convening authority shall dismiss the charges.

(B) If the Court has authorized a rehearing, but the special trial counsel to whom the record is transmitted finds a rehearing impracticable, special trial counsel shall dismiss the charges.

(3) *Action when sentence is set aside.* In a case reviewed by the Court of Criminal Appeals under this rule in which it has set aside the sentence and which is not forwarded to the Court of Appeals for the Armed Forces under R.C.M. 1203(e)(1), the Judge Advocate General shall instruct an appropriate authority to modify the judgment in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has authorized a rehearing on sentence, the record shall be sent to an appropriate referral authority.

(A) If the convening authority finds a rehearing impracticable, the applicable convening authority shall order either that a sentence of no punishment be imposed or that the applicable charges be dismissed.

(B) If special trial counsel finds a rehearing impracticable, special trial counsel may dismiss the applicable charges. If special trial counsel makes a determination not to dismiss the applicable charges, the convening authority shall order that a sentence of no punishment be imposed.

(4) *Action when sentence is affirmed in whole or part.*

(A) *Sentence including death.* If the Court of Criminal Appeals affirms any sentence which includes death, the Judge Advocate General shall transmit the record of trial and the decision of the Court of Criminal Appeals directly to the Court of Appeals for the Armed Forces when any period for reconsideration provided by the rules of the Courts of Criminal Appeals has expired.

(B) *Other cases.* If the Court of Criminal Appeals affirms any sentence other than one which includes death, the Judge Advocate General shall cause a copy of the decision of the Court of Criminal Appeals to be served on the accused in accordance with R.C.M. 1203(f).

(5) *Remission or suspension.* If the Judge Advocate General believes that a sentence as affirmed by the Court of Criminal Appeals, other than one which includes death, should be remitted or suspended in whole or part, the Judge Advocate General may, before taking action under R.C.M. 1203(e)(1) or (4), transmit the record of trial and the decision of the Court of Criminal Appeals to the Secretary concerned with a recommendation for action under Article 74 or may take such action as may be authorized by the Secretary concerned under Article 74(a).

(6) *Action when accused lacks mental capacity.* In a review conducted under R.C.M. 1203(b) or (c), the Court of Criminal Appeals may not affirm the proceedings while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the appellate proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the Court of Criminal Appeals may direct an examination of the accused in accordance with R.C.M. 706, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the appellate proceedings. The Court may further order a remand under R.C.M. 810(f) as may be necessary. If the record is thereafter returned to the Court of Criminal Appeals, the Court of Criminal Appeals may affirm part or all of the findings or sentence unless it is established, by a preponderance of the evidence—including matters outside the record of trial—that the accused does not have the requisite mental capacity. If the accused does not have the requisite mental capacity, the Court of Criminal Appeals shall stay the proceedings until the accused regains appropriate capacity or take other appropriate action. Nothing in this subsection shall prohibit the Court of Criminal Appeals from making a determination in favor of the accused which will result in the setting aside of a conviction."

(zzzz) R.C.M. 1203(f)(1) is amended to read as follows:

"(1) *Notification of decision.* The accused shall be notified of the decision of the Court of Criminal Appeals in accordance with regulations prescribed by the Secretary concerned."

(aaaaa) R.C.M. 1204(c)(1) is amended to read as follows:

"(1) *In general.* After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for

further proceedings in accordance with the decision of the court. Otherwise, unless the decision is subject to review by the Supreme Court, or there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the appropriate authority to take action in accordance with that decision. If the Court has authorized a rehearing, but the convening authority to whom the record is transmitted finds a rehearing impracticable, the convening authority may dismiss the charges. If a special trial counsel referred the affected charges, the special trial counsel shall determine if a rehearing is impracticable. If a special trial counsel determines a rehearing is impracticable, the special trial counsel shall dismiss the charges."

(bbbbb) R.C.M. 1204(c)(4) amended to read as follows:

"(4) *Decisions subject to review by the Supreme Court.* If the decision of the Court of Appeals for the Armed Forces is subject to review by the Supreme Court, the Judge Advocate General shall take no action under R.C.M. 1204(c)(1), (2), or (3) until:

(A) the time for filing a petition for a writ of certiorari with the Supreme Court has expired; or

(B) the Supreme Court has denied any petitions for writ of certiorari filed in the case."

(ccccc) A new R.C.M. 1204(c)(5) is inserted immediately after R.C.M. 1204(c)(4) to read as follows:

"(5) Upon the occurrence of an event described by R.C.M. 1204(c)(4)(A) or (B), the Judge Advocate General shall take action in accordance with R.C.M. 1204(c)(1), (2), or (3). If the Supreme Court issues a writ of certiorari, the Judge Advocate General shall take action under R.C.M. 1205(b)."

(ddddd) R.C.M. 1210(h)(1) is amended to read as follows:

"(1) *Forwarding to appropriate authority.* When a petition for a new trial is granted, the Judge Advocate General shall select and forward the case to an appropriate authority for disposition."

(eeeee) R.C.M. 1301(a) is amended to read as follows:

"(a) *Composition.* A summary court-martial is composed of one commissioned officer on active duty. Unless otherwise prescribed by the Secretary concerned, a summary court-martial shall be of the same armed force as the accused. Summary courts-martial shall be conducted in accordance with the regulations of the military Service to which the accused belongs. Whenever practicable, a summary court-martial should be an officer whose grade is not below lieutenant of the Navy or Coast Guard or captain of the Army, Marine Corps, Air Force, or Space Force. When only one commissioned officer is present with a command or detachment, that officer shall be the summary court-martial of that command or detachment. When more than one commissioned officer is present with a command or detachment, the convening authority may not be the summary court-martial of that command or detachment."

(fffff) R.C.M. 1301(c)(1) is amended to read as follows:

"(1) Subject to Chapter II and R.C.M. 1301(c)(2), summary courts-martial have the power to try persons subject to the UCMJ, except commissioned officers, warrant officers, cadets, aviation cadets, and midshipmen, for any non-capital offense made punishable by the UCMJ."

(ggggg) R.C.M. 1302(a)(3) is amended to read as follows:

"(3) The commander of a detached squadron or other detachment of the Air Force or a corresponding unit of the Space Force."

(hhhhhh) R.C.M. 1306(b)(3) is amended to read as follows:

"(3) *Action on sentence.* The convening authority shall take action on the sentence. The convening authority may approve the sentence as adjudged or disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence. The convening authority shall approve the sentence that is warranted by the circumstances of the offense and appropriate for the accused."

Section 3. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 505(f)(4) is amended to read as follows:

"(4) *Convening Authority and Special Trial Counsel Notice and Action.* If a claim of privilege has been made under this rule with respect to classified information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority and special trial counsel, as applicable.

(A) The convening authority may institute action to obtain the classified information for use by the military judge in making a determination under Mil. R. Evid. 505(j).

(B) The convening authority or special trial counsel, as applicable, may:

(i) dismiss the charges;

(ii) dismiss the charges or specifications or both to which the information relates; or

(iii) take such other action as may be required in the interests of justice."

(b) Mil. R. Evid. 506(f)(4) is amended to read as follows:

"(4) *Convening Authority and Special Trial Counsel Notice and Action.* If a claim of privilege has been made under this rule with respect to government information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority and special trial counsel, as applicable.

(A) The convening authority may institute action to obtain the information for use by the military judge in making a determination under Mil. R. Evid. 505(j);

(B) The convening authority or special trial counsel, as applicable, may:

(i) dismiss the charges;

(ii) dismiss the charges or specifications or both to which the information relates; or

(iii) take such other action as may be required in the interests of justice."

(c) Mil. R. Evid. 507(e)(3) is amended to read as follows:

"(3) *Action by the Convening Authority or* S*pecial Trial Counsel.* If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this rule, and the prosecution elects not to disclose the identity of the informant, the matter must be reported to the convening authority. The convening authority or the special trial counsel, as applicable, may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances."

Section 4. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 77.b.(4)(d)(ii) is amended to read as follows:

"(ii) That the accused did so by strangulation or suffocation; and".

(b) Paragraph 77.d.(1)(b) is amended to read as follows:

"(b) *When committed with a firearm or other dangerous weapon.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years."

Section 5. Part V of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 1.h. is amended to read as follows:

"h. *Burden of proof.* The burden of proof to be utilized by commanders throughout the nonjudicial punishment process shall be a preponderance of the evidence. This means the commanding officer must determine it is "more likely than not" the member committed the offense defined by the UCMJ. Each element of each offense, as defined in the Manual for Courts-Martial, must be supported by a preponderance of the evidence (*i.e.,* "more likely than not"). This standard is more rigorous than a "probable cause" standard of proof used by law enforcement to obtain a warrant but a lower standard of proof than the "beyond a reasonable doubt" standard used at a court-martial."

Section 6. Appendix 12A of the Manual for Courts-Martial, United States, is revised to read as follows:

"**PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES PURSUANT TO ARTICLE 79(b)(2), UNIFORM CODE OF MILITARY JUSTICE"**

This authoritative list provides actual notice of factually similar lesser included offenses designated by the President, pursuant to Article 79(b)(2), that are "reasonably included" in the greater offense. The military justice system has unique, but closely related, military offenses, which are not "necessarily included" lesser offenses under the "elements test." *See United States v. Teters*, 37 M.J. 370 (C.A.A.F. 1993); *see also United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2009). This list is exhaustive as to those lesser included offenses (called "reasonably included

offenses" in the chart below) that the President has designated pursuant to Article 79(b)(2). However, this list is not intended to address, and does not address, those offenses that are necessarily included in a charged offense and are therefore lesser included offenses pursuant to Article 79(b)(1).

Article	Offense (Part IV Citation)	Reasonably Included Offense (RIO) Article	RIO (Part IV Citation)
85 - Desertion	Para. 9.b.(1)-(3)	85 - Desertion	Para. 9.b.(4)
87a - Resistance, flight, breach of arrest, and escape	Par. 12.b.(5)	86 - Absent without leave	Para. 10.b.(3)
87b - Offenses against correctional custody and restriction	Para. 13.b.(1)	86 - Absent without leave	Para. 10.b.(3)
93a - Prohibited activities with military recruit or trainee by person in position of special trust	Para. 20.b.(1); 20.b.(2)	93 - Cruelty and maltreatment	Para. 19.b.
94 - Mutiny or sedition	Para. 21.b.(1)	94 - Mutiny or sedition	Para. 21.b.(6)
100 - Subordinate compelling surrender	Para. 28.b.(1)	100 - Subordinate compelling surrender	Para. 28.b.(2)
103a - Espionage	Para. 32.b.(1)	103a - Espionage	Para. 32.b.(2)
103b - Aiding the enemy	Para. 33.b.(1)	103b - Aiding the enemy	Para. 33.b.(2)
104b - Unlawful enlistment, appointment, or separation	Para. 36.b.	107- False official statements; false swearing	Para. 41.b.(1)
118 - Murder	Para. 56.b.(1); 56.b.(2); 56.b.(3); 56.b.(4)	114 - Endangerment Offenses	Para. 52.b.(1)
119 - Manslaughter	Para. 57.b.(1)	114 - Endangerment Offenses	Para. 52.b.(1)
119a - Death or injury of an unborn child	Para. 58.b.(2); 58.b.(4)	119a - Death or injury of an unborn child	Para. 58.b.(3)
120 - Rape and Sexual Assault	Para. 60.b.(1)	128 - Assault with intent to commit specified offenses (rape)	Para. 77.b.(3)

120 - Rape and Sexual Assault	Para. 60.b.(2)	128 - Assault with intent to commit specified offenses (sexual assault)	Para. 77.b.(3)
120b - Rape of a child	Para. 62.b.(1)	128 - Assault with intent to commit specified offenses (rape of a child)	Para. 77.b.(3)
120b - Rape of a child	Para. 62.b.(2)	128 - Assault with intent to commit specified offenses (sexual assault of a child)	Para. 77.b.(3)
128 - Assault	Para. 77.b.(2); 77.b.(3); 77.b.(4); 77.b.(5)	128 - Assault	Para. 77.b.(1)
134 - Check, worthless making and uttering by dishonorably failing to maintain funds	Para. 94.b.	134 - Debt, dishonorably failing to pay	Para. 96.b.
134 - Child pornography	Para. 95.b.(1); 95.b.(2); 95.b.(3); 95.b.(4)	134 - Indecent conduct	Para. 104.b.
134 - Disloyal statements	Para. 97.b.	88 - Contempt toward officials	Para. 14.b.

”

ANNEX 3

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

(a) R.C.M. 502(a)(2)(A) is amended to read as follows:

"(A) *Members.* The members of a court-martial shall determine whether the accused is proved guilty and, in a capital case in which the accused is unanimously found guilty of a capital offense, the members shall make a determination in accordance with Article 53(c)(1)(A). Each member has an equal voice and vote with other members in deliberating upon and deciding all matters submitted to them. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Manual, reports of decided cases, or any other reference material."

(b) R.C.M. 902A is deleted.

(c) R.C.M. 906(b)(12)(B) is amended to read as follows:

"(B) *As applied to sentence.* Where the military judge finds that the unreasonable multiplication of charges requires a remedy that focuses more appropriately on punishment than on findings, the military judge may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding, the remedy shall be as set forth in R.C.M. 1002(d)(2). A ruling on this motion ordinarily should be deferred until after findings are entered."

(d) A new R.C.M. 925 is inserted immediately after R.C.M. 924 to read as follows:

"Rule 925. Application of sentencing rules

(a) Only one set of sentencing rules shall apply in a court-martial.

(b) If convicted of any offense for which death may be adjudged, the accused shall be sentenced in accordance with R.C.M. 1004.

(c) Except as provided in R.C.M. 925(b):

(1) If convicted of any offense committed on or before December 27, 2023, the accused shall be sentenced in accordance with the Rules for Courts-Martial in effect prior to December 28, 2023. The military judge shall inquire into the accused's election of sentencing rules after the announcement of findings and before any matter is presented in the presentencing phase.

(2) If convicted of only offenses committed after December 27, 2023, the accused shall be sentenced by a military judge in accordance with R.C.M. 1002(a)(2).

(d) Any elections made by the accused pursuant to R.C.M. 925(c)(1) shall be made orally on the record or be in writing and signed by the accused. The military judge shall ascertain whether the accused has consulted with defense counsel and has been informed of the right to make the election of the applicable sentencing rules."

(e) R.C.M. 1001(a)(1) is amended to read as follows:

"(1) *Procedure.* After findings of guilty have been announced, the Government and defense may present matters pursuant to this rule to aid the court-martial in determining an appropriate sentence. Such matters shall ordinarily be presented in the following sequence:

(A) Presentation by the trial counsel of:

(i) service data relating to the accused taken from the charge sheet;

(ii) personal data relating to the accused and of the character of the accused's prior service as reflected in the personnel records of the accused.

(B) Crime victim's right to be reasonably heard.

(C) Presentation by the defense of evidence in extenuation or mitigation or both.

(D) Rebuttal.

(E) Argument by the trial counsel on sentence.

(F) Argument by the defense counsel on sentence.

(G) Rebuttal argument in the discretion of the military judge."

(f) R.C.M. 1001(b)(2) is amended to read as follows:

"(2) *Personal data and character of prior service of the accused.* Under regulations of the Secretary concerned, the trial counsel may obtain and introduce from the personnel records of the accused evidence of the accused's marital status; number of dependents, if any; and character of prior service. Such evidence includes copies of reports reflecting the past military efficiency, conduct, performance, and history of the accused and evidence of any disciplinary actions, including punishments under Article 15 and summary courts-martial after review has been completed pursuant to Article 64. "Personnel records of the accused" includes any records made or maintained in accordance with departmental regulations that reflect the past military efficiency, conduct, performance, and history of the accused. If the accused objects to a particular document as inaccurate or incomplete in a specified respect, or as containing matter that is not admissible under the Military Rules of Evidence, the matter shall be determined by the military judge. Objections not asserted are forfeited."

(g) R.C.M. 1001(b)(3)(B) is amended to read as follows:

"(B) *Pendency of appeal.* The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible."

(h) R.C.M. 1001(b)(4) is amended to read as follows:

"(4) *Evidence in aggravation.* The trial counsel may present evidence as to any aggravating circumstance directly relating to or resulting from the offenses of which the accused has been found guilty. Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was

the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused's offense. In addition, evidence in aggravation may include evidence that the accused intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, sex (including pregnancy), gender (including gender identity), disability, or sexual orientation of any person. Except in capital cases, a written or oral deposition taken in accordance with R.C.M. 702 is admissible in aggravation."

(i) R.C.M. 1001(c) is amended to read as follows:

"(c) *Crime victim's right to be reasonably heard.*

(1) *In general.* After presentation by the trial counsel, a crime victim of an offense of which the accused has been found guilty has the right to be reasonably heard at the presentencing proceeding relating to that offense. A crime victim who makes an unsworn statement under R.C.M. 1001(c)(5) is not considered a witness for the purposes of Article 42(b). If the crime victim exercises the right to be reasonably heard, the crime victim shall be called by the court-martial. The exercise of the right is independent of whether the crime victim testified during findings or is called to testify by the Government or defense under this rule.

(2) *Definitions.*

(A) *Crime victim.* For purposes of R.C.M. 1001(c), a crime victim is an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty or the individual's lawful representative or designee appointed by the military judge under these rules.

(B) *Victim impact.* For purposes of R.C.M. 1001(c), victim impact includes any financial, social, psychological, or medical impact on the crime victim relating to or arising from the offense of which the accused has been found guilty.

(C) *Mitigation.* For the purposes of R.C.M. 1001(c), mitigation includes any matter that may lessen the punishment to be adjudged by the court-martial or furnish grounds for a recommendation of clemency.

(D) *Right to be reasonably heard.*

(i) *Capital cases.* In capital cases, for purposes of R.C.M. 1001(c), the "right to be reasonably heard" means the right to make a sworn statement. The statement may not recommend a specific sentence.

(ii) *Noncapital cases.* In noncapital cases, for purposes of R.C.M. 1001(c), the "right to be reasonably heard" means the right to make a sworn statement, an unsworn statement, or both. This right includes the right to be heard on any objection to any unsworn statement.

(3) *Contents of statement.* The content of statements made under R.C.M. 1001(c)(4) or (5) may only include victim impact and matters in mitigation, except that, in a noncapital case, the victim may recommend a specific sentence.

(4) *Sworn statement.* The crime victim may make a sworn statement and shall be subject to cross-examination concerning it by the trial counsel and the defense counsel or examination on it by the court-martial.

(5) *Unsworn statement.* The crime victim may make an unsworn statement and may not be cross-examined by the trial counsel or the defense counsel or examined upon it by the court-martial. The Government or defense may, however, rebut any statements of fact therein. The

unsworn statement may be oral, written, or both, and may be made by the crime victim, by counsel representing the crime victim, or both.

(j) R.C.M. 1001(f)(1) is amended to read as follows:

"(1) *In general.* During the presentencing proceedings, there shall be much greater latitude than on the merits to receive information by means other than testimony presented through the personal appearance of witnesses. During presentencing proceedings, a dispute as to the production of a witness at Government expense is a matter within the discretion of the military judge to resolve subject to the limitations in R.C.M. 1001(f)(2)."

(k) R.C.M. 1001(f)(2)(C) is amended to read as follows:

"(C) the other party refuses to enter into a stipulation containing the matters to which the witness is expected to testify, except in an extraordinary case when such a stipulation would be an insufficient substitute for the testimony;".

(l) R.C.M. 1001(h) is amended as follows:

"(h) *Argument.* After introduction of matters relating to the sentence under this rule, counsel for the Government and defense may argue for an appropriate sentence. The trial counsel may not in argument purport to speak for the convening authority or any other higher authority or refer to the views of such authorities or any policy directive relative to punishment or to any punishment or quantum of punishment greater than the court-martial may adjudge. The trial counsel may, however, recommend a specific lawful sentence and may also refer to the sentencing considerations set forth in R.C.M. 1002(f). Failure to object to improper argument before the military judge begins deliberations, or before the military judge instructs the members on sentencing, shall constitute forfeiture of the objection."

(m) R.C.M. 1002 is amended to read as follows:

"Rule 1002. Sentencing determination

(a) *Generally.* Subject to limitations in this Manual, the sentence to be adjudged is a matter within the discretion of the court-martial. A court-martial may adjudge any punishment authorized in this Manual in order to achieve the purposes of sentencing under R.C.M. 1002(c), including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment except as outlined below.

(1) *Mandatory minimum.* Unless otherwise authorized, when a mandatory minimum sentence is prescribed by the UCMJ, the sentence for an offense shall include any punishment that is made mandatory by law for that offense. The sentence for an offense may not be greater than the maximum sentence established by law or by the President for that offense.

(2) *Parameters and criteria.*

(A) When an offense is subject to sentencing criteria, the military judge shall consider the applicable sentencing criteria in determining the sentence for that offense.

(B) When an offense is subject to sentencing parameters, the military judge shall sentence the accused for that offense within the applicable parameter, unless the military judge finds specific facts that warrant a sentence outside the applicable parameter. If the military judge imposes a sentence outside a sentencing parameter, the military judge shall include in the record a written statement of the factual basis for the sentence.

(3) If the military judge accepts a plea agreement with a sentence limitation, the court-martial shall sentence the accused in accordance with the limits established by the plea agreement. Subject to Article 53a(c), the military judge shall accept a plea agreement submitted by the parties, except that—

(A) in the case of an offense with a sentencing parameter, the military judge may

reject a plea agreement that proposes a sentence that is outside the sentencing parameter if the military judge determines that the proposed sentence is plainly unreasonable; and

(B) in the case of an offense for which there is no sentencing parameter, the military judge may reject a plea agreement that proposes a sentence if the military judge determines that the proposed sentence is plainly unreasonable.

(b) *Noncapital cases.* The military judge shall determine the sentence of a general or special court-martial in accordance with this subsection in all noncapital cases.

(1) *Segmented sentencing for confinement and fines.* The military judge at a general or special court-martial shall determine an appropriate term of confinement and fine, if applicable, for each specification for which the accused was found guilty. Subject to R.C.M. 1002(a), such a determination may include a term of no confinement or no fine when appropriate for the offense.

(2) *Special court-martial.* The military judge shall, in a special court-martial, to the extent necessary, reduce the total confinement to the maximum confinement authorized under R.C.M. 201(f)(2).

(3) *Unitary sentencing for other forms of punishment.* All punishments other than confinement or a fine available under R.C.M. 1003, if any, shall be determined as a single, unitary component of the sentence, covering all of the guilty findings in their entirety. The military judge shall not segment those punishments among the guilty findings.

(c) *Imposition of sentence.* In sentencing an accused under this rule, the court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the United States Armed Forces, taking into consideration—

(1) the nature and circumstances of the offense and the history and characteristics of the

accused;

(2) the impact of the offense on—

(A) the financial, social, psychological, or medical well-being of any victim of the offense; and

(B) the mission, discipline, or efficiency of the command of the accused and any victim of the offense;

(3) the need for the sentence to—

(A) reflect the seriousness of the offense;

(B) promote respect for the law;

(C) provide just punishment for the offense;

(D) promote adequate deterrence of misconduct;

(E) protect others from further crimes by the accused;

(F) rehabilitate the accused; and

(G) provide, in appropriate cases, the opportunity for retraining and returning to duty to meet the needs of the service; and

(4) the sentences available under these rules.

(d) *Information that may be considered.* The court-martial, in applying the factors listed in R.C.M. 1002(c) to the facts of a particular case, may consider—

(1) Any evidence admitted by the military judge during the presentencing proceeding under R.C.M. 1001; and

(2) Any evidence admitted by the military judge during the findings proceeding."

(n) R.C.M. 1003(b)(5) is amended to read as follows:

"(5) *Restriction to specified limits.* Restriction may be adjudged for no more than 2

months. Confinement and restriction may be adjudged in the same case, but they may not together exceed the maximum authorized period of confinement."

(o) R.C.M. 1003(c)(1)(A)(i) is amended to read as follows:

"(i) *Maximum punishment.* The maximum limits for the authorized punishments of confinement, forfeitures, and punitive discharge (if any) are set forth for each offense listed in Part IV of this Manual. These limitations are for each separate offense, not for each charge, and apply notwithstanding any applicable sentencing parameter. When a dishonorable discharge is authorized, a bad-conduct discharge is also authorized."

(p) R.C.M. 1003(c)(1)(B) is amended to read as follows:

"(B) *Offenses not listed in Part IV.*

(i) *Included or closely related offenses.* For an offense not listed in Part IV of this Manual that is included in or closely related to an offense listed therein, the maximum punishment and the sentencing parameter or criteria shall be that or those of the offense listed; however, if an offense not listed is included in a listed offense, and is closely related to another or is equally closely related to two or more listed offenses, the maximum punishment and the sentencing parameter or criteria shall be the same as that or those of the least severe of the listed offenses.

(ii) *Not included or closely related offenses.* An offense not listed in Part IV and not included in or closely related to an offense listed therein is punishable as authorized by the United States Code or as authorized by the custom of the applicable service. When the United States Code provides for confinement for a specified period or not more than a specified period, the maximum punishment by court-martial shall include confinement for that period. If the period is 1 year or longer, the maximum punishment by court-martial also includes a

dishonorable discharge and forfeiture of all pay and allowances; if the period is 6 months or more but less than 1 year, the maximum punishment by court-martial also includes a bad-conduct discharge and forfeiture of all pay and allowances; if the period is less than 6 months, the maximum punishment by court-martial also includes forfeiture of two-thirds pay per month for the authorized period of confinement."

(q) R.C.M. 1004 is revised to read as follows:

"Rule 1004. Capital cases

(a) *In general.* In addition to the provisions in R.C.M. 1001, the provisions in this rule shall apply in capital cases. Death may be adjudged only when—

(1) Death is expressly authorized under Part IV of this Manual for an offense of which the accused has been found guilty or is authorized under the law of war for an offense of which the accused has been found guilty under the law of war;

(2) The accused was properly notified that the case would be tried as a capital case and was properly notified of the aggravating factors the Government intended to prove;

(3) The accused was convicted of such an offense by either—

(A) the unanimous vote of all twelve members of the court-martial; or

(B) the military judge pursuant to the accused's plea of guilty to such an offense;

(4) The members unanimously find that at least one of the aggravating factors under R.C.M. 1004(c) existed beyond a reasonable doubt for that offense and notice of such factor was provided in accordance with R.C.M. 1004(b);

(5) The members unanimously find that the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, including any relevant aggravating factor(s); and

(6) The members unanimously determine that the sentence for that offense shall be death.

(b) *Notice.*

(1) *Referral.* The referral authority shall indicate that the case is to be tried as a capital case by including a special instruction on the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the referral authority from later adding the required special instruction, provided that—

(A) the referral authority has otherwise complied with the notice requirement of R.C.M. 1004(b)(2); and

(B) if the accused demonstrates specific prejudice from such failure to include the special instruction, the military judge determines that a continuance or a recess is an adequate remedy.

(2) *Arraignment.* Before arraignment, the trial counsel shall give the defense written notice of which specific aggravating factor(s) under R.C.M. 1004(c) the Government intends to prove and to which offense(s) the aggravating factor(s) apply. Failure to provide timely notice under this subsection of any aggravating factors under R.C.M. 1004(c) shall not bar later notice and proof of such additional aggravating factors unless the accused demonstrates specific prejudice from such failure and that a continuance or a recess is not an adequate remedy.

(c) *Aggravating factors.* The trial counsel may present evidence in accordance with R.C.M. 1001(b)(4) tending to establish one or more of the aggravating factors enumerated below. Death may be adjudged only if the members find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) That the offense was committed before or in the presence of the enemy, except that this factor shall not apply in the case of a violation of Article 118;

(2) That in committing the offense the accused—

(A) Knowingly created a grave risk of substantial damage to the national security of the United States; or

(B) Knowingly created a grave risk of substantial damage to a mission, system, or function of the United States, provided that this subparagraph shall apply only if substantial damage to the national security of the United States would have resulted had the potential damage been effected;

(3) That the offense caused substantial damage to the national security of the United States, regardless of whether the accused intended such damage, except that this factor shall not apply in case of a violation of Article 118;

(4) That the offense was committed in such a way or under such circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Articles 103a or 103b;

(5) That the accused committed the offense with the intent to avoid hazardous duty;

(6) That, only in the case of a violation of Article 118, the offense was committed in time of war and in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in active hostilities;

(7) That, only in the case of a violation of Article 118(1)—

(A) The accused was serving a sentence of confinement for 30 years or more or for life at the time of the murder;

(B) The murder was committed while the accused was engaged in the commission or attempted commission of a separate murder, or any robbery, rape, rape of a child, sexual

assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, aggravated arson, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any offense listed in this subparagraph (R.C.M. 1004(c)(7)(B)).

(C) The murder was committed for the purpose of receiving money or a thing of value;

(D) The accused procured another by means of compulsion, coercion, or a promise of an advantage, a service, or a thing of value to commit the murder;

(E) The murder was committed with the intent to avoid or to prevent lawful apprehension or effect an escape from custody or confinement;

(F) The victim was the President of the United States; the President-elect; the Vice President, or, if there was no Vice President, the next officer in the order of succession to the office of President of the United States; the Vice President-elect; any individual who is acting as President under the Constitution and laws of the United States; a Member of Congress (including a Delegate to, or Resident Commissioner in, the Congress) or Member of Congress-elect; a justice or judge of the United States; a chief of state or head of government (or the political equivalent) of a foreign nation; or a foreign official (as such term is defined in 18 U.S.C. § 1116(b)(3)(A)), if the official was on official business at the time of the offense and was in the United States or in a place described in Mil. R. Evid. 315(c)(2) or (c)(3);

(G) The accused then knew that the victim was any of the following persons in the execution of office: a commissioned, warrant, noncommissioned, or petty officer of the United States Armed Forces; a member of any law enforcement or security activity or agency, military or civilian, including correctional custody personnel; or any firefighter;

(H) The murder was committed with intent to obstruct justice;

(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, "substantial physical harm" means fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, or other serious bodily injuries. The term "substantial physical harm" does not mean minor injuries, such as a black eye or bloody nose. The term "substantial mental or physical pain and suffering" is accorded its common meaning and includes torture.

(J) The accused has been found guilty in the same case of another violation of Article 118;

(K) The victim of the murder was under 15 years of age;

(8) That, only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life.

(9) [Reserved]

(10) That, only in the case of a violation of the law of war, death is authorized under the law of war for the offense;

(11) That, only in the case of a violation of Article 103, 103a, or 103b—

(A) The accused has been convicted of another offense involving espionage, spying, or treason for which either a sentence of death or imprisonment for life was authorized by statute; or

(B) That in committing the offense, the accused knowingly created a grave risk of death to a person other than the individual who was the victim.

For purposes of R.C.M. 1004, "national security" means the national defense and foreign relations of the United States and specifically includes a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without.

(d) *Evidence in extenuation and mitigation.* The accused shall be given broad latitude to present evidence in extenuation and mitigation.

(e) *Basis for findings.* The findings specified by R.C.M. 1004(a)(4) and (a)(5) may be based on evidence introduced before or after findings under R.C.M. 921, or both.

(f) *Instructions.* Instructions shall be given after arguments by counsel and before the members close to deliberate on sentence, but the military judge may, upon request of the members, any party, or *sua sponte*, give additional instructions at a later time.

(1) *Requests for instructions.* During presentencing proceedings or at such other time as the military judge may permit, any party may request that the military judge instruct the members on the law as set forth in the request. The military judge may require the requested instruction to be written. Each party shall be given the opportunity to be heard on any proposed instruction before it is given. The military judge shall inform the parties of the proposed action on such requests before their arguments to the members.

(2) *How given.* Instructions shall be given orally on the record in the presence of all parties and the members. Written copies of the instructions or, unless a party objects, portions of them may also be given to the members for their use during deliberations.

(3) *Required instructions.* Instructions shall include—

(A) The charge(s) and specification(s) for which the members shall make a sentencing determination;

(B) The applicable aggravating factor or factors under R.C.M. 1004(c) and to which charge(s) and specification(s) the aggravating factor or factors apply;

(C) A statement of the procedures for deliberation and voting set out in R.C.M. 1004(g);

(D) A statement informing the members that they are solely responsible for selecting an appropriate determination and may not rely on the possibility of any mitigating action by the convening or higher authority;

(E) A statement that the members should consider all matters in aggravation, whether introduced before or after findings, and matters introduced under R.C.M. 1001(b)(1), (2), (3), and (5);

(F) A statement that the members may consider:

(i) Any evidence admitted by the military judge during the presentencing proceeding under R.C.M. 1001; and

(ii) Any evidence admitted by the military judge during the findings proceeding;

(G) A statement that the members shall consider all evidence in extenuation and mitigation before a sentence of death may be determined; and

(H) Such other explanations, descriptions, or directions that the military judge determines to be necessary, whether properly requested by a party or determined by the military judge *sua sponte*.

(4) *Failure to object.* After being afforded an opportunity to object, failure to object to an instruction or to omission of an instruction before the members close to deliberate shall constitute waiver of the objection. The military judge may require the party objecting to specify in what respect the instructions were improper. The parties shall be given the opportunity to be heard on any objection outside the presence of the members.

(g) *Deliberations and voting.*

(1) *In general.* With respect to each charge and specification for which a sentence of death may be determined, the members shall deliberate and vote after the military judge instructs the members. Only the members shall be present during deliberations and voting. Superiority in rank shall not be used in any manner to control the independence of members in the exercise of their judgment.

(2) *Deliberations.* Deliberations require a full and free discussion of the determination to be made in the case. Unless otherwise directed by the military judge, members may take with them in deliberations their notes, if any; any exhibits admitted in evidence; and any written instructions. Members may request that the court-martial be reopened and that portions of the record be read to them or additional evidence introduced. The military judge may, in the exercise of discretion, grant such requests.

(3) *Voting generally.*

(A) *Duty of members.* Each member has the duty to vote on the necessary findings described in R.C.M. 1004(a)(4)-(6) as applicable. No member may abstain from voting.

(B) *Secret ballot.* Voting shall be by secret written ballot.

(4) *Procedure.*

(A) *Initial process.* The members shall employ the following process for each charge and specification for which death may be determined.

(i) The members shall vote separately on each aggravating factor under R.C.M. 1004(c) that applies to the offense and on which the members have been instructed. The members shall not proceed to R.C.M. 1004(g)(4)(A)(ii) unless the members unanimously find that at least one of the aggravating factors existed beyond a reasonable doubt.

(ii) The members shall vote on whether the extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances, including any relevant aggravating factor(s) under R.C.M. 1004(c). The members shall not proceed to R.C.M. 1004(g)(4)(B) unless the members unanimously find that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances.

(B) *Voting on a sentencing determination if death may be adjudged.*

(i) If the members unanimously find both that at least one aggravating factor exists and that the extenuating and mitigating circumstances are substantially outweighed by the aggravating circumstances, the members shall vote on the following sentencing determinations, which shall be binding on the military judge. Except as permitted under R.C.M. 1004(i), the members must vote on potential sentence determinations in the order listed below. The members must vote on each option separately from the other option, considering only one option at a time. During the voting on a particular option, each member may cast one vote for or against that option. The order of the options to be considered is:

(I) Death; or

(II) Life in prison without eligibility for parole.

(ii) If all 12 members vote for death, the sentencing determination of the members shall be death. If any member does not vote for death, the sentencing determination of the members shall not be death.

(iii) If the members' initial vote does not reach the required unanimous consensus for death, the members shall vote on life in prison without eligibility for parole. If three-fourths or more of the members vote for life in prison without eligibility for parole, the sentencing determination of the members shall be life in prison without eligibility for parole.

(iv) If the members' vote does not reach three-fourths for life in prison without eligibility for parole, the offense shall be returned to the military judge for imposition of a sentence of a lesser punishment in accordance with R.C.M. 1001.

(C) *Voting on a sentencing determination if death may not be adjudged.*

(i) If the members do not unanimously find that at least one aggravating factor exists or the members do not unanimously find that the aggravating circumstances substantially outweigh the extenuating and mitigating circumstances, the members shall vote on life in prison without eligibility for parole.

(ii) If the members' vote does not reach three-fourths for life in prison without eligibility for parole, the offense shall be returned to the military judge for imposition of a sentence of a lesser punishment in accordance with R.C.M. 1001.

(D) *Counting votes.* The junior member shall collect the ballots and count the votes. The president shall check the count and inform the other members of the result.

(h) *Action after a sentence is reached.* After the members have agreed upon a determination by the required number of votes in accordance with this rule, the court-martial shall be opened, and

the president shall inform the military judge that the members have reached a determination. The military judge may, in the presence of the parties, examine any writing used by the president to state the determination and may assist the members in putting the determination in proper form. If the members voted unanimously for a determination of death, the writing shall indicate which aggravating factor or factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt. Neither that writing nor any oral or written clarification or discussion concerning it shall constitute announcement of the determination.

(i) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before it is announced in open session of the court.

(1) *Clarification of determination.* A sentence determination may be clarified at any time before entry of judgment. When a determination by the members in a capital case is ambiguous, the military judge shall bring the matter to the attention of the members if the matter is discovered before the court-martial is adjourned. If the matter is discovered after adjournment, the military judge may call a session for clarification by the members as soon as practicable after the ambiguity is discovered, or the military judge may resolve the ambiguity.

(2) *Action by the convening authority.*

(A) Prior to entry of judgment, if a convening authority becomes aware that the sentence of the court-martial is ambiguous, the convening authority shall return the matter to the court-martial for clarification. When the sentence of the court-martial appears to be illegal, the convening authority shall return the matter to the court-martial for correction.

(B) Prior to entry of judgment in a case in which a special trial counsel has exercised authority—

(i) if the special trial counsel becomes aware that the sentence of a court-martial is ambiguous, the special trial counsel shall make a binding determination that the convening authority return the matter to the court-martial for clarification; or

(ii) if the sentence of the court-martial appears to be illegal, the special trial counsel shall make a binding determination that the convening authority shall return the matter to the court-martial for correction.

(3) *Reconsideration procedure.* Any member of the court-martial may propose that a determination of the members in a capital case be reconsidered.

(A) *Instructions.* When reconsideration has been requested, the military judge shall instruct the members on the procedure for reconsideration.

(B) *Voting.* The members shall vote by secret written ballot in closed session whether to reconsider a determination.

(C) *Number of votes required for aggravating factors in capital cases.* Members may reconsider a unanimous vote under R.C.M. 1004(g)(4)(A) (i) that an aggravating factor was proven beyond a reasonable doubt if at least one member votes to reconsider. Members may reconsider a unanimous vote under R.C.M. 1004(g)(4)(A)(ii) that any extenuating and mitigating circumstances are substantially outweighed by any aggravating circumstances admissible under R.C.M. 1001(b)(4), including the factors under R.C.M. 1004(c), if at least one member votes to reconsider. In all other circumstances, a vote under R.C.M. 1004(g)(4)(A)(i) or (ii) may be reconsidered only if at least a majority of the members vote for reconsideration.

(D) *Number of votes required for determinations.*

(i) *With a view toward increasing.* Members may reconsider a determination with a view toward increasing the severity of the determination only if at least a

majority votes for reconsideration. However, members may not reconsider a non-unanimous vote for a determination of death.

(ii) *With a view toward decreasing.* Members may reconsider a determination with a view toward decreasing the severity of the determination only if—

(I) In the case of a death determination, at least one member votes to reconsider; or

(II) In the case of a determination of life in prison without eligibility for parole, more than one-fourth of the members vote to reconsider.

(E) *Successful vote*. If a vote to reconsider succeeds, the members will revote in accordance with R.C.M. 1001(g)(3) and (4).

(j) *Sentencing by military judge.*

(1) The military judge shall sentence the accused in accordance with the binding determination of the members under R.C.M. 1004(g). The military judge may include in any sentence to death or life in prison without eligibility for parole any other authorized lesser punishment. When the military judge's sentence includes confinement or fines, the military judge shall determine an appropriate term of confinement and fine for each specification for which the accused was found guilty.

(2) Where there is a finding of guilty for a specification for which death may be adjudged and a finding of guilty for a specification for which death may not be adjudged—

(A) The members shall make a determination for each specification for which death may be adjudged in accordance with subsection (g);

(B) The military judge shall determine the sentence for any specification returned by the members for sentencing of a lesser punishment than death or life in prison without eligibility for parole; and

(C) The military judge shall determine the sentence for all charges and specifications for which death may not be adjudged. If the sentence includes more than one term of confinement, the military judge shall determine whether the terms of confinement will run concurrently or consecutively.

(k) *Other penalties.* When death is an authorized punishment for an offense, all other punishments authorized under R.C.M. 1003 are also authorized for that offense, including confinement for life, with or without eligibility for parole, and may be adjudged in lieu of death, subject to limitations specifically prescribed in this Manual. A sentence of death includes a dishonorable discharge or dismissal as appropriate. Confinement is a necessary incident of a sentence of death, but not a part of it.

(l) *Impeachment of determination.* A determination that is proper on its face may be impeached only when extraneous prejudicial information was improperly brought to the attention of any member, outside influence was improperly brought to bear upon any member, or unlawful command influence was brought to bear upon any member."

(r) R.C.M. 1005 is amended to read as follows:

"Rule 1005. Reconsideration of sentence in noncapital cases

(a) *Reconsideration.* Subject to this rule, a sentence may be reconsidered at any time before such sentence is announced in open session of the court.

(b) *Exceptions.*

(1) If the sentence announced in open session was less than the mandatory minimum prescribed for an offense of which the accused has been found guilty, the court that announced the sentence may reconsider such sentence.

(2) If the sentence announced in open session exceeds the maximum permissible punishment for the offense or the jurisdictional limitation of the court-martial, the court that announced the sentence may reconsider such sentence.

(3) If the sentence announced in open session is not in accordance with a sentence limitation in the plea agreement, if any, the court that announced the sentence may reconsider such sentence.

(c) *Clarification of sentence.* A sentence may be clarified at any time before entry of judgment. When a sentence determined by the military judge is ambiguous, the military judge shall call a session for clarification as soon as practicable after the ambiguity is discovered.

(d) *Action by the convening authority or special trial counsel.*

(1) Prior to entry of judgment, if a convening authority becomes aware that the sentence of the court-martial is ambiguous, the convening authority shall return the matter to the court-martial for clarification. When the sentence of the court-martial appears to be illegal, the convening authority shall return the matter to the court-martial for correction.

(2) Prior to entry of judgment in a case in which a special trial counsel has exercised authority—

(A) if the special trial counsel becomes aware that the sentence of a court-martial is ambiguous, the special trial counsel shall make a binding determination that the convening authority return the matter to the court-martial for clarification.

(B) if the sentence of the court-martial appears to be illegal, the special trial counsel shall make a binding determination that the convening authority shall return the matter to the court-martial for correction.

(e) *Limitation.* A military judge may reconsider a sentence once announced only under the circumstances described in R.C.M. 1005(b)."

(s) R.C.M. 1006 is amended to read as follows.

"Rule 1006. [Reserved]".

(t) R.C.M. 1007(b)(1) is amended to read as follows:

"(1) In a capital case, the determination of the members shall be announced by the military judge. If the members voted unanimously for death, the military judge shall announce which aggravating factor or factors under R.C.M. 1004(c) the members unanimously found to exist beyond a reasonable doubt."

(u) R.C.M. 1008 is amended to read as follows:

"Rule 1008. Impeachment of sentence in noncapital cases

A sentence that is proper on its face may be impeached only when extraneous prejudicial information was improperly brought to the attention of the military judge, outside influence was improperly brought to bear upon the military judge, or unlawful command influence was brought to bear upon the military judge."

(v) R.C.M. 1009 is amended to read as follows:

"Rule 1009. [Reserved]".

(w) R.C.M. 1112(b) is amended to read as follows:

(b) *Contents of the record of trial.* The record of trial contains the court-martial proceedings and includes any evidence or exhibits considered by the court-martial in determining the findings or sentence. The record of trial in every general and special court-martial shall include:

(1) A substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting;

(2) The original charge sheet or a duplicate;

(3) A copy of the convening order and any amending order;

(4) The request, if any, for trial by military judge alone; the accused's election, if any, of members under R.C.M. 903; and, when applicable, any statement by the convening authority required under R.C.M. 503(a)(2);

(5) Exhibits, or, if permitted by the military judge, copies, photographs, or descriptions of any exhibits that were received in evidence and any appellate exhibits;

(6) The Statement of Trial Results;

(7) Any action by the convening authority under R.C.M. 1109 or 1110; and

(8) The judgment entered into the record by the military judge."

(x) R.C.M. 1117 is amended to read as follows:

"Rule 1117. Appeal of sentence by the United States

(a) *In general.* With the approval of the Judge Advocate General concerned, the Government may appeal a sentence announced under R.C.M. 1007 to the Court of Criminal Appeals on the grounds that—

(1) The sentence violates the law;

(2) The sentence is a result of an incorrect application of sentencing parameters or criteria established under Article 56(c); or

(3) The sentence is plainly unreasonable.

(b) *Timing.*

(1) An appeal under this rule must be filed within 60 days after the date on which the judgment of the court-martial is entered into the record under R.C.M. 1111.

(2) Any request for approval must be submitted in sufficient time to obtain and consider submissions under R.C.M. 1117(c)(5).

(c) *Approval process.*

(1) A request from the Government to the Judge Advocate General for approval of an appeal under this rule shall include a statement of reasons in support of an appeal under R.C.M. 1117(a)(1), (a)(2), or (a)(3), as applicable, based upon the information contained in the record before the sentencing authority at the time the sentence was announced under R.C.M. 1007.

(2) A statement of reasons in support of an appeal under R.C.M. 1117(a)(1) shall identify the specific provisions of law at issue and the facts in the record demonstrating a violation of the law in the announced sentence under R.C.M. 1007.

(3) A statement of reasons in support of an appeal under R.C.M. 1117(a)(2) shall identify parameters or criteria at issue and the facts supporting how parameters or criteria were applied incorrectly.

(4) A statement of reasons in support of an appeal under R.C.M. 1117(a)(3) shall identify the facts in the record that demonstrate by clear and convincing evidence that the sentence announced under R.C.M. 1007 was plainly unreasonable.

(5) Prior to acting on a request from the Government, the Judge Advocate General shall transmit the request to the military judge who presided over the presentencing proceeding for purposes of providing the military judge, the parties, and any person who, at the time of

sentencing, was a crime victim as defined by R.C.M. 1001(c)(2)(A), with an opportunity to make a submission addressing the statement of reasons in the Government's request.

(A) The military judge shall establish the time for the parties and crime victims to provide such a submission to the military judge and for the military judge to forward all submissions to the Judge Advocate General. The military judge shall ensure that the parties have not less than 7 days to prepare, review, and transmit such submissions.

(B) Submissions under this paragraph (R.C.M. 1117(c)(5)) shall not include facts beyond the record established at the time the sentence was announced under R.C.M. 1007.

(6) The decision of the Judge Advocate General as to whether to approve a request shall be based on the information developed under this rule.

(7) If an appeal is approved by the Judge Advocate General and submitted to the Court of Criminal Appeals under this rule, the following shall be included with the appeal: the statement of approval, the Government's request and statement of reasons under R.C.M. 1117(c), and any submissions under R.C.M. 1117(c)(5).

(d) *Contents of the record of trial*. Unless the record has been forwarded to the Court of Criminal Appeals for review under R.C.M. 1116(b), the record of trial for an appeal under this rule shall consist of—

(1) Any portion of the record in the case that is designated as pertinent by either of the parties;

(2) The information submitted during the presentencing proceeding; and

(3) Any information required by rule or order of the Court of Criminal Appeals."

Section 2. A new Appendix 12B is inserted immediately after Appendix 12A to read as follows:

"Appendix 12B

Offense Category	Months
1	0–12
2	1–36
3	30–120
4	120–240
5	240–480
6	Confinement for life with eligibility for parole

Sentencing Parameter Table – Confinement Range Categories

Note: For all above categories, if the confinement portion of the maximum authorized punishment for the offense is less than the Offense Category's confinement maximum, the lesser confinement portion of the maximum authorized punishment shall control as the recommended maximum confinement time for that offense. At a special court-martial, for an offense that is a category 3 offense or greater, the jurisdictional maximum period of confinement (12 months) constitutes the parameter; however, the military judge may impose a period of confinement less than the jurisdictional maximum period of confinement upon finding specific facts that warrant such a sentence."

Section 3. A new Appendix 12C is inserted immediately after the new Appendix 12B to read as follows:

"Appendix 12C – Offense Category Chart

Article	*Offense*	*Offense Category*
77	Principals	Dependent on underlying offense
78	Accessory after the fact	Dependent on underlying offense
79	Conviction of offense charged, lesser included offenses, and attempts	Dependent on underlying offense
80	Attempts	Dependent on underlying offense
81	Conspiracy	Dependent on underlying offense
82	Soliciting commission of offenses	
	Solicitation of espionage	Category 4
	Solicitation of desertion, mutiny or sedition, misbehavior before the enemy if committed or attempted	Dependent on underlying offense
	Solicitation of desertion in time of war if not committed or attempted	Criteria
	Solicitation of desertion if not committed or attempted	Category 1
	Solicitation of mutiny or sedition if not committed or attempted	Category 3
	Solicitation of misbehavior before enemy if not committed or attempted	Category 3
	Solicitation of other offense regardless of whether committed or attempted	Dependent on underlying offense
83	Malingering	
	Feigning illness, physical disablement, mental lapse, or mental derangement	
	In time of war or in a hostile fire pay zone	Criteria
	Other	Category 1
	Intentional self-inflicted injury	
	In time of war or in a hostile fire pay zone	Criteria
	Other	Category 2
84	Breach of medical quarantine	
	Breach of medical quarantine involving a quarantinable communicable disease defined by 42 CFR 70.1	Category 1
	Breach of medical quarantine	Category 1
85	Desertion	
	In time of war	Criteria
	Intent to avoid hazardous duty or to shirk important services	Category 2
	Other cases	
	Terminated by apprehension	Category 2
	Terminated otherwise	Category 1
86	Absence without leave	
	Failing to go, going from appointed place of duty	Category 1
	Absence from unit, organization, etc.	
	Not more than 3 days	Category 1
	More than 3, not more than 30 days	Category 1
	More than 30 days	Category 1
	More than 30 days and terminated by apprehension	Category 1
	Absence from guard or watch	Category 1
	Absence from guard or watch with intent to abandon	Category 1
	Absence with intent to avoid maneuvers or field exercises	Category 1
87	Missing movement; jumping from vessel	
	Missing movement	
	Design	Category 2
	Neglect	Category 1
	Jumping from vessel into the water	Category 1
87a	Resistance, flight, breach of arrest, and escape	
	Resisting apprehension	Category 1
	Flight from apprehension	Category 1
	Breaking arrest	Category 1
	Escape from custody, pretrial confinement, or confinement pursuant to Article 15	Category 1
	Escape from post-trial confinement	Category 2
87b	Offenses against correctional custody and restriction	
	Escape from correctional custody	Category 1
	Breach of correctional custody	Category 1
	Breach of restriction	Category 1

Article	*Offense*	*Offense Category*
88	Contempt toward officials	Category 1
89	Disrespect toward superior commissioned officer; assault of superior commissioned officer	
	Disrespect toward superior commissioned officer	
	In command	Category 1
	In rank	Category 1
	Striking, drawing, or lifting up a weapon or offering any violence to superior commissioned officer in execution of office	
	In time or war	Criteria
	Other	Category 2
90	Willfully disobeying superior commissioned officer	
	In time of war	Criteria
	Other	Category 2
91	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer	
	Striking or assaulting	
	Warrant officer	Category 2
	Superior noncommissioned or petty officer	Category 2
	Other noncommissioned or petty officer	Category 1
	Willfully disobeying	
	Warrant officer	Category 1
	Noncommissioned or petty officer	Category 1
	Contempt or disrespect	
	Warrant officer	Category 1
	Superior noncommissioned or petty officer	Category 1
	Other noncommissioned or petty officer	Category 1
92	Failure to obey order or regulation	
	Violation of or failure to obey general order or regulation	Category 1
	Violation of or failure to obey other lawful order	Category 1
	Dereliction in performance of duties	
	Through neglect or culpable inefficiency	Category 1
	Through neglect or culpable inefficiency resulting in death or grievous bodily harm	Category 2
	Willful	Category 1
	Willful dereliction of duty resulting in death or grievous bodily harm	Category 2
93	Cruelty and maltreatment	Category 1
93a	Prohibited activities with military recruit or trainee by person in position of special trust	Category 2
94	Mutiny or sedition	Criteria
95	Offenses by sentinel or lookout	
	Drunk or sleeping on post, or leaving post before being relieved	
	In time of war	Criteria
	While receiving special pay under 37 USC 310	Criteria
	In all other places	Category 1
	Loitering or wrongfully sitting on post by a sentinel or lookout	
	In time of war or while receiving special pay under 37 USC 310	Criteria
	Other cases	Category 1
95a	Disrespect toward sentinel or lookout	Category 1
96	Release of prisoner without authority; drinking with prisoner	
	Releasing a prisoner without authority	Category 2
	Allowing a prisoner to escape through neglect	Category 1
	Allowing a prisoner to escape through design	Category 2
	Drinking with prisoner	Category 1
97	Unlawful Detention	Category 2
98	Misconduct as prisoner	Criteria
99	Misbehavior before the enemy	Criteria
100	Subordinate compelling surrender	Criteria
101	Improper use of countersign	Criteria
102	Forcing a safeguard	Criteria
103	Spies	Category 5
103a	Espionage	
	Espionage as a capital offense	Category 5
	Espionage or attempted espionage	Category 5

Article	*Offense*	*Offense Category*
103b	Aiding the enemy	Criteria
104	Public records offenses	Category 2
104a	Fraudulent enlistment, appointment, or separation	
	Fraudulent enlistment or appointment	Category 2
	Fraudulent separation	Category 2
104b	Unlawful enlistment, appointment, or separation	Category 2
105	Forgery	Category 2
105a	False or unauthorized pass offenses	
	Possessing or using with intent to defend or deceive, or making, altering, counterfeiting, tampering with, or selling	Category 2
	All other cases	Category 1
106	Impersonation of officer, noncommissioned or petty officer, or agent or official	
	With intent to defraud	Category 2
	All other cases	Category 1
106a	Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button	
	Wrongful wearing of the Medal of Honor; Distinguished Service Cross; Navy Cross; Air Force Cross; Silver Star; Purple Heart: or a valor device on any personal award	Category 1
	All other cases	Category 1
107	False official statements; false swearing	
	False official statement	Category 2
	False swearing	Category 1
107a	Parole violation	Category 1
108	Military property of United States—Loss, damage, destruction, or wrongful disposition	
	Selling or otherwise disposing	
	Of a value of $1,000 or less	Category 1
	Of a value of more than $1,000 or any firearm or explosive	Category 2
	Damaging, destroying, losing or suffering to be lost, damaged, destroyed, sold, or wrongfully disposed	
	Through neglect, of a value or damage of	
	Of a value of $1,000 or less	Category 1
	Of a value of more than $1,000	Category 1
	Willfully, of a value or damage of	
	$1,000 or less	Category 1
	More than $1,000 or of any firearm or explosive	Category 2
108a	Captured or abandoned property	
	Captured, abandoned property; failure to secure, etc.	
	Of a value of $1,000 or less	Category 1
	Of a value of more than $1,000 or any firearm or explosive	Category 2
	Looting or pillaging	Criteria
109	Property other than military property of United States— Waste, spoilage, or destruction	
	Wasting, spoiling, destroying, or damaging non-military property	
	Of a value of $1,000 or less	Category 1
	Of a value of more than $1,000	Category 2
109a	Mail matter: wrongful taking, opening, etc.	Category 2
110	Improper hazarding of vessel or aircraft	
	Willfully and wrongfully	Criteria
	Negligently	Category 2
111	Leaving scene of vehicle accident	Category 1
112	Drunkenness and other incapacitation offenses	
	Drunk on duty	Category 1
	Incapacitation for duty from drunkenness or drug use	Category 1
	Drunk prisoner	Category 1

Article	*Offense*	*Offense Category*
112a	Wrongful use, possession, etc., of controlled substances	
	Wrongful use, possession, manufacture, or introduction of controlled substance	
	Wrongful use or possession of amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana, methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, and III controlled substances	Category 1
	Wrongful manufacture or introduction of amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana, methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, and III controlled substances	Category 2
	Wrongful use, possession, manufacture, or introduction of phenobarbital and Schedule IV and V controlled substances	Category 1
	Wrongful distribution, possession, manufacture, or introduction of controlled substance with intent to distribute, or wrongful importation or exportation of a controlled substance	
	Amphetamine, cocaine, heroin, lysergic acid diethylamide, marijuana, methamphetamine, opium, phencyclidine, secobarbital, and Schedule I, II, and III controlled substances	Category 2
	Phenobarbital and schedule IV and V controlled substances	Category 2
113	Drunken or reckless operation of a vehicle, aircraft, or vessel	
	Resulting in personal injury	Category 2
	No personal injury involved	Category 1
114	Endangerment offenses	
	Carrying concealed weapon	Category 1
	Discharging firearm, willfully, under such circumstances as to endanger human life	Category 1
	Reckless endangerment	Category 1
	Dueling	Category 1
115	Communicating threats	
	Threats and false threats generally	Category 2
	Threats and false threats concerning use of explosives, etc.	Category 3
116	Riot or breach of peace	
	Riot	Category 3
	Breach of the peace	Category 1
117	Provoking speeches or gestures	Category 1
117a	Wrongful broadcast or distribution of intimate visual images	Category 2
118	Murder	
	Article 118(1) or (4)	Category 6
	Article 118(2) or (3)	Category 5
119	Manslaughter	
	Voluntary manslaughter	Category 4
	Involuntary manslaughter	Category 3
	Voluntary manslaughter of a child under 16 years of age	Category 4
	Involuntary manslaughter of a child under 16 years of age	Category 3
119a	Death or injury of an unborn child	
	Injuring or killing an unborn child	Dependent on underlying offense
	Attempting to kill an unborn child	Dependent on underlying offense
	Intentionally killing an unborn child	Dependent on underlying offense
119b	Child endangerment	
	Endangerment by design resulting in grievous bodily harm	Category 3
	Endangerment by design resulting in harm	Category 2
	Other cases by design	Category 2
	Endangerment by culpable negligence resulting in grievous bodily harm	Category 2
	Endangerment by culpable negligence resulting in harm	Category 2
	Other cases by culpable negligence	Category 1

Article	*Offense*	*Offense Category*
120	Rape and sexual assault generally	
	Rape	Category 4
	Sexual assault	Category 3
	Aggravated sexual contact	Category 3
	Abusive sexual contact	Category 2
120a	Mails: deposit of obscene matter	Category 2
120b	Rape and sexual assault of a child	
	Rape of a child	Category 5
	Sexual assault of a child	Category 4
	Sexual abuse of a child	
	Cases involving sexual contact	Category 3
	Other cases	Category 3
120c	Other sexual misconduct	
	Indecent viewing	Category 1
	Indecent recording	Category 2
	Broadcasting or distributing of an indecent recording	Category 2
	Forcible pandering	Category 3
	Indecent exposure	Category 1
121	Larceny and wrongful appropriation	
	Larceny	
	Property of a value of $1,000 or less	Category 1
	Military property of a value of more than $1,000 or of any military motor vehicle, aircraft, vessel, firearm, or explosive	Category 2
	Property other than military property of a value of more than $1,000 or any motor vehicle, aircraft, vessel, firearm, or explosive	Category 2
	Wrongful appropriation	
	Of a value of $1,000 or less	Category 1
	Of a value of more than $1,000	Category 1
	Of any motor vehicle, aircraft, vessel, firearm, explosive, or military property of a value of more than $1,000	Category 1
121a	Fraudulent use of credit cards, debit cards, and other access devices	
	Fraudulent use of a credit card, debit card, or other access device to obtain property of a value of $1,000 or less	Category 1
	Fraudulent use during any 1-year period of a credit card, debit card, or other access device to obtain property the aggregate value of which is more than $1,000	Category 2
121b	False pretenses to obtain services	
	Of a value of $1,000 or less	Category 1
	Of a value of more than $1,000	Category 2
122	Robbery	
	When committed with a dangerous weapon	Category 3
	All other cases	Category 3
122a	Receiving stolen property	
	Receiving, buying, or concealing stolen property of a value of $1,000 or less	Category 1
	Receiving, buying, or concealing stolen property of a value of more than $1,000	Category 2
123	Offenses concerning Government computers	
	Unauthorized distribution of classified information obtained from a Government computer	Category 3
	Unauthorized access of a Government computer and obtaining classified or other protected information	Category 2
	Causing damage to a Government computer	Category 3
123a	Making, drawing, or uttering check, draft, or order without sufficient funds	
	For the procurement of any article or thing of value, with intent to defraud, in the face amount of:	
	$1,000 or less	Category 1
	More than $1,000	Category 2
	For the payment of any past due obligation, or for any other purpose, with intent to deceive	Category 1

Article	*Offense*	*Offense Category*
124	Frauds against the United States	
	Article 124(1) and (2)	Category 2
	Article 124(3) and (4)	
	When amount is $1,000 or less	Category 1
	When amount is more than $1,000	Category 2
124a	Bribery	Category 2
124b	Graft	Category 2
125	Kidnapping	Category 3
126	Arson; burning property with intent to defraud	
	Aggravated arson	Category 3
	Simple arson, where property value is:	
	$1,000 or less	Category 1
	More than $1,000	Category 2
	Burning with intent to defraud	Category 2
127	Extortion	Category 2
128	Assault	
	Simple assault	
	Generally	Category 1
	When committed with an unloaded firearm	Category 2
	Battery	
	Assault consummated by a battery	Category 1
	Assault upon a commissioned officer of the armed forces of the United States or of a friendly foreign power, not in the execution of office	Category 2
	Assault upon a warrant officer, not in the execution of office	Category 2
	Assault upon a noncommissioned or petty officer, not in the execution of office	Category 1
	Assault upon a sentinel or lookout in the execution of duty, or upon any person who, in the execution of office, is performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties	Category 2
	Assault consummated by a battery upon a child under 16 years	Category 2
	Assault with intent to commit murder or rape	Category 3
	Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, or kidnapping	Category 3
	Aggravated assault	
	Aggravated assault with a dangerous weapon	
	When committed with a loaded firearm	Category 3
	When committed upon a child under the age of 16 years	Category 3
	Other cases	Category 2
	Aggravated assault in which substantial bodily harm in inflicted	
	When the injury is inflicted with a loaded firearm	Category 3
	When the injury is inflicted upon a child under the age of 16 years	Category 3
	Other cases	Category 2
	Aggravated assault in which grievous bodily harm is inflicted	
	When the injury is inflicted with a loaded firearm	Category 3
	When the injury is inflicted upon a child under the age of 16 years	Category 3
	Other cases	Category 2
	Aggravated assault by strangulation or suffocation	
	When committed upon a child under the age of 16 years	Category 3
	Other cases	Category 2
128a	Maiming	Category 3
128b	Domestic Violence	
	Commission of violent offense against spouse, intimate partner, or immediate family member of that person	Dependent on underlying offense
	Commission of UCMJ violation against any person with intent to threaten or intimidate spouse, intimate partner, or immediate family member of that person	Dependent on underlying offense

Article	*Offense*	*Offense Category*
	Commission of UCMJ violation against any property, including animal, with intent to threaten or intimidate spouse, intimate partner, or immediate family member of that person	Dependent on underlying offense
	Violation of protection order with intent to threaten or intimidate spouse, intimate partner, or immediate family member of that person	Category 2
	Violation of protection order with intent to commit a violent offense against spouse, intimate partner, or immediate family member of that person	Category 2
	Assaulting spouse, intimate partner, or immediate family member of that person by strangulation or suffocation	
	Aggravated assault by strangulation or suffocation when committed upon a child under 16 years	Category 3
	Other cases	Category 2
129	Burglary; unlawful entry	
	Burglary (with intent to commit an offense punishable under Article 118–120, 120b–121, 122, 125–128a, or 130)	Category 3
	Burglary (with intent to commit any other offense punishable under the UCMJ)	Category 2
	Unlawful entry	Category 1
130	Stalking	Category 2
131	Perjury	Category 2
131a	Subornation of perjury	Category 2
131b	Obstructing justice	Category 2
131c	Misprision of serious offense	Category 2
131d	Wrongful refusal to testify	Category 2
131e	Prevention of authorized seizure of property	Category 1
131f	Noncompliance with procedural rules	
	Unnecessary delay in disposing of case	Category 1
	Knowingly and intentionally failing to enforce or comply with provisions of the UCMJ	Category 2
131g	Wrongful interference with adverse administrative proceeding	Category 2
132	Retaliation	Category 2
133	Conduct unbecoming an officer.	Criteria
134	General article	Criteria
	Animal abuse	
	Abuse, neglect, or abandonment of an animal	Category 1
	Abuse, neglect, or abandonment of a public animal	Category 1
	Sexual act with an animal or cases where the accused caused the serious injury or death of the animal	Category 2
	Bigamy	Category 1
	Check, worthless making and uttering – by dishonorably failing to maintain funds	Category 1
	Child pornography	
	Possessing, receiving, or viewing child pornography	Category 2
	Possessing child pornography with intent to distribute	Category 3
	Distributing child pornography	Category 3
	Producing child pornography	Category 4
	Debt, dishonorably failing to pay	Category 1
	Disloyal statements	Category 1
	Disorderly conduct, drunkenness	
	Disorderly conduct	
	Under such circumstances as to bring discredit upon the military Service	Category 1
	Other cases	Category 1
	Drunkenness	
	Aboard ship or under such circumstances as to bring discredit upon the military Service	Category 1
	Other cases	Category 1

Article	*Offense*	*Offense Category*
134	Drunk and disorderly	
	Aboard ship	Category 1
	Under such circumstances as to bring discredit upon the military Service	Category 1
	Other cases	Category 1
	Extramarital sexual conduct	Category 1
	Firearm, discharging – through negligence	Category 1
	Fraternization	Category 1
	Gambling with subordinate	Category 1
	Homicide, negligent	Category 2
	Indecent conduct	Category 2
	Indecent language	
	Communicated to any child under the age of 16 years	Category 2
	Other cases	Category 1
	Pandering and prostitution	
	Prostitution and patronizing a prostitute	Category 1
	Pandering	Category 2
	Self-injury without intent to avoid service	
	In time of war or in a hostile fire pay zone	Criteria
	Intentional self-inflicted injury	Category 1
	Sexual harassment	Category 2
	Straggling	Category 1"

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Section 4. A new Appendix 12D is inserted immediately after Appendix 12C to read as follows:

"Appendix 12D - List of Sentencing Criteria Offenses

UCMJ Article	Title
82	Solicitation to desert (in time of war)
83	Malingering (in time of war or in hostile fire pay zone)
85	Desertion (in time of war)
89	Striking, drawing, or lifting up a weapon or offering any violence to superior commissioned officer in execution of office (in time of war)
90	Willfully disobeying a lawful order of superior commissioned officer (in time of war)
94	Mutiny or sedition
95	Offenses by sentinel or lookout (in time of war or while receiving special pay under 37 U.S.C. 310)
98	Misconduct as prisoner
99	Misbehavior before the enemy
100	Subordinate compelling surrender
101	Improper use of countersign
102	Forcing a safeguard
103b	Aiding the enemy
108a	Captured or abandoned property (looting or pillaging)
110	Improper hazarding of vessel or aircraft (willfully and wrongfully)
133	Conduct unbecoming an officer
134	General article
134	Self-injury without intent to avoid service (in time of war or in a hostile fire pay zone)

SENTENCING CRITERIA

The military judge shall consider the sentencing criteria established for the following offenses:

Article 82. Solicitation to desert (*in time of war*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 83. Malingering (*in time of war or in hostile fire pay zone*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 85. Desertion (*in time of war*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense was committed while the accused was under charges, investigation, or adverse action;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in a way or under circumstances such that the location from which the accused absented himself or remained absent was a territory in which

the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 89. Striking, drawing, or lifting up a weapon or offering any violence to superior commissioned officer in execution of office (*in time of war*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense was committed before or in the presence of other members of the accused's or the superior commissioned officer's unit;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

The status of the superior commissioned officer and command relationship to the accused;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The nature or extent of any injuries suffered by the victim;

Whether the offense was committed in a way that created, or under circumstances creating, a substantial risk of bodily harm or death to any person;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 90. Willfully disobeying a lawful order of superior commissioned officer (*in time of war*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense was committed before or in the presence of other members of the accused's or the superior commissioned officer's unit;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

The status of the superior commissioned officer and command relationship to the accused;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense was committed in a way that created, or under circumstances creating, a substantial risk of bodily harm or death to any person;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 94. Mutiny or sedition.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The accused's relationship to the military or civil authority against which the accused committed the mutiny or sedition;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The nature or extent of any injuries suffered by any victims of the offense;

The nature or extent of any public or private property damage related to the offense;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense involved the conscious or reckless disregard of a risk of serious damage to public or private property; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 95. Offenses by sentinel or lookout *(in time of war or while the accused was receiving special pay under 37 U.S.C. 310*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense was committed to avoid the movement of a vessel or hazardous duty or shirk important service;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 98. Misconduct as prisoner.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

The nature of any maltreatment inflicted on other prisoners;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The nature or extent of any injuries suffered by any victims of the offense;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

The nature of any benefits or improvements enjoyed by the accused as a result of his or her conduct; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 99. Misbehavior before the enemy.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense was committed in a way that created, or under circumstances creating, a substantial risk of bodily harm or death to any person; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 100. Subordinate compelling surrender.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The nature of the conflict or hostilities in which the accused's unit was engaged;

Whether the offense was committed in the immediate presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense impacted the operations of any organization in addition to the unit of the accused;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense was committed for the purpose of receiving money or a thing of value;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense; and

Whether the accused was a minimal or minor participant in the offense.

Article 101. Improper use of countersign.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense; and

Whether the offense was committed for the purpose of receiving money or a thing of value.

Article 102. Forcing a safeguard.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

That nature of the person or persons, place, or property intended to be protected by the safeguard;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense was committed for the purpose of receiving money or a thing of value;

Whether any person or persons, place, or property intended to be protected by the safeguard was injured or damaged;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused actually knew of the safeguard;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense; and

Whether the accused was a minimal or minor participant in the offense.

Article 103b. Aiding the enemy

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the accused intended to cause damage to national security;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities.

Article 108a. Captured or abandoned property (*looting or pillaging*)

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities;

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense;

Whether the accused was a minimal or minor participant in the offense;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the offense involved possession of a dangerous weapon;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons;

Whether the offense involved the conscious or reckless disregard of a risk of serious damage to public or private property;

The amount of force or violence used or threatened by the accused and other participants in the offense;

The value and nature of the captured or abandoned property; and

The amount of restitution, if any, paid by the accused.

Article 110. Improper hazarding of vessel or aircraft (*willfully and wrongfully*).

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The position, responsibility, and authority of the accused at the time of the offense;

Whether the offense caused damage to the vessel or aircraft and the amount and type of damage;

Whether the accused committed the offense with the intent to prevent the vessel's or aircraft's deployment, movement, or departure;

Whether the offense occurred in a time of active hostilities;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person;

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense;

Whether the accused was an organizer, leader, manager, or supervisor in the offense and the number of other participants in the offense; and

Whether the accused was the actual perpetrator of the offense or was a principal whose participation in the offense was major.

Article 133. Conduct unbecoming an officer.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

The sentencing parameter for the most analogous enumerated offense;

The grade of the accused;

Whether the offense occurred in a time of active hostilities;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense involved a severe lack of integrity and judgment.

Whether the offense involved the conscious or reckless disregard of a risk of death or serious bodily harm to any person; and

Whether the accused abused a position of trust or authority, or used specialized skill or training, in a manner that significantly facilitated the offense.

Article 134. General article.

(A) For offenses under Article 134's "disorders and neglects to the prejudice of good order and discipline" or "conduct of a nature to bring discredit upon the armed forces" clause that are not listed in Part IV of the Manual for Courts-Martial:

(1) For offenses for which the maximum punishment is calculated pursuant to Rule for Courts-Martial 1003(c)(1)(B)(i), the sentencing parameter for the offense that provided the maximum punishment.

(2) For offenses for which the maximum punishment is calculated by reference to a provision of the United States Code pursuant to Rule for Courts-Martial 1003(c)(1)(B)(ii), the Federal Sentencing Guideline range for the offense that provided the maximum punishment.

(3) For offenses for which the maximum punishment is calculated by reference to a custom of the applicable service pursuant to Rule for Courts-Martial 1003(c)(1)(B)(ii), the sentencing parameter for the most analogous enumerated offense.

(B) For offenses under Article 134's "crimes and offenses not capital" clause, the Federal Sentencing Guideline range for the underlying offense.

Article 134. Self-injury without intent to avoid service in a time of war or in a hostile fire pay zone.

The age and experience of the accused;

Any mental impairment or deficiency of the accused;

Whether the offense was committed before or in the presence of the enemy;

Whether the offense disrupted or, in any way, impacted the operations of any organization;

Whether the offense caused damage to the national security of the United States, regardless of whether the accused intended such damage;

Whether the offense was committed in a way or under circumstances that unlawfully and substantially endangered the life of one or more persons; and

Whether the offense was committed in territory in which the United States or an ally of the United States was then an occupying power or in which the United States Armed Forces were then engaged in a contingency operation or active hostilities."

Executive Order 14104 of July 28, 2023

Federal Research and Development in Support of Domestic Manufacturing and United States Jobs

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The United States maintains an unparalleled innovation ecosystem with world-class universities, Federal laboratories, research centers, and technology incubators, supported in part by Federal investment. Our world is healthier, smarter, more connected, and more sustainable because of Federal taxpayers' investment in discovery and innovation that has supported the commercialization of new products and services.

My Administration has prioritized support for our unique innovation ecosystem by reinvesting across sectors in research and development (R&D), demonstrations, education, and the necessary infrastructure to accelerate the transition of discoveries quickly from the lab to the marketplace.

This investment is designed to produce cutting-edge technologies that support the competitiveness, domestic manufacturing capacity, and well-being of the United States economy; United States workers; our communities; and our national security. Ensuring the commercialization of federally funded inventions by United States manufacturers—while maintaining intellectual property rights—will build on the successful legacy of the United States in spurring economic growth and enhancing United States competitiveness through R&D. It will also further our joint R&D work with partners and allies to strengthen the resilience of global critical supply chains and secure America's leadership in delivering a net-zero emissions economy by no later than 2050.

Therefore, it is the policy of my Administration that when new technologies and products are developed with support from the United States Government, they will be manufactured in the United States whenever feasible and consistent with applicable law.

Sec. 2. *Coordination and Consultation.* (a) The Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Director of the Office of Science and Technology Policy (OSTP) shall coordinate the executive branch actions necessary to implement this order through the interagency process identified in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System).

(b) In implementing this order, the heads of executive departments and agencies (agencies) shall, as appropriate and consistent with applicable law, consult outside stakeholders—such as those in industry; academia, including Historically Black Colleges and Universities, Tribal Colleges and Universities, and other Minority Serving Institutions; non-governmental organizations; communities; labor unions; and State, local, Tribal, and territorial governments—in order to implement the policy identified in section 1 of this order.

Sec. 3. *Strengthening Domestic Manufacturing.* (a) The Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Health and Human Services, the Secretary of Transportation, the

Secretary of Energy, the Secretary of Homeland Security, the Director of the National Science Foundation, and the Administrator of the National Aeronautics and Space Administration should consider domestic manufacturing in Federal R&D funding agreement solicitations, as appropriate and consistent with applicable law. These agency heads shall also consider how their respective agencies' R&D funding agreements support broader domestic manufacturing objectives, including the development of production facilities and capabilities broadly supportive of United States manufacturing, as appropriate and consistent with applicable law.

(b) The Director of OSTP, working through the National Science and Technology Council (NSTC) and in coordination with the Director of the Office of Management and Budget's Made in America Office (Made in America Director) and the heads of agencies identified in subsection (a) of this section, shall seek to add ''domestic manufacturing'' to future interagency technology R&D roadmaps, as appropriate. The Director of OSTP shall endeavor to standardize the format of domestic manufacturing considerations in technology R&D roadmaps to ensure that industry, the research community, and agencies create the conditions for new technologies to be produced in the United States once they are commercialized.

(c) In collaboration with the Administrator of the Small Business Administration (SBA), the heads of agencies participating in the Small Business Innovation Research and Small Business Technology Transfer programs are encouraged to advance a coordinated interagency approach to innovation and research solicitations with the goals of reducing barriers to program participation, streamlining access to funding opportunities, and encouraging production of new technologies in the United States. The heads of these agencies are further encouraged to collaborate with the SBA to support small businesses transitioning technologies from intramural and extramural labs to commercial markets.

(d) The heads of agencies that have statutory Other Transaction Authority, or that can use other business arrangements authorized by the Congress, are encouraged, when appropriate, to consider using these authorities to purchase or invest in leading-edge technologies to support their production in the United States. If these agencies use these authorities to purchase or invest in the development of new technologies, the terms of these purchases and investments should ensure that the product is substantially manufactured in the United States, as appropriate and consistent with applicable law.

(e) To further support the commercialization and production in the United States of technologies developed, in part, through federally funded R&D, the heads of agencies identified in subsection (a) of this section are encouraged to establish or enhance the technology transfer and commercialization capabilities of their agencies.

Sec. 4. *Modernizing Reporting of Invention Utilization.* (a) In an effort to streamline reporting requirements for recipients of Federal R&D funding agreements, the heads of agencies identified in section 3(a) of this order should seek to make reporting on the utilization of ''subject inventions'' (as defined in 35 U.S.C. 201(e)) easier and consistent across the United States Government.

(b) To incentivize domestic manufacturing through the reporting of invention disclosures and the utilization of those inventions, the heads of

agencies identified in section 3(a) of this order shall require recipients of Federal R&D funding agreements to track and update the awarding agency on the location in which subject inventions are manufactured.

(c) The heads of agencies identified in section 3(a) of this order should require recipients of Federal R&D funding agreements to report annually to the awarding agency the names of licensees and manufacturing locations of the applicable subject inventions.

(d) Within 60 days of the date of this order, the Secretary of Commerce, through the Director of the National Institute of Standards and Technology (NIST) and in consultation with the Office of Management and Budget (OMB), should develop award terms and conditions regarding the reporting requirements in subsections (a) through (c) of this section to be implemented by each awarding agency identified in section 3(a) of this order. Award terms and conditions shall ensure that the reporting of the information specified in subsections (b) and (c) of this section protects business confidential information, consistent with 35 U.S.C. 202(c)(5), while providing increased visibility to taxpayers on the use of Federal R&D funding in support of domestic manufacturing and job creation.

(e) The Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, shall consider developing an action plan, including resource requirements, to transition all agencies identified in section 3(a) of this order to the iEdison reporting system to track unclassified subject inventions, patents, and related utilization reports by calendar year 2025. The Secretary of Commerce shall submit the action plan to the Director of OMB within 1 year of the date of this order.

(f) Not later than 120 days after issuance of any final regulations implementing the action plan described in subsection (e) of this section, the heads of agencies identified in section 3(a) of this order shall report to the Director of OMB and the Director of OSTP on steps their respective agencies have taken to transition all unclassified reporting to iEdison by the end of calendar year 2025. These reports may include resource needs and timelines for implementation.

(g) Within 180 days of the date of this order, the Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, should develop common invention utilization questions (utilization questions), allowing agencies to add agency-specific questions.

(i) The utilization questions should be used by all agencies by May 1, 2024, for subject inventions that a Federal R&D funding agreement recipient has elected to retain title on or after the date of this order.

(ii) The utilization questions should require information on the locations where subject inventions are produced or are used to produce a product.

(iii) The Secretary of Commerce, through the Director of NIST, and the heads of other agencies should aim to minimize the reporting burden on recipients of Federal R&D funding agreements associated with the utilization questions, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and applicable OMB guidance.

(h) Within 2 years after the date of this order and annually thereafter, the heads of agencies identified in section 3(a) of this order shall submit

reports to the Made in America Director on the utilization of inventions that were developed through their previous R&D funding agreements and reported after the date of this order, including where products embodying a subject invention or produced through the use of a subject invention were manufactured.

Sec. 5. *Securing Critical and Emerging Technologies Through Domestic Manufacturing.* (a) Within 90 days of the date of this order, the heads of agencies identified in section 3(a) of this order shall consider whether ''exceptional circumstances'' exist warranting a determination that a restriction of the right to retain title to any subject invention funded by their respective agencies' R&D funding agreements will better promote the policy and objectives of the Bayh-Dole Act, as appropriate and consistent with applicable law, including 35 U.S.C. 202(a). Such consideration shall include evaluation of whether ''exceptional circumstances'' exist to warrant the extension of the requirement to manufacture ''substantially in the United States'' to recipients of Federal R&D funding agreements, to non-exclusive licensees of subject inventions, and for use or sale of subject inventions outside the United States, as appropriate and consistent with applicable law, including 35 U.S.C. 202(a). In considering the issuance of such determinations for these purposes, the heads of agencies identified in section 3(a) of this order shall:

(i) consider measures for technologies important to the United States economy and national security, including critical and emerging technologies such as energy storage, quantum information science, artificial intelligence and machine learning, semiconductors and microelectronics, and advanced manufacturing; and

(ii) consider narrowly tailoring terms related to enhanced United States manufacturing while encouraging technology transfer and commercialization, and allowing small businesses and nonprofit organizations to retain ownership of and commercialize their federally funded subject inventions.

(b) The heads of agencies identified in section 3(a) of this order shall consider whether other measures are needed to promote domestic manufacturing of subject inventions funded by their respective agencies.

Sec. 6. *Implementation of this Order.* (a) Within 2 years of the date of this order and annually thereafter for 5 years, the heads of agencies identified in section 3(a) of this order shall submit a report on their respective agencies' implementation of this order to the Director of OMB and the Director of OSTP.

(b) Each report shall include, to the extent possible, a review of this order's effectiveness in using the R&D funding agreements of the agencies identified in section 3(a) of this order to support domestic manufacturing, United States industrial competitiveness, and job creation.

(c) Each report shall include, to the extent possible, identification of any challenges to implementation of this order or to the effectiveness of this order in accomplishing the policy goals described in section 1 of this order, as well as recommendations to address such challenges.

Sec. 7. *Improving the Waiver Process.* (a) Under the Bayh-Dole Act, agencies may waive the requirement that certain products embodying the subject invention or produced through the use of the subject invention be ''manufactured substantially in the United States'' if, as specified in 35

U.S.C. 204, ''reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States'' or ''under the circumstances domestic manufacture is not commercially feasible.''

(b) Every agency should consider developing a process by which the agency may waive the domestic manufacturing requirements for agency-funded technology or technology developed under an agency funding opportunity without a request from a recipient of a Federal R&D funding agreement. As part of its process, an agency should seek concurrence from the Made in America Director to waive the domestic manufacturing requirements, and should set forth specific factors that may support a waiver, including whether the manufacture of the technology outside the United States is in the economic or national security interest of the United States.

(c) The heads of agencies identified in section 3(a) of this order shall ensure that the waiver process for their agency is rigorous, timely, transparent, and consistent, with due regard for all applicable authorities, including Executive Order 14005 of January 25, 2021 (Ensuring the Future Is Made in All of America by All of America's Workers), and the Bayh-Dole Act's requirement that a waiver be available when reasonable but unsuccessful efforts have been made to license to a company that could substantially manufacture in the United States, or when domestic manufacture is not commercially feasible.

(d) The Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, the NSTC Lab-to-Market Subcommittee, and the Made in America Director, shall provide guidance to agencies on the factors and considerations that should be weighed in determining whether domestic manufacturing is not commercially feasible. Guidance shall be designed to help applicants understand the factors an agency will consider when evaluating a waiver application, and should ensure that a determination of the commercial feasibility of manufacturing abroad is not based on substandard or unacceptable working conditions. Within 90 days of the date of this order, the Secretary of Commerce, through the Director of NIST, shall make the guidance available for public comment.

(e) Within 90 days of the date of this order, the Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, shall develop common waiver application questions for use by all agencies.

(i) The common waiver application questions should include as relevant criteria, as appropriate and consistent with applicable law:

(A) how the waiver will be used;

(B) why it is important that the subject invention be brought to market;

(C) any potential economic and national security impacts of manufacturing the subject invention abroad;

(D) the benefits that will accrue to domestic manufacturing and United States jobs as a result of the subject invention being brought to market;

(E) whether the applicant is proposing an exclusive or non-exclusive license; and

(F) the conditions under which the subject invention would be manufactured abroad, including unionization of workplaces, health and safety standards, labor and wage laws, and environmental impacts.

(ii) Given the need to maintain agency flexibility, the heads of agencies identified in section 3(a) of this order may add questions to the common waiver application questions, but they should do so sparingly and only as needed to accomplish the policy set forth in this order within their respective agencies' existing authorities.

(f) The heads of agencies identified in section 3(a) of this order shall adopt the common waiver application questions, to the extent consistent with applicable law.

(g) The heads of agencies identified in section 3(a) of this order should acknowledge receipt of waiver applications within 10 business days, to the extent practicable. Once an applicant submits a waiver request application, the reviewing agency should seek to finalize its decision, including negotiations with the applicant as needed, as soon as possible.

(h) Within 270 days of the date of this order, the heads of agencies identified in section 3(a) of this order shall establish agency guidelines for negotiating with waiver applicants to retain as much value or benefit to the United States as possible, as appropriate and consistent with applicable law, while considering technical, business, social, environmental, and economic realities. In assessing a waiver's value to the United States economy, the heads of agencies identified in section 3(a) of this order should consider, as appropriate and in addition to any other relevant factors, potential benefits to domestic manufacturing competitiveness, to United States job creation, and to United States economic and national security.

(i) The heads of agencies identified in section 3(a) of this order should consider limiting waivers to applicants that commit to manufacture in locations that maintain a market economy and for specific agreed-upon purposes.

(ii) The heads of agencies identified in section 3(a) of this order should expect waiver applicants to deliver alternative benefits to the United States as part of an agreement to grant the waiver. Consideration of alternative benefits may include direct or indirect investment in domestic plants and equipment, the creation of high-quality domestic jobs, or further domestic development of the subject invention.

(i) Beginning in fiscal year 2024 and on an annual basis thereafter, the heads of agencies identified in section 3(a) of this order shall provide to the Secretary of Commerce, through the Interagency Working Group for Bayh-Dole, a summary of each waiver application received, approved, and rejected. The summary shall include the terms of any approved waiver and the processing time needed to reach a decision.

(i) The Secretary of Commerce, through the Interagency Working Group for Bayh-Dole, shall publish a periodic summary of the waiver applications in aggregate that describes common reasons for waiver requests, processing times by agency, and recommended policy responses to common challenges.

(ii) Agencies shall ensure that the information submitted for publication to the Secretary of Commerce, through the Interagency Working Group for Bayh-Dole, appropriately protects business confidential and sensitive

information provided by waiver applicants as part of their justification for the waiver, consistent with 35 U.S.C. 202(c)(5). However, the names of applicants seeking a waiver and a summary of the benefits the waiver recipients will provide to the United States should be made available to the public, to the extent permitted by law.

Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
July 28, 2023.

Executive Order 14105 of August 9, 2023

Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that countries of concern are engaged in comprehensive, long-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries' military, intelligence, surveillance, or cyber-enabled capabilities. Moreover, these countries eliminate barriers between civilian and commercial sectors and military and defense industrial sectors, not just through research and development, but also by acquiring and diverting the world's cutting-edge technologies, for the purposes of achieving military dominance. Rapid advancement in semiconductors and microelectronics, quantum information technologies, and artificial intelligence capabilities by these countries significantly enhances their ability to conduct activities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will accelerate the development of advanced computational capabilities that will enable new applications that pose significant national security risks, such as the development of more sophisticated

weapons systems, breaking of cryptographic codes, and other applications that could provide these countries with military advantages.

As part of this strategy of advancing the development of these sensitive technologies and products, countries of concern are exploiting or have the ability to exploit certain United States outbound investments, including certain intangible benefits that often accompany United States investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. The commitment of the United States to open investment is a cornerstone of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, innovation, and productivity, and the United States supports cross-border investment, where not inconsistent with the protection of United States national security interests. However, certain United States investments may accelerate and increase the success of the development of sensitive technologies and products in countries that develop them to counter United States and allied capabilities.

I therefore find that advancement by countries of concern in sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the United States, which has its source in whole or substantial part outside the United States, and that certain United States investments risk exacerbating this threat. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

Section 1. *Notifiable and Prohibited Transactions.* (a) To assist in addressing the national emergency declared in this order, the Secretary of the Treasury (Secretary), in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant executive departments and agencies (agencies), shall issue, subject to public notice and comment, regulations that require United States persons to provide notification of information relative to certain transactions involving covered foreign persons (notifiable transactions) and that prohibit United States persons from engaging in certain other transactions involving covered foreign persons (prohibited transactions).

(b) The regulations issued under this section shall identify categories of notifiable transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines may contribute to the threat to the national security of the United States identified in this order. The regulations shall require United States persons to notify the Department of the Treasury of each such transaction and include relevant information on the transaction in each such notification.

(c) The regulations issued under this section shall identify categories of prohibited transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines pose a particularly acute national security threat because of their potential to significantly advance the military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern. The regulations shall prohibit

United States persons from engaging, directly or indirectly, in such transactions.

Sec. 2. *Duties of the Secretary*. In carrying out this order, the Secretary shall, as appropriate:

(a) communicate with the Congress and the public with respect to the implementation of this order;

(b) consult with the Secretary of Commerce on industry engagement and analysis of notified transactions;

(c) consult with the Secretary of State, the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, and the Director of National Intelligence on the implications for military, intelligence, surveillance, or cyber-enabled capabilities of covered national security technologies and products and potential covered national security technologies and products;

(d) engage, together with the Secretary of State and the Secretary of Commerce, with allies and partners regarding the national security risks posed by countries of concern advancing covered national security technologies and products;

(e) consult with the Secretary of State on foreign policy considerations related to the implementation of this order, including but not limited to the issuance and amendment of regulations; and

(f) investigate, in consultation with the heads of relevant agencies, as appropriate, violations of this order or the regulations issued under this order and pursue available civil penalties for such violations.

Sec. 3. *Program Development.* Within 1 year of the effective date of the regulations issued under section 1 of this order, the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, shall assess whether to amend the regulations, including whether to adjust the definition of ''covered national security technologies and products'' to add or remove technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors. The Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, shall periodically review the effectiveness of the regulations thereafter.

Sec. 4. *Reports to the President.* Within 1 year of the effective date of the regulations issued under section 1 of this order and, as appropriate but no less than annually thereafter, the Secretary, in coordination with the Secretary of Commerce and in consultation with the heads of other relevant agencies and the Director of the Office of Management and Budget, as appropriate, shall provide the President, through the Assistant to the President for National Security Affairs:

(a) to the extent practicable, an assessment of the effectiveness of the measures imposed under this order in addressing threats to the national security of the United States described in this order; advancements by the countries of concern in covered national security technologies and products critical for such countries' military, intelligence, surveillance, or cyber-enabled capabilities; aggregate sector trends evident in notifiable transactions and related capital flows in covered national security technologies and products, drawing on analysis provided by the Secretary of Commerce, the

Director of National Intelligence, and the heads of other relevant agencies, as appropriate; and other relevant information obtained through the implementation of this order; and

(b) recommendations, as appropriate, regarding:

(i) modifications to this order, including the addition or removal of identified sectors or countries of concern, and any other modifications to avoid circumvention of this order and enhance its effectiveness; and

(ii) the establishment or expansion of other Federal programs relevant to the covered national security technologies and products, including with respect to whether any existing legal authorities should be used or new action should be taken to address the threat to the national security of the United States identified in this order.

Sec. 5. *Reports to the Congress.* The Secretary is authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 6. *Official United States Government Business.* Nothing in this order or the regulations issued under this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Sec. 7. *Confidentiality.* The regulations issued by the Secretary under this order shall address the confidentiality of information or documentary material submitted pursuant to this order, consistent with applicable law.

Sec. 8. *Additional Notifications and Prohibitions.* (a) Any conspiracy formed to violate any regulation issued under this order is prohibited.

(b) Subject to the regulations issued under this order, any action that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order or any regulation issued under this order is prohibited.

(c) In the regulations issued under this order, the Secretary may prohibit United States persons from knowingly directing transactions if such transactions would be prohibited transactions pursuant to this order if engaged in by a United States person.

(d) In the regulations issued under this order, the Secretary may require United States persons to:

(i) provide notification to the Department of the Treasury of any transaction by a foreign entity controlled by such United States person that would be a notifiable transaction if engaged in by a United States person; and

(ii) take all reasonable steps to prohibit and prevent any transaction by a foreign entity controlled by such United States person that would be a prohibited transaction if engaged in by a United States person.

Sec. 9. *Definitions.* For purposes of this order:

(a) the term ''country of concern'' means a country or territory listed in the Annex to this order that the President has identified to be engaging in a comprehensive, long-term strategy that directs, facilitates, or otherwise supports advancements in sensitive technologies and products that are critical to such country's military, intelligence, surveillance, or cyber-enabled

capabilities to counter United States capabilities in a way that threatens the national security of the United States;

(b) the term ''covered foreign person'' means a person of a country of concern who or that is engaged in activities, as identified in the regulations issued under this order, involving one or more covered national security technologies and products;

(c) the term ''covered national security technologies and products'' means sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern, as determined by the Secretary in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies. Where applicable, ''covered national security technologies and products'' may be limited by reference to certain end-uses of those technologies or products;

(d) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(e) the term ''person of a country of concern'' means:

(i) any individual that is not a United States person and is a citizen or permanent resident of a country of concern;

(ii) any entity organized under the laws of a country of concern or with a principal place of business in a country of concern;

(iii) the government of each country of concern, including any political subdivision, political party, agency, or instrumentality thereof, or any person owned, controlled, or directed by, or acting for or on behalf of the government of such country of concern; or

(iv) any entity owned by a person identified in subsections (e)(i) through (e)(iii) of this section;

(f) the term ''person'' means an individual or entity;

(g) the term ''relevant agencies'' includes the Departments of State, Defense, Justice, Commerce, Energy, and Homeland Security, the Office of the United States Trade Representative, the Office of Science and Technology Policy, the Office of the Director of National Intelligence, the Office of the National Cyber Director, and any other department, agency, or office the Secretary determines appropriate; and

(h) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of any such entity, and any person in the United States.

Sec. 10. *General Provisions*. (a) The Secretary is authorized to take such actions and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order, including to:

(i) promulgate rules and regulations, including elaborating upon the definitions contained in section 9 of this order for purposes of the regulations issued under this order and further prescribing definitions of other terms as necessary to implement this order;

(ii) investigate and make requests for information relative to notifiable or prohibited transactions from parties to such transactions or other relevant persons at any time, including through the use of civil administrative subpoenas as appropriate;

(iii) nullify, void, or otherwise compel the divestment of any prohibited transaction entered into after the effective date of the regulations issued under this order; and

(iv) refer potential criminal violations of this order or the regulations issued under this order to the Attorney General.

(b) Notwithstanding any other provision of this order, the Secretary is authorized to exempt from applicable prohibitions or notification requirements any transaction or transactions determined by the Secretary, in consultation with the heads of relevant agencies, as appropriate, to be in the national interest of the United States.

(c) To the extent consistent with applicable law, the Secretary may redelegate any functions authorized hereunder within the Department of the Treasury. All agencies of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this order.

(d) If any provision of this order, or the application of any provision of this order to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

(e) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
August 9, 2023.

Annex

The People's Republic of China

The Special Administrative Region of Hong Kong

The Special Administrative Region of Macau

Executive Order 14106 of August 14, 2023

United States Coast Guard Officer Personnel Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to delegate certain functions concerning the appointment, promotion, separation, and retirement of commissioned officers of the United States Coast Guard, it is hereby ordered as follows:

Section 1. The Secretary of Homeland Security is directed to perform, without approval, ratification, or other action by the President, the following functions vested in the President:

(a) the authority vested in the President by section 2118(a) of title 14, United States Code, to approve, modify, or disapprove the report of a selection board;

(b) the authority vested in the President by sections 2118(b) and 2122(a) of title 14, United States Code, to remove a name of an officer from a selection board report or a list of selectees;

(c) the authority vested in the President by section 2101 of title 14, United States Code, to appoint officers from the categories described in section 2101(a)(1) of title 14, United States Code, to the grades of ensign, lieutenant (junior grade), and lieutenant, and to accept the resignations of officers appointed pursuant to section 2101 of title 14, United States Code;

(d) the authority vested in the President by section 2121(e) of title 14, United States Code, to appoint officers in the grades of lieutenant (junior grade) and lieutenant;

(e) the authority vested in the President by section 2104(a) of title 14, United States Code, to make temporary appointments not above lieutenant in the Regular Coast Guard and Coast Guard Reserve;

(f) the authority vested in the President by section 2150(f) of title 14, United States Code, to approve the report of a board convened to recommend for continuation on active duty officers serving in the grade of captain;

(g) the authority vested in the President by section 571(b) of title 10, United States Code, to appoint by commission regular chief warrant officers in the Coast Guard; and

(h) the authority vested in the President by sections 12241(b) and 571(b) of title 10, United States Code, to appoint by commission reserve chief warrant officers in the Coast Guard.

Sec. 2. (a) During a time of war or national emergency, the Secretary of Homeland Security is directed to perform the authority vested in the President by section 2125 of title 14, United States Code, to suspend the operation of any law relating to the selection, promotion, or involuntary separation of officers of the Coast Guard, and to temporarily promote officers serving on active duty and chief warrant officers serving on active duty, as authorized by section 2125 of title 14, United States Code, without the approval, ratification, or other action by the President.

(b) During a time of war or national emergency, the Secretary of Homeland Security is directed to perform the authority vested in the President

by section 3733 of title 14, United States Code, to suspend the operation of subchapter II of chapter 37 of title 14, United States Code, concerning officers of the Coast Guard Reserve without the approval, ratification, or other action by the President.

(c) The authority delegated to the Secretary of Homeland Security by this section may not be exercised during the time of a national emergency declared by the President, unless the exercise of any such authority is specifically directed by the President in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631).

(d) The Secretary of Homeland Security shall ensure that actions taken pursuant to the authority delegated by this section are accounted for as required by section 401 of the National Emergencies Act (50 U.S.C. 1641).

Sec. 3. All actions heretofore taken by the President with respect to the matters affected by this order and in force at the time of issuance of this order, including any regulations prescribed or approved by the President with respect to such matters, shall, except as they may be inconsistent with the provisions of this order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

Sec. 4. As used in this order, the term ''functions'' embraces duties, powers, responsibilities, authority, or discretion, and the term ''perform'' may be construed to mean ''exercise.''

Sec. 5. Whenever the entire Coast Guard operates as a service in the Navy, the references to the Secretary of Homeland Security in sections 1 and 2 of this order shall be deemed to be references to the Secretary of Defense.

Sec. 6. If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

August 14, 2023.

Executive Order 14107 of September 6, 2023

Exemption of Paul H. Maurer From Mandatory Separation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 8425(e) of title 5, United States Code, it is hereby ordered as follows:

Section 1. Consistent with section 8425(e) of title 5, United States Code, I hereby determine that the public interest requires that Paul H. Maurer, the current Special Agent in Charge of the George W. Bush Protective Detail in Dallas, Texas, shall be exempted from automatic separation under section 8425(b)(1) of title 5, United States Code. The Director of the United States Secret Service retains all applicable supervisory authority over Special Agent Maurer, including authorities vested in him pursuant to chapter 75 of title 5, United States Code.

Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
September 6, 2023.

Executive Order 14108 of September 20, 2023

Ensuring the People of East Palestine Are Protected Now and in the Future

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* On the evening of February 3, 2023, a Norfolk Southern Railway Company (Norfolk Southern) train carrying hazardous materials derailed in the Village of East Palestine, located in Columbiana County in the State of Ohio. At least 11 rail cars contained hazardous materials, including vinyl chloride, ethylene glycol monobutyl ether, ethyl-hexyl acrylate, butyl acrylates, benzene residue, and isobutylene. Some cars caught fire, and some spilled their loads onto the ground. These substances traveled into local waterways, including Sulphur Run and Leslie Run, and flowed miles downstream. The Village's fire department and several other

fire departments responded. On the evening of February 5, 2023, responders observed a dramatic temperature increase in a derailed tanker rail car. Norfolk Southern expressed serious concern that the temperature change could lead to a catastrophic tanker rail car failure, which could cause an explosion with the potential of deadly shrapnel traveling up to 1 mile. The incident commander on the scene determined that the safest course of action was to conduct a controlled release of the chemicals.

It is critical that Norfolk Southern continue to be held fully accountable under the law for this disaster, and continue to provide resources to address the effects in East Palestine and surrounding communities.

My Administration has mobilized a robust, multi-agency effort to support the people of East Palestine, Ohio, and surrounding communities. Within hours of the Norfolk Southern train derailment, the Environmental Protection Agency (EPA) deployed a team to East Palestine to support State and local emergency and environmental response efforts. On February 21, 2023, EPA issued a Unilateral Administrative Order (UAO) for Removal Actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9606(a). Pursuant to the UAO, EPA is directing and supervising the cleanup to protect the health, safety, and future of the East Palestine community and other affected communities. Norfolk Southern and its contractors are performing the cleanup under the UAO. Since February 21, 2023, working closely with Federal, State, and local partners, EPA has led and continues to lead cleanup efforts, air quality monitoring, soil sampling, and water sampling to ensure the protection of human health and the environment, keep residents of East Palestine and nearby areas of Ohio and Pennsylvania updated on these and other ongoing efforts, and, importantly, hold Norfolk Southern fully accountable under CERCLA for the cleanup operation. More than 115,000 tons of contaminated soil and more than 33 million gallons of contaminated liquid have been shipped offsite for disposal. The EPA has built and manages an extensive air monitoring and sampling network that uses several different technologies and approaches to provide separate and redundant sources of data on air quality at the derailment site and throughout the area. In addition to monitoring, EPA's network continues to conduct analytical air sampling at many locations in the affected areas. Together, these efforts are designed to ensure that contamination from the site does not enter nearby communities. To date, EPA has collected more than 18,000 air samples and more than 3,000 soil samples. The EPA's State and local partners have collected more than 425 monitoring-well samples and more than 3,200 surface water samples, and have conducted 31 rounds of drinking water sampling. Available data show that no contaminants of concern have been detected at levels of concern in the air in the affected communities at sustained levels since the evacuation order was lifted. Almost no contaminants of concern have been detected at levels of concern in water in surface streams since early May of 2023. Treated municipal drinking water shows no detection of contaminants associated with the derailment. To date, sampling indicates that residential groundwater wells have not been affected by chemicals associated with the derailment.

The Department of Transportation (DOT) has been coordinating with and supporting the National Transportation Safety Board (NTSB) to investigate

the derailment. Officials from two DOT agencies, the Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA), also arrived on the scene within hours of the incident to investigate the causes of the derailment. The FRA is also assessing Norfolk Southern's compliance with rail safety regulations and scrutinizing Norfolk Southern's overall safety culture. The Federal Emergency Management Agency (FEMA) provided incident management and outreach support on the ground in East Palestine and has been closely coordinating with the Ohio Emergency Management Agency in furtherance of the multi-agency response and recovery effort. The Department of Health and Human Services (HHS), including through the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry, have also responded, including by deploying a team to conduct public health testing and assessments in the affected areas. The team has supported Federal, State, and local officials already on the ground to evaluate individuals who were exposed or potentially exposed to chemicals and help ensure timely communications to the public.

My Administration is committed to supporting the people of East Palestine and all those affected in surrounding areas of Ohio and Pennsylvania every step of the way, and continuing to hold Norfolk Southern fully accountable under the law.

Sec. 2. *Policy*. It is a continuing priority of my Administration to hold Norfolk Southern fully accountable under the law for this disaster and any of its long-term effects and to provide additional Federal assistance that the affected States, the people of East Palestine, and all those affected in surrounding communities may need.

Sec. 3. *Federal Implementation.* (a) The Department of Homeland Security, EPA, DOT, FEMA, FRA, PHMSA, and HHS are directed to use their authorities and available resources as appropriate to advance the policy established in section 2 of this order.

(b) Within 5 days of the date of this order, pursuant to section 503(b) of the Homeland Security Act of 2002, as amended (6 U.S.C. 313(b)), the Secretary of Homeland Security, through the Administrator of FEMA, shall designate a Federal Disaster Recovery Coordinator (Coordinator) to oversee long-term recovery efforts in the affected communities and conduct a comprehensive assessment of unmet needs of the affected communities in recovering from the derailment beyond the cleanup work directed by EPA. The Coordinator shall identify, in partnership with the State and East Palestine community, any unmet needs that are not addressed by Norfolk Southern and would qualify for Federal assistance, and shall immediately notify the relevant executive department or agency. The Coordinator shall repeat this assessment should Norfolk Southern stop meeting needs that it is currently addressing.

(c) The State of Ohio's request for a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.* (Stafford Act), shall be held in abeyance to allow the State time to submit information on needs that may arise in the future and cannot be addressed by Norfolk Southern, State, and local governments and therefore require Federal assistance under the Stafford Act. If the Administrator of FEMA receives such information from the

State, including with respect to a change in the nature of assistance provided by Norfolk Southern, the Administrator shall immediately assess and submit a recommendation on whether a major disaster declaration is warranted.

(d) The EPA shall continue to direct removal of contaminated soils and wastewater from the site. The EPA shall also ensure that any remaining contamination in surface stream sediments is addressed and that air and water monitoring continue. Within 30 days of the date of this order, EPA shall submit a report to the President on the cleanup efforts and whether Norfolk Southern continues to comply with EPA's UAO to address the imminent and substantial endangerment its derailment caused. The report shall also explain the status of air, soil, surface water, groundwater, and drinking water sampling and monitoring. The EPA shall submit an updated report to the President every 60 days thereafter until all cleanup, assessment, and monitoring work required by EPA's UAO has been completed.

(e) Within 60 days of the date of this order, HHS shall submit a report to the President that summarizes key conclusions from the public health testing and assessments that have been conducted to date and the resources HHS and the CDC have provided to address any health conditions related to the derailment.

(f) In coordination with the affected States, HHS shall continue to monitor the public health consequences of the derailment, including any long-term health issues in the affected communities. Based on that monitoring, and based on the development of any acute medical conditions related to the derailment, the Secretary of Health and Human Services shall consider whether the circumstances warrant a declaration of a public health emergency under 42 U.S.C. 247d and, if the Secretary makes such a declaration, the Secretary shall exercise all appropriate authorities made available by such a declaration. The Administrator of EPA shall also consider, in consultation with HHS, whether the circumstances constitute a public health emergency under 42 U.S.C. 9604(a).

(g) The HHS shall provide technical assistance to the States of Ohio and Pennsylvania in the event that either State considers submitting a proposal for services through the Medicaid program for individuals affected by the derailment, such as an experimental, pilot, or demonstration project under 42 U.S.C. 1315.

(h) Within 60 days of the date of this order, DOT shall submit a report to the President on the actions that DOT is taking in light of the East Palestine train derailment. This report shall be updated within 120 days of the final NTSB investigation; the updated report shall include DOT's preliminary set of follow-on actions, which could include rulemakings, inspection activities, or other actions to ensure accountability. Should the Congress provide DOT with broader authorities than now exist, such new authorities shall be identified and timelines established for action.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
September 20, 2023.

Executive Order 14109 of September 29, 2023

Continuance of Certain Federal Advisory Committees and Amendments to Other Executive Orders

By the authority vested in me as President by the Constitution and the laws of the United States of America, and consistent with chapter 10 of title 5, United States Code (commonly known as the Federal Advisory Committee Act), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2025.

(a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).

(b) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).

(c) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).

(d) Federal Advisory Council on Occupational Safety and Health; Executive Order 11612, as amended (Department of Labor).

(e) President's Export Council; Executive Order 12131, as amended (Department of Commerce).

(f) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor).

(g) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Homeland Security).

(h) National Industrial Security Program Policy Advisory Committee; Executive Order 12829, as amended (National Archives and Records Administration).

(i) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative).

(j) Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation; Executive Order 12915 (Environmental Protection Agency).

(k) National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation; Executive Order 12915 (Environmental Protection Agency).

(l) Good Neighbor Environmental Board; Executive Order 12916, as amended (Environmental Protection Agency).

(m) Presidential Advisory Council on HIV/AIDS; Executive Order 12963, as amended (Department of Health and Human Services).

(n) President's Committee for People with Intellectual Disabilities; Executive Order 12994, as amended (Department of Health and Human Services).

(o) Invasive Species Advisory Committee; Executive Order 13112, as amended (Department of the Interior).

(p) Advisory Board on Radiation and Worker Health; Executive Order 13179 (Department of Health and Human Services).

(q) National Infrastructure Advisory Council; Executive Order 13231, as amended (Department of Homeland Security).

(r) President's Council on Sports, Fitness, and Nutrition; Executive Order 13265, as amended (Department of Health and Human Services).

(s) Interagency Task Force on Veterans Small Business Development; Executive Order 13540 (Small Business Administration).

(t) State, Local, Tribal, and Private Sector (SLTPS) Policy Advisory Committee; Executive Order 13549 (National Archives and Records Administration).

(u) President's Advisory Council on Doing Business in Africa; Executive Order 13675, as amended (Department of Commerce).

(v) President's Council of Advisors on Science and Technology; Executive Order 14007, as amended (Department of Energy).

(w) White House Environmental Justice Advisory Council; Executive Order 14008 (Environmental Protection Agency).

(x) President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders; Executive Order 14031 (Department of Health and Human Services).

(y) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 14041 (Department of Education).

(z) Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics; Executive Order 14045 (Department of Education).

(aa) Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans; Executive Order 14050 (Department of Education).

(bb) President's Committee on the Arts and the Humanities; Executive Order 14084 (Institute of Museum and Library Services).

(cc) President's Advisory Council on African Diaspora Engagement in the United States; Executive Order 14089 (Department of State).

(dd) Commerce Spectrum Management Advisory Committee; initially established pursuant to Presidential Memorandum on Improving Spectrum Management for the 21st Century (November 29, 2004) (Department of Commerce).

(ee) Grand Staircase-Escalante National Monument Advisory Committee; Proclamation 6920 of September 18, 1996, as amended (Department of the Interior).

(ff) San Juan Islands National Monument Advisory Committee; Proclamation 8947 of March 25, 2013 (Department of the Interior).

(gg) Bears Ears National Monument Advisory Committee; Proclamation 9558 of December 28, 2016, as amended (Department of the Interior).

(hh) Gold Butte National Monument Advisory Committee; Proclamation 9559 of December 28, 2016 (Department of the Interior).

(ii) Avi Kwa Ame National Monument Advisory Committee; Proclamation 10533 of March 21, 2023 (Department of the Interior).

(jj) Baaj Nwaavjo I'tah Kukveni-Ancestral Footprints of the Grand Canyon National Monument Advisory Committee; Proclamation 10606 of August 8, 2023 (Department of the Interior).

(kk) National Space-Based Positioning, Navigation, and Timing Advisory Board; Space Policy Directive 7, ''The United States Space-Based Positioning, Navigation, and Timing Policy'' (January 15, 2021) (National Aeronautics and Space Administration).

Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under chapter 10 of title 5, United States Code, that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after each committee, in accordance with the regulations, guidelines, and procedures established by the Administrator of General Services.

Sec. 3. Sections 1 and 2 of Executive Order 14048 of September 30, 2021, are hereby superseded by sections 1 and 2 of this order.

Sec. 4. Executive Order 14031 of May 28, 2021, is amended as follows:

(a) in section 2(b), by striking ''and'' at the conclusion of subsection (vi), by striking the period at the conclusion of subsection (vii) and replacing it with ''; and'', and by inserting the following new subsection after subsection (vii):

''(viii) ways to expand national awareness of and share information about efforts to advance equity, justice, and opportunity for AA and NHPI communities.'';

(b) in section 2, by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting the following new subsection after subsection (c):

''(d) The members of the Commission shall function as liaisons and spokespersons on behalf of the Commission to relevant State, local, and private entities, and shall share information about the work of the Commission in order to advise the President regarding the development, monitoring, and coordination of executive branch efforts to advance equity, justice, and opportunity for AA and NHPI communities in the United States,

including efforts to close gaps in health, socioeconomic, employment, and educational outcomes.''; and

(c) in section 3, by striking subsection (f) and inserting, in lieu thereof, the following:

''(f) The Initiative shall coordinate with and support the existing regional network of Federal officials who facilitate improved communication, engagement, and coordination between the Federal Government and AA and NHPI communities throughout the United States (Regional Network). Agencies identified as participants in the Initiative shall designate regional agency employees to serve as representatives to the Regional Network and shall seek opportunities, consistent with applicable law and available resources, to provide support and resources to the Regional Network. The Executive Director shall coordinate the efforts of the Regional Network and may establish regular reporting and information-sharing activities between the Regional Network and the Initiative.''.

Sec. 5. Executive Order 14084 of September 30, 2022, is amended as follows:

(a) in section 2(b)(i), by striking ''25'' and inserting in lieu thereof ''30''; and

(b) in section 2, by redesignating subsections (f), (g), (h), and (i) as subsections (g), (h), (i), and (j), respectively, and by inserting after subsection (e) the following new subsection:

''(f) The Executive Director and the members of the Committee may function as liaisons and spokespersons on behalf of the Committee to relevant State, local, and private entities to share information about the work of the Committee in order to advise the President on the implementation of national engagement with Americans necessary to advance the arts, the humanities, and museum and library services.''.

Sec. 6. This order shall be effective September 30, 2023.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

September 29, 2023.

Executive Order 14110 of October 30, 2023

Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Artificial intelligence (AI) holds extraordinary potential for both promise and peril. Responsible AI use has the potential to help solve urgent challenges while making our world more prosperous, productive, innovative, and secure. At the same time, irresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security. Harnessing AI for good and realizing its myriad benefits requires mitigating its substantial risks. This endeavor demands a society-wide effort that includes government, the private sector, academia, and civil society.

My Administration places the highest urgency on governing the development and use of AI safely and responsibly, and is therefore advancing a coordinated, Federal Government-wide approach to doing so. The rapid speed at which AI capabilities are advancing compels the United States to lead in this moment for the sake of our security, economy, and society.

In the end, AI reflects the principles of the people who build it, the people who use it, and the data upon which it is built. I firmly believe that the power of our ideals; the foundations of our society; and the creativity, diversity, and decency of our people are the reasons that America thrived in past eras of rapid change. They are the reasons we will succeed again in this moment. We are more than capable of harnessing AI for justice, security, and opportunity for all.

Sec. 2. *Policy and Principles.* It is the policy of my Administration to advance and govern the development and use of AI in accordance with eight guiding principles and priorities. When undertaking the actions set forth in this order, executive departments and agencies (agencies) shall, as appropriate and consistent with applicable law, adhere to these principles, while, as feasible, taking into account the views of other agencies, industry, members of academia, civil society, labor unions, international allies and partners, and other relevant organizations:

(a) Artificial Intelligence must be safe and secure. Meeting this goal requires robust, reliable, repeatable, and standardized evaluations of AI systems, as well as policies, institutions, and, as appropriate, other mechanisms to test, understand, and mitigate risks from these systems before they are put to use. It also requires addressing AI systems' most pressing security risks—including with respect to biotechnology, cybersecurity, critical infrastructure, and other national security dangers—while navigating AI's opacity and complexity. Testing and evaluations, including post-deployment performance monitoring, will help ensure that AI systems function as intended, are resilient against misuse or dangerous modifications, are ethically developed and operated in a secure manner, and are compliant with applicable Federal laws and policies. Finally, my Administration will help develop effective labeling and content provenance mechanisms, so that Americans are able to determine when content is generated using AI and

when it is not. These actions will provide a vital foundation for an approach that addresses AI's risks without unduly reducing its benefits.

(b) Promoting responsible innovation, competition, and collaboration will allow the United States to lead in AI and unlock the technology's potential to solve some of society's most difficult challenges. This effort requires investments in AI-related education, training, development, research, and capacity, while simultaneously tackling novel intellectual property (IP) questions and other problems to protect inventors and creators. Across the Federal Government, my Administration will support programs to provide Americans the skills they need for the age of AI and attract the world's AI talent to our shores—not just to study, but to stay—so that the companies and technologies of the future are made in America. The Federal Government will promote a fair, open, and competitive ecosystem and marketplace for AI and related technologies so that small developers and entrepreneurs can continue to drive innovation. Doing so requires stopping unlawful collusion and addressing risks from dominant firms' use of key assets such as semiconductors, computing power, cloud storage, and data to disadvantage competitors, and it requires supporting a marketplace that harnesses the benefits of AI to provide new opportunities for small businesses, workers, and entrepreneurs.

(c) The responsible development and use of AI require a commitment to supporting American workers. As AI creates new jobs and industries, all workers need a seat at the table, including through collective bargaining, to ensure that they benefit from these opportunities. My Administration will seek to adapt job training and education to support a diverse workforce and help provide access to opportunities that AI creates. In the workplace itself, AI should not be deployed in ways that undermine rights, worsen job quality, encourage undue worker surveillance, lessen market competition, introduce new health and safety risks, or cause harmful labor-force disruptions. The critical next steps in AI development should be built on the views of workers, labor unions, educators, and employers to support responsible uses of AI that improve workers' lives, positively augment human work, and help all people safely enjoy the gains and opportunities from technological innovation.

(d) Artificial Intelligence policies must be consistent with my Administration's dedication to advancing equity and civil rights. My Administration cannot—and will not—tolerate the use of AI to disadvantage those who are already too often denied equal opportunity and justice. From hiring to housing to healthcare, we have seen what happens when AI use deepens discrimination and bias, rather than improving quality of life. Artificial Intelligence systems deployed irresponsibly have reproduced and intensified existing inequities, caused new types of harmful discrimination, and exacerbated online and physical harms. My Administration will build on the important steps that have already been taken—such as issuing the Blueprint for an AI Bill of Rights, the AI Risk Management Framework, and Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)—in seeking to ensure that AI complies with all Federal laws and to promote robust technical evaluations, careful oversight, engagement with affected communities, and rigorous regulation. It is necessary to hold those developing and deploying AI accountable to standards that protect against unlawful discrimination and abuse, including in the justice system and the

Federal Government. Only then can Americans trust AI to advance civil rights, civil liberties, equity, and justice for all.

(e) The interests of Americans who increasingly use, interact with, or purchase AI and AI-enabled products in their daily lives must be protected. Use of new technologies, such as AI, does not excuse organizations from their legal obligations, and hard-won consumer protections are more important than ever in moments of technological change. The Federal Government will enforce existing consumer protection laws and principles and enact appropriate safeguards against fraud, unintended bias, discrimination, infringements on privacy, and other harms from AI. Such protections are especially important in critical fields like healthcare, financial services, education, housing, law, and transportation, where mistakes by or misuse of AI could harm patients, cost consumers or small businesses, or jeopardize safety or rights. At the same time, my Administration will promote responsible uses of AI that protect consumers, raise the quality of goods and services, lower their prices, or expand selection and availability.

(f) Americans' privacy and civil liberties must be protected as AI continues advancing. Artificial Intelligence is making it easier to extract, reidentify, link, infer, and act on sensitive information about people's identities, locations, habits, and desires. Artificial Intelligence's capabilities in these areas can increase the risk that personal data could be exploited and exposed. To combat this risk, the Federal Government will ensure that the collection, use, and retention of data is lawful, is secure, and mitigates privacy and confidentiality risks. Agencies shall use available policy and technical tools, including privacy-enhancing technologies (PETs) where appropriate, to protect privacy and to combat the broader legal and societal risks—including the chilling of First Amendment rights—that result from the improper collection and use of people's data.

(g) It is important to manage the risks from the Federal Government's own use of AI and increase its internal capacity to regulate, govern, and support responsible use of AI to deliver better results for Americans. These efforts start with people, our Nation's greatest asset. My Administration will take steps to attract, retain, and develop public service-oriented AI professionals, including from underserved communities, across disciplines—including technology, policy, managerial, procurement, regulatory, ethical, governance, and legal fields—and ease AI professionals' path into the Federal Government to help harness and govern AI. The Federal Government will work to ensure that all members of its workforce receive adequate training to understand the benefits, risks, and limitations of AI for their job functions, and to modernize Federal Government information technology infrastructure, remove bureaucratic obstacles, and ensure that safe and rights-respecting AI is adopted, deployed, and used.

(h) The Federal Government should lead the way to global societal, economic, and technological progress, as the United States has in previous eras of disruptive innovation and change. This leadership is not measured solely by the technological advancements our country makes. Effective leadership also means pioneering those systems and safeguards needed to deploy technology responsibly—and building and promoting those safeguards with the rest of the world. My Administration will engage with international allies and partners in developing a framework to manage AI's risks, unlock AI's potential for good, and promote common approaches to

shared challenges. The Federal Government will seek to promote responsible AI safety and security principles and actions with other nations, including our competitors, while leading key global conversations and collaborations to ensure that AI benefits the whole world, rather than exacerbating inequities, threatening human rights, and causing other harms.

Sec. 3. *Definitions.* For purposes of this order:

(a) The term ''agency'' means each agency described in 44 U.S.C. 3502(1), except for the independent regulatory agencies described in 44 U.S.C. 3502(5).

(b) The term ''artificial intelligence'' or ''AI'' has the meaning set forth in 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

(c) The term ''AI model'' means a component of an information system that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

(d) The term ''AI red-teaming'' means a structured testing effort to find flaws and vulnerabilities in an AI system, often in a controlled environment and in collaboration with developers of AI. Artificial Intelligence red-teaming is most often performed by dedicated ''red teams'' that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.

(e) The term ''AI system'' means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

(f) The term ''commercially available information'' means any information or data about an individual or group of individuals, including an individual's or group of individuals' device or location, that is made available or obtainable and sold, leased, or licensed to the general public or to governmental or non-governmental entities.

(g) The term ''crime forecasting'' means the use of analytical techniques to attempt to predict future crimes or crime-related information. It can include machine-generated predictions that use algorithms to analyze large volumes of data, as well as other forecasts that are generated without machines and based on statistics, such as historical crime statistics.

(h) The term ''critical and emerging technologies'' means those technologies listed in the February 2022 Critical and Emerging Technologies List Update issued by the National Science and Technology Council (NSTC), as amended by subsequent updates to the list issued by the NSTC.

(i) The term ''critical infrastructure'' has the meaning set forth in section 1016(e) of the USA PATRIOT Act of 2001, 42 U.S.C. 5195c(e).

(j) The term ''differential-privacy guarantee'' means protections that allow information about a group to be shared while provably limiting the

improper access, use, or disclosure of personal information about particular entities.

(k) The term ''dual-use foundation model'' means an AI model that is trained on broad data; generally uses self-supervision; contains at least tens of billions of parameters; is applicable across a wide range of contexts; and that exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters, such as by:

(i) substantially lowering the barrier of entry for non-experts to design, synthesize, acquire, or use chemical, biological, radiological, or nuclear (CBRN) weapons;

(ii) enabling powerful offensive cyber operations through automated vulnerability discovery and exploitation against a wide range of potential targets of cyber attacks; or

(iii) permitting the evasion of human control or oversight through means of deception or obfuscation.

Models meet this definition even if they are provided to end users with technical safeguards that attempt to prevent users from taking advantage of the relevant unsafe capabilities.

(l) The term ''Federal law enforcement agency'' has the meaning set forth in section 21(a) of Executive Order 14074 of May 25, 2022 (Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety).

(m) The term ''floating-point operation'' means any mathematical operation or assignment involving floating-point numbers, which are a subset of the real numbers typically represented on computers by an integer of fixed precision scaled by an integer exponent of a fixed base.

(n) The term ''foreign person'' has the meaning set forth in section 5(c) of Executive Order 13984 of January 19, 2021 (Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities).

(o) The terms ''foreign reseller'' and ''foreign reseller of United States Infrastructure as a Service Products'' mean a foreign person who has established an Infrastructure as a Service Account to provide Infrastructure as a Service Products subsequently, in whole or in part, to a third party.

(p) The term ''generative AI'' means the class of AI models that emulate the structure and characteristics of input data in order to generate derived synthetic content. This can include images, videos, audio, text, and other digital content.

(q) The terms ''Infrastructure as a Service Product,'' ''United States Infrastructure as a Service Product,'' ''United States Infrastructure as a Service Provider,'' and ''Infrastructure as a Service Account'' each have the respective meanings given to those terms in section 5 of Executive Order 13984.

(r) The term ''integer operation'' means any mathematical operation or assignment involving only integers, or whole numbers expressed without a decimal point.

(s) The term ''Intelligence Community'' has the meaning given to that term in section 3.5(h) of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended.

(t) The term ''machine learning'' means a set of techniques that can be used to train AI algorithms to improve performance at a task based on data.

(u) The term ''model weight'' means a numerical parameter within an AI model that helps determine the model's outputs in response to inputs.

(v) The term ''national security system'' has the meaning set forth in 44 U.S.C. 3552(b)(6).

(w) The term ''omics'' means biomolecules, including nucleic acids, proteins, and metabolites, that make up a cell or cellular system.

(x) The term ''Open RAN'' means the Open Radio Access Network approach to telecommunications-network standardization adopted by the O–RAN Alliance, Third Generation Partnership Project, or any similar set of published open standards for multi-vendor network equipment interoperability.

(y) The term ''personally identifiable information'' has the meaning set forth in Office of Management and Budget (OMB) Circular No. A–130.

(z) The term ''privacy-enhancing technology'' means any software or hardware solution, technical process, technique, or other technological means of mitigating privacy risks arising from data processing, including by enhancing predictability, manageability, disassociability, storage, security, and confidentiality. These technological means may include secure multiparty computation, homomorphic encryption, zero-knowledge proofs, federated learning, secure enclaves, differential privacy, and synthetic-data-generation tools. This is also sometimes referred to as ''privacy-preserving technology.''

(aa) The term ''privacy impact assessment'' has the meaning set forth in OMB Circular No. A–130.

(bb) The term ''Sector Risk Management Agency'' has the meaning set forth in 6 U.S.C. 650(23).

(cc) The term ''self-healing network'' means a telecommunications network that automatically diagnoses and addresses network issues to permit self-restoration.

(dd) The term ''synthetic biology'' means a field of science that involves redesigning organisms, or the biomolecules of organisms, at the genetic level to give them new characteristics. Synthetic nucleic acids are a type of biomolecule redesigned through synthetic-biology methods.

(ee) The term ''synthetic content'' means information, such as images, videos, audio clips, and text, that has been significantly modified or generated by algorithms, including by AI.

(ff) The term ''testbed'' means a facility or mechanism equipped for conducting rigorous, transparent, and replicable testing of tools and technologies, including AI and PETs, to help evaluate the functionality, usability, and performance of those tools or technologies.

(gg) The term ''watermarking'' means the act of embedding information, which is typically difficult to remove, into outputs created by AI—including into outputs such as photos, videos, audio clips, or text—for the purposes of verifying the authenticity of the output or the identity or characteristics of its provenance, modifications, or conveyance.

Sec. 4. *Ensuring the Safety and Security of AI Technology.*

4.1. Developing Guidelines, Standards, and Best Practices for AI Safety and Security. (a) Within 270 days of the date of this order, to help ensure the development of safe, secure, and trustworthy AI systems, the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), in coordination with the Secretary of Energy, the Secretary of Homeland Security, and the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall:

(i) Establish guidelines and best practices, with the aim of promoting consensus industry standards, for developing and deploying safe, secure, and trustworthy AI systems, including:

(A) developing a companion resource to the AI Risk Management Framework, NIST AI 100–1, for generative AI;

(B) developing a companion resource to the Secure Software Development Framework to incorporate secure development practices for generative AI and for dual-use foundation models; and

(C) launching an initiative to create guidance and benchmarks for evaluating and auditing AI capabilities, with a focus on capabilities through which AI could cause harm, such as in the areas of cybersecurity and biosecurity.

(ii) Establish appropriate guidelines (except for AI used as a component of a national security system), including appropriate procedures and processes, to enable developers of AI, especially of dual-use foundation models, to conduct AI red-teaming tests to enable deployment of safe, secure, and trustworthy systems. These efforts shall include:

(A) coordinating or developing guidelines related to assessing and managing the safety, security, and trustworthiness of dual-use foundation models; and

(B) in coordination with the Secretary of Energy and the Director of the National Science Foundation (NSF), developing and helping to ensure the availability of testing environments, such as testbeds, to support the development of safe, secure, and trustworthy AI technologies, as well as to support the design, development, and deployment of associated PETs, consistent with section 9(b) of this order.

(b) Within 270 days of the date of this order, to understand and mitigate AI security risks, the Secretary of Energy, in coordination with the heads of other Sector Risk Management Agencies (SRMAs) as the Secretary of Energy may deem appropriate, shall develop and, to the extent permitted by law and available appropriations, implement a plan for developing the Department of Energy's AI model evaluation tools and AI testbeds. The Secretary shall undertake this work using existing solutions where possible, and shall develop these tools and AI testbeds to be capable of assessing near-term extrapolations of AI systems' capabilities. At a minimum, the Secretary shall develop tools to evaluate AI capabilities to generate outputs

that may represent nuclear, nonproliferation, biological, chemical, critical infrastructure, and energy-security threats or hazards. The Secretary shall do this work solely for the purposes of guarding against these threats, and shall also develop model guardrails that reduce such risks. The Secretary shall, as appropriate, consult with private AI laboratories, academia, civil society, and third-party evaluators, and shall use existing solutions.

4.2. Ensuring Safe and Reliable AI. (a) Within 90 days of the date of this order, to ensure and verify the continuous availability of safe, reliable, and effective AI in accordance with the Defense Production Act, as amended, 50 U.S.C. 4501 *et seq.,* including for the national defense and the protection of critical infrastructure, the Secretary of Commerce shall require:

(i) Companies developing or demonstrating an intent to develop potential dual-use foundation models to provide the Federal Government, on an ongoing basis, with information, reports, or records regarding the following:

(A) any ongoing or planned activities related to training, developing, or producing dual-use foundation models, including the physical and cybersecurity protections taken to assure the integrity of that training process against sophisticated threats;

(B) the ownership and possession of the model weights of any dual-use foundation models, and the physical and cybersecurity measures taken to protect those model weights; and

(C) the results of any developed dual-use foundation model's performance in relevant AI red-team testing based on guidance developed by NIST pursuant to subsection 4.1(a)(ii) of this section, and a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security. Prior to the development of guidance on red-team testing standards by NIST pursuant to subsection 4.1(a)(ii) of this section, this description shall include the results of any red-team testing that the company has conducted relating to lowering the barrier to entry for the development, acquisition, and use of biological weapons by non-state actors; the discovery of software vulnerabilities and development of associated exploits; the use of software or tools to influence real or virtual events; the possibility for self-replication or propagation; and associated measures to meet safety objectives; and

(ii) Companies, individuals, or other organizations or entities that acquire, develop, or possess a potential large-scale computing cluster to report any such acquisition, development, or possession, including the existence and location of these clusters and the amount of total computing power available in each cluster.

(b) The Secretary of Commerce, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence, shall define, and thereafter update as needed on a regular basis, the set of technical conditions for models and computing clusters that would be subject to the reporting requirements of subsection 4.2(a) of this section. Until such technical conditions are defined, the Secretary shall require compliance with these reporting requirements for:

(i) any model that was trained using a quantity of computing power greater than 10^{26} integer or floating-point operations, or using primarily

biological sequence data and using a quantity of computing power greater than 10^{23} integer or floating-point operations; and

(ii) any computing cluster that has a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum computing capacity of 10^{20} integer or floating-point operations per second for training AI.

(c) Because I find that additional steps must be taken to deal with the national emergency related to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended by Executive Order 13757 of December 28, 2016 (Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities), and further amended by Executive Order 13984, to address the use of United States Infrastructure as a Service (IaaS) Products by foreign malicious cyber actors, including to impose additional record-keeping obligations with respect to foreign transactions and to assist in the investigation of transactions involving foreign malicious cyber actors, I hereby direct the Secretary of Commerce, within 90 days of the date of this order, to:

(i) Propose regulations that require United States IaaS Providers to submit a report to the Secretary of Commerce when a foreign person transacts with that United States IaaS Provider to train a large AI model with potential capabilities that could be used in malicious cyber-enabled activity (a ''training run''). Such reports shall include, at a minimum, the identity of the foreign person and the existence of any training run of an AI model meeting the criteria set forth in this section, or other criteria defined by the Secretary in regulations, as well as any additional information identified by the Secretary.

(ii) Include a requirement in the regulations proposed pursuant to subsection 4.2(c)(i) of this section that United States IaaS Providers prohibit any foreign reseller of their United States IaaS Product from providing those products unless such foreign reseller submits to the United States IaaS Provider a report, which the United States IaaS Provider must provide to the Secretary of Commerce, detailing each instance in which a foreign person transacts with the foreign reseller to use the United States IaaS Product to conduct a training run described in subsection 4.2(c)(i) of this section. Such reports shall include, at a minimum, the information specified in subsection 4.2(c)(i) of this section as well as any additional information identified by the Secretary.

(iii) Determine the set of technical conditions for a large AI model to have potential capabilities that could be used in malicious cyber-enabled activity, and revise that determination as necessary and appropriate. Until the Secretary makes such a determination, a model shall be considered to have potential capabilities that could be used in malicious cyber-enabled activity if it requires a quantity of computing power greater than 10^{26} integer or floating-point operations and is trained on a computing cluster that has a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum compute capacity of 10^{20} integer or floating-point operations per second for training AI.

(d) Within 180 days of the date of this order, pursuant to the finding set forth in subsection 4.2(c) of this section, the Secretary of Commerce shall propose regulations that require United States IaaS Providers to ensure that foreign resellers of United States IaaS Products verify the identity of any foreign person that obtains an IaaS account (account) from the foreign reseller. These regulations shall, at a minimum:

(i) Set forth the minimum standards that a United States IaaS Provider must require of foreign resellers of its United States IaaS Products to verify the identity of a foreign person who opens an account or maintains an existing account with a foreign reseller, including:

(A) the types of documentation and procedures that foreign resellers of United States IaaS Products must require to verify the identity of any foreign person acting as a lessee or sub-lessee of these products or services;

(B) records that foreign resellers of United States IaaS Products must securely maintain regarding a foreign person that obtains an account, including information establishing:

(1) the identity of such foreign person, including name and address;

(2) the means and source of payment (including any associated financial institution and other identifiers such as credit card number, account number, customer identifier, transaction identifiers, or virtual currency wallet or wallet address identifier);

(3) the electronic mail address and telephonic contact information used to verify a foreign person's identity; and

(4) the internet Protocol addresses used for access or administration and the date and time of each such access or administrative action related to ongoing verification of such foreign person's ownership of such an account; and

(C) methods that foreign resellers of United States IaaS Products must implement to limit all third-party access to the information described in this subsection, except insofar as such access is otherwise consistent with this order and allowed under applicable law;

(ii) Take into consideration the types of accounts maintained by foreign resellers of United States IaaS Products, methods of opening an account, and types of identifying information available to accomplish the objectives of identifying foreign malicious cyber actors using any such products and avoiding the imposition of an undue burden on such resellers; and

(iii) Provide that the Secretary of Commerce, in accordance with such standards and procedures as the Secretary may delineate and in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, may exempt a United States IaaS Provider with respect to any specific foreign reseller of their United States IaaS Products, or with respect to any specific type of account or lessee, from the requirements of any regulation issued pursuant to this subsection. Such standards and procedures may include a finding by the Secretary that such foreign reseller, account, or lessee complies with security best practices to otherwise deter abuse of United States IaaS Products.

(e) The Secretary of Commerce is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* as may be necessary to carry out the purposes of subsections 4.2(c) and (d) of this section. Such actions may include a requirement that United States IaaS Providers require foreign resellers of United States IaaS Products to provide United States IaaS Providers verifications relative to those subsections.

4.3. Managing AI in Critical Infrastructure and in Cybersecurity. (a) To ensure the protection of critical infrastructure, the following actions shall be taken:

(i) Within 90 days of the date of this order, and at least annually thereafter, the head of each agency with relevant regulatory authority over critical infrastructure and the heads of relevant SRMAs, in coordination with the Director of the Cybersecurity and Infrastructure Security Agency within the Department of Homeland Security for consideration of cross-sector risks, shall evaluate and provide to the Secretary of Homeland Security an assessment of potential risks related to the use of AI in critical infrastructure sectors involved, including ways in which deploying AI may make critical infrastructure systems more vulnerable to critical failures, physical attacks, and cyber attacks, and shall consider ways to mitigate these vulnerabilities. Independent regulatory agencies are encouraged, as they deem appropriate, to contribute to sector-specific risk assessments.

(ii) Within 150 days of the date of this order, the Secretary of the Treasury shall issue a public report on best practices for financial institutions to manage AI-specific cybersecurity risks.

(iii) Within 180 days of the date of this order, the Secretary of Homeland Security, in coordination with the Secretary of Commerce and with SRMAs and other regulators as determined by the Secretary of Homeland Security, shall incorporate as appropriate the AI Risk Management Framework, NIST AI 100–1, as well as other appropriate security guidance, into relevant safety and security guidelines for use by critical infrastructure owners and operators.

(iv) Within 240 days of the completion of the guidelines described in subsection 4.3(a)(iii) of this section, the Assistant to the President for National Security Affairs and the Director of OMB, in consultation with the Secretary of Homeland Security, shall coordinate work by the heads of agencies with authority over critical infrastructure to develop and take steps for the Federal Government to mandate such guidelines, or appropriate portions thereof, through regulatory or other appropriate action. Independent regulatory agencies are encouraged, as they deem appropriate, to consider whether to mandate guidance through regulatory action in their areas of authority and responsibility.

(v) The Secretary of Homeland Security shall establish an Artificial Intelligence Safety and Security Board as an advisory committee pursuant to section 871 of the Homeland Security Act of 2002 (Public Law 107–296).

The Advisory Committee shall include AI experts from the private sector, academia, and government, as appropriate, and provide to the Secretary of Homeland Security and the Federal Government's critical infrastructure community advice, information, or recommendations for improving security, resilience, and incident response related to AI usage in critical infrastructure.

(b) To capitalize on AI's potential to improve United States cyber defenses:

(i) The Secretary of Defense shall carry out the actions described in subsections 4.3(b)(ii) and (iii) of this section for national security systems, and the Secretary of Homeland Security shall carry out these actions for non-national security systems. Each shall do so in consultation with the heads of other relevant agencies as the Secretary of Defense and the Secretary of Homeland Security may deem appropriate.

(ii) As set forth in subsection 4.3(b)(i) of this section, within 180 days of the date of this order, the Secretary of Defense and the Secretary of Homeland Security shall, consistent with applicable law, each develop plans for, conduct, and complete an operational pilot project to identify, develop, test, evaluate, and deploy AI capabilities, such as large-language models, to aid in the discovery and remediation of vulnerabilities in critical United States Government software, systems, and networks.

(iii) As set forth in subsection 4.3(b)(i) of this section, within 270 days of the date of this order, the Secretary of Defense and the Secretary of Homeland Security shall each provide a report to the Assistant to the President for National Security Affairs on the results of actions taken pursuant to the plans and operational pilot projects required by subsection 4.3(b)(ii) of this section, including a description of any vulnerabilities found and fixed through the development and deployment of AI capabilities and any lessons learned on how to identify, develop, test, evaluate, and deploy AI capabilities effectively for cyber defense.

4.4. Reducing Risks at the Intersection of AI and CBRN Threats. (a) To better understand and mitigate the risk of AI being misused to assist in the development or use of CBRN threats—with a particular focus on biological weapons—the following actions shall be taken:

(i) Within 180 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy (OSTP), shall evaluate the potential for AI to be misused to enable the development or production of CBRN threats, while also considering the benefits and application of AI to counter these threats, including, as appropriate, the results of work conducted under section 8(b) of this order. The Secretary of Homeland Security shall:

(A) consult with experts in AI and CBRN issues from the Department of Energy, private AI laboratories, academia, and third-party model evaluators, as appropriate, to evaluate AI model capabilities to present CBRN threats—for the sole purpose of guarding against those threats—as well as options for minimizing the risks of AI model misuse to generate or exacerbate those threats; and

(B) submit a report to the President that describes the progress of these efforts, including an assessment of the types of AI models that may present CBRN risks to the United States, and that makes recommendations for regulating or overseeing the training, deployment, publication, or use of these models, including requirements for safety evaluations and guardrails for mitigating potential threats to national security.

(ii) Within 120 days of the date of this order, the Secretary of Defense, in consultation with the Assistant to the President for National Security Affairs and the Director of OSTP, shall enter into a contract with the National Academies of Sciences, Engineering, and Medicine to conduct—and submit to the Secretary of Defense, the Assistant to the President for National Security Affairs, the Director of the Office of Pandemic Preparedness and Response Policy, the Director of OSTP, and the Chair of the Chief Data Officer Council—a study that:

(A) assesses the ways in which AI can increase biosecurity risks, including risks from generative AI models trained on biological data, and makes recommendations on how to mitigate these risks;

(B) considers the national security implications of the use of data and datasets, especially those associated with pathogens and omics studies, that the United States Government hosts, generates, funds the creation of, or otherwise owns, for the training of generative AI models, and makes recommendations on how to mitigate the risks related to the use of these data and datasets;

(C) assesses the ways in which AI applied to biology can be used to reduce biosecurity risks, including recommendations on opportunities to coordinate data and high-performance computing resources; and

(D) considers additional concerns and opportunities at the intersection of AI and synthetic biology that the Secretary of Defense deems appropriate.

(b) To reduce the risk of misuse of synthetic nucleic acids, which could be substantially increased by AI's capabilities in this area, and improve biosecurity measures for the nucleic acid synthesis industry, the following actions shall be taken:

(i) Within 180 days of the date of this order, the Director of OSTP, in consultation with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Health and Human Services (HHS), the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of other relevant agencies as the Director of OSTP may deem appropriate, shall establish a framework, incorporating, as appropriate, existing United States Government guidance, to encourage providers of synthetic nucleic acid sequences to implement comprehensive, scalable, and verifiable synthetic nucleic acid procurement screening mechanisms, including standards and recommended incentives. As part of this framework, the Director of OSTP shall:

(A) establish criteria and mechanisms for ongoing identification of biological sequences that could be used in a manner that would pose a risk to the national security of the United States; and

(B) determine standardized methodologies and tools for conducting and verifying the performance of sequence synthesis procurement

screening, including customer screening approaches to support due diligence with respect to managing security risks posed by purchasers of biological sequences identified in subsection 4.4(b)(i)(A) of this section, and processes for the reporting of concerning activity to enforcement entities.

(ii) Within 180 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, in coordination with the Director of OSTP, and in consultation with the Secretary of State, the Secretary of HHS, and the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall initiate an effort to engage with industry and relevant stakeholders, informed by the framework developed under subsection 4.4(b)(i) of this section, to develop and refine for possible use by synthetic nucleic acid sequence providers:

(A) specifications for effective nucleic acid synthesis procurement screening;

(B) best practices, including security and access controls, for managing sequence-of-concern databases to support such screening;

(C) technical implementation guides for effective screening; and

(D) conformity-assessment best practices and mechanisms.

(iii) Within 180 days of the establishment of the framework pursuant to subsection 4.4(b)(i) of this section, all agencies that fund life-sciences research shall, as appropriate and consistent with applicable law, establish that, as a requirement of funding, synthetic nucleic acid procurement is conducted through providers or manufacturers that adhere to the framework, such as through an attestation from the provider or manufacturer. The Assistant to the President for National Security Affairs and the Director of OSTP shall coordinate the process of reviewing such funding requirements to facilitate consistency in implementation of the framework across funding agencies.

(iv) In order to facilitate effective implementation of the measures described in subsections 4.4(b)(i)–(iii) of this section, the Secretary of Homeland Security, in consultation with the heads of other relevant agencies as the Secretary of Homeland Security may deem appropriate, shall:

(A) within 180 days of the establishment of the framework pursuant to subsection 4.4(b)(i) of this section, develop a framework to conduct structured evaluation and stress testing of nucleic acid synthesis procurement screening, including the systems developed in accordance with subsections 4.4(b)(i)–(ii) of this section and implemented by providers of synthetic nucleic acid sequences; and

(B) following development of the framework pursuant to subsection 4.4(b)(iv)(A) of this section, submit an annual report to the Assistant to the President for National Security Affairs, the Director of the Office of Pandemic Preparedness and Response Policy, and the Director of OSTP on any results of the activities conducted pursuant to subsection 4.4(b)(iv)(A) of this section, including recommendations, if any, on how to strengthen nucleic acid synthesis procurement screening, including customer screening systems.

4.5. Reducing the Risks Posed by Synthetic Content. To foster capabilities for identifying and labeling synthetic content produced by AI systems, and to establish the authenticity and provenance of digital content, both synthetic and not synthetic, produced by the Federal Government or on its behalf:

(a) Within 240 days of the date of this order, the Secretary of Commerce, in consultation with the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall submit a report to the Director of OMB and the Assistant to the President for National Security Affairs identifying the existing standards, tools, methods, and practices, as well as the potential development of further science-backed standards and techniques, for:

(i) authenticating content and tracking its provenance;

(ii) labeling synthetic content, such as using watermarking;

(iii) detecting synthetic content;

(iv) preventing generative AI from producing child sexual abuse material or producing non-consensual intimate imagery of real individuals (to include intimate digital depictions of the body or body parts of an identifiable individual);

(v) testing software used for the above purposes; and

(vi) auditing and maintaining synthetic content.

(b) Within 180 days of submitting the report required under subsection 4.5(a) of this section, and updated periodically thereafter, the Secretary of Commerce, in coordination with the Director of OMB, shall develop guidance regarding the existing tools and practices for digital content authentication and synthetic content detection measures. The guidance shall include measures for the purposes listed in subsection 4.5(a) of this section.

(c) Within 180 days of the development of the guidance required under subsection 4.5(b) of this section, and updated periodically thereafter, the Director of OMB, in consultation with the Secretary of State; the Secretary of Defense; the Attorney General; the Secretary of Commerce, acting through the Director of NIST; the Secretary of Homeland Security; the Director of National Intelligence; and the heads of other agencies that the Director of OMB deems appropriate, shall—for the purpose of strengthening public confidence in the integrity of official United States Government digital content—issue guidance to agencies for labeling and authenticating such content that they produce or publish.

(d) The Federal Acquisition Regulatory Council shall, as appropriate and consistent with applicable law, consider amending the Federal Acquisition Regulation to take into account the guidance established under subsection 4.5 of this section.

4.6. Soliciting Input on Dual-Use Foundation Models with Widely Available Model Weights. When the weights for a dual-use foundation model are widely available—such as when they are publicly posted on the internet—there can be substantial benefits to innovation, but also substantial security risks, such as the removal of safeguards within the model. To address the risks and potential benefits of dual-use foundation models with widely available weights, within 270 days of the date of this order, the Secretary

of Commerce, acting through the Assistant Secretary of Commerce for Communications and Information, and in consultation with the Secretary of State, shall:

(a) solicit input from the private sector, academia, civil society, and other stakeholders through a public consultation process on potential risks, benefits, other implications, and appropriate policy and regulatory approaches related to dual-use foundation models for which the model weights are widely available, including:

(i) risks associated with actors fine-tuning dual-use foundation models for which the model weights are widely available or removing those models' safeguards;

(ii) benefits to AI innovation and research, including research into AI safety and risk management, of dual-use foundation models for which the model weights are widely available; and

(iii) potential voluntary, regulatory, and international mechanisms to manage the risks and maximize the benefits of dual-use foundation models for which the model weights are widely available; and

(b) based on input from the process described in subsection 4.6(a) of this section, and in consultation with the heads of other relevant agencies as the Secretary of Commerce deems appropriate, submit a report to the President on the potential benefits, risks, and implications of dual-use foundation models for which the model weights are widely available, as well as policy and regulatory recommendations pertaining to those models.

4.7. Promoting Safe Release and Preventing the Malicious Use of Federal Data for AI Training. To improve public data access and manage security risks, and consistent with the objectives of the Open, Public, Electronic, and Necessary Government Data Act (title II of Public Law 115–435) to expand public access to Federal data assets in a machine-readable format while also taking into account security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but, when combined with other available information, may pose such a risk:

(a) within 270 days of the date of this order, the Chief Data Officer Council, in consultation with the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence, shall develop initial guidelines for performing security reviews, including reviews to identify and manage the potential security risks of releasing Federal data that could aid in the development of CBRN weapons as well as the development of autonomous offensive cyber capabilities, while also providing public access to Federal Government data in line with the goals stated in the Open, Public, Electronic, and Necessary Government Data Act (title II of Public Law 115–435); and

(b) within 180 days of the development of the initial guidelines required by subsection 4.7(a) of this section, agencies shall conduct a security review of all data assets in the comprehensive data inventory required under 44 U.S.C. 3511(a)(1) and (2)(B) and shall take steps, as appropriate and consistent with applicable law, to address the highest-priority potential security risks that releasing that data could raise with respect to CBRN weapons, such as the ways in which that data could be used to train AI systems.

4.8. Directing the Development of a National Security Memorandum. To develop a coordinated executive branch approach to managing AI's security risks, the Assistant to the President for National Security Affairs and the Assistant to the President and Deputy Chief of Staff for Policy shall oversee an interagency process with the purpose of, within 270 days of the date of this order, developing and submitting a proposed National Security Memorandum on AI to the President. The memorandum shall address the governance of AI used as a component of a national security system or for military and intelligence purposes. The memorandum shall take into account current efforts to govern the development and use of AI for national security systems. The memorandum shall outline actions for the Department of Defense, the Department of State, other relevant agencies, and the Intelligence Community to address the national security risks and potential benefits posed by AI. In particular, the memorandum shall:

(a) provide guidance to the Department of Defense, other relevant agencies, and the Intelligence Community on the continued adoption of AI capabilities to advance the United States national security mission, including through directing specific AI assurance and risk-management practices for national security uses of AI that may affect the rights or safety of United States persons and, in appropriate contexts, non-United States persons; and

(b) direct continued actions, as appropriate and consistent with applicable law, to address the potential use of AI systems by adversaries and other foreign actors in ways that threaten the capabilities or objectives of the Department of Defense or the Intelligence Community, or that otherwise pose risks to the security of the United States or its allies and partners.

Sec. 5. *Promoting Innovation and Competition.*

5.1. Attracting AI Talent to the United States. (a) Within 90 days of the date of this order, to attract and retain talent in AI and other critical and emerging technologies in the United States economy, the Secretary of State and the Secretary of Homeland Security shall take appropriate steps to:

(i) streamline processing times of visa petitions and applications, including by ensuring timely availability of visa appointments, for noncitizens who seek to travel to the United States to work on, study, or conduct research in AI or other critical and emerging technologies; and

(ii) facilitate continued availability of visa appointments in sufficient volume for applicants with expertise in AI or other critical and emerging technologies.

(b) Within 120 days of the date of this order, the Secretary of State shall:

(i) consider initiating a rulemaking to establish new criteria to designate countries and skills on the Department of State's Exchange Visitor Skills List as it relates to the 2-year foreign residence requirement for certain J–1 nonimmigrants, including those skills that are critical to the United States;

(ii) consider publishing updates to the 2009 Revised Exchange Visitor Skills List (74 FR 20108); and

(iii) consider implementing a domestic visa renewal program under 22 CFR 41.111(b) to facilitate the ability of qualified applicants, including highly skilled talent in AI and critical and emerging technologies, to continue their work in the United States without unnecessary interruption.

(c) Within 180 days of the date of this order, the Secretary of State shall:

(i) consider initiating a rulemaking to expand the categories of nonimmigrants who qualify for the domestic visa renewal program covered under 22 CFR 41.111(b) to include academic J–1 research scholars and F–1 students in science, technology, engineering, and mathematics (STEM); and

(ii) establish, to the extent permitted by law and available appropriations, a program to identify and attract top talent in AI and other critical and emerging technologies at universities, research institutions, and the private sector overseas, and to establish and increase connections with that talent to educate them on opportunities and resources for research and employment in the United States, including overseas educational components to inform top STEM talent of nonimmigrant and immigrant visa options and potential expedited adjudication of their visa petitions and applications.

(d) Within 180 days of the date of this order, the Secretary of Homeland Security shall:

(i) review and initiate any policy changes the Secretary determines necessary and appropriate to clarify and modernize immigration pathways for experts in AI and other critical and emerging technologies, including O–1A and EB–1 noncitizens of extraordinary ability; EB–2 advanced-degree holders and noncitizens of exceptional ability; and startup founders in AI and other critical and emerging technologies using the International Entrepreneur Rule; and

(ii) continue its rulemaking process to modernize the H–1B program and enhance its integrity and usage, including by experts in AI and other critical and emerging technologies, and consider initiating a rulemaking to enhance the process for noncitizens, including experts in AI and other critical and emerging technologies and their spouses, dependents, and children, to adjust their status to lawful permanent resident.

(e) Within 45 days of the date of this order, for purposes of considering updates to the ''Schedule A'' list of occupations, 20 CFR 656.5, the Secretary of Labor shall publish a request for information (RFI) to solicit public input, including from industry and worker-advocate communities, identifying AI and other STEM-related occupations, as well as additional occupations across the economy, for which there is an insufficient number of ready, willing, able, and qualified United States workers.

(f) The Secretary of State and the Secretary of Homeland Security shall, consistent with applicable law and implementing regulations, use their discretionary authorities to support and attract foreign nationals with special skills in AI and other critical and emerging technologies seeking to work, study, or conduct research in the United States.

(g) Within 120 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of OSTP, shall develop and publish informational resources to better attract and retain experts in AI and other critical and emerging technologies, including:

(i) a clear and comprehensive guide for experts in AI and other critical and emerging technologies to understand their options for working in the United States, to be published in multiple relevant languages on AI.gov; and

(ii) a public report with relevant data on applications, petitions, approvals, and other key indicators of how experts in AI and other critical and emerging technologies have utilized the immigration system through the end of Fiscal Year 2023.

5.2. Promoting Innovation. (a) To develop and strengthen public-private partnerships for advancing innovation, commercialization, and risk-mitigation methods for AI, and to help promote safe, responsible, fair, privacy-protecting, and trustworthy AI systems, the Director of NSF shall take the following steps:

(i) Within 90 days of the date of this order, in coordination with the heads of agencies that the Director of NSF deems appropriate, launch a pilot program implementing the National AI Research Resource (NAIRR), consistent with past recommendations of the NAIRR Task Force. The program shall pursue the infrastructure, governance mechanisms, and user interfaces to pilot an initial integration of distributed computational, data, model, and training resources to be made available to the research community in support of AI-related research and development. The Director of NSF shall identify Federal and private sector computational, data, software, and training resources appropriate for inclusion in the NAIRR pilot program. To assist with such work, within 45 days of the date of this order, the heads of agencies whom the Director of NSF identifies for coordination pursuant to this subsection shall each submit to the Director of NSF a report identifying the agency resources that could be developed and integrated into such a pilot program. These reports shall include a description of such resources, including their current status and availability; their format, structure, or technical specifications; associated agency expertise that will be provided; and the benefits and risks associated with their inclusion in the NAIRR pilot program. The heads of independent regulatory agencies are encouraged to take similar steps, as they deem appropriate.

(ii) Within 150 days of the date of this order, fund and launch at least one NSF Regional Innovation Engine that prioritizes AI-related work, such as AI-related research, societal, or workforce needs.

(iii) Within 540 days of the date of this order, establish at least four new National AI Research Institutes, in addition to the 25 currently funded as of the date of this order.

(b) Within 120 days of the date of this order, to support activities involving high-performance and data-intensive computing, the Secretary of Energy, in coordination with the Director of NSF, shall, in a manner consistent with applicable law and available appropriations, establish a pilot program to enhance existing successful training programs for scientists, with the goal of training 500 new researchers by 2025 capable of meeting the rising demand for AI talent.

(c) To promote innovation and clarify issues related to AI and inventorship of patentable subject matter, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO Director) shall:

(i) within 120 days of the date of this order, publish guidance to USPTO patent examiners and applicants addressing inventorship and the use of AI, including generative AI, in the inventive process, including illustrative examples in which AI systems play different roles in inventive

processes and how, in each example, inventorship issues ought to be analyzed;

(ii) subsequently, within 270 days of the date of this order, issue additional guidance to USPTO patent examiners and applicants to address other considerations at the intersection of AI and IP, which could include, as the USPTO Director deems necessary, updated guidance on patent eligibility to address innovation in AI and critical and emerging technologies; and

(iii) within 270 days of the date of this order or 180 days after the United States Copyright Office of the Library of Congress publishes its forthcoming AI study that will address copyright issues raised by AI, whichever comes later, consult with the Director of the United States Copyright Office and issue recommendations to the President on potential executive actions relating to copyright and AI. The recommendations shall address any copyright and related issues discussed in the United States Copyright Office's study, including the scope of protection for works produced using AI and the treatment of copyrighted works in AI training.

(d) Within 180 days of the date of this order, to assist developers of AI in combatting AI-related IP risks, the Secretary of Homeland Security, acting through the Director of the National Intellectual Property Rights Coordination Center, and in consultation with the Attorney General, shall develop a training, analysis, and evaluation program to mitigate AI-related IP risks. Such a program shall:

(i) include appropriate personnel dedicated to collecting and analyzing reports of AI-related IP theft, investigating such incidents with implications for national security, and, where appropriate and consistent with applicable law, pursuing related enforcement actions;

(ii) implement a policy of sharing information and coordinating on such work, as appropriate and consistent with applicable law, with the Federal Bureau of Investigation; United States Customs and Border Protection; other agencies; State and local agencies; and appropriate international organizations, including through work-sharing agreements;

(iii) develop guidance and other appropriate resources to assist private sector actors with mitigating the risks of AI-related IP theft;

(iv) share information and best practices with AI developers and law enforcement personnel to identify incidents, inform stakeholders of current legal requirements, and evaluate AI systems for IP law violations, as well as develop mitigation strategies and resources; and

(v) assist the Intellectual Property Enforcement Coordinator in updating the Intellectual Property Enforcement Coordinator Joint Strategic Plan on Intellectual Property Enforcement to address AI-related issues.

(e) To advance responsible AI innovation by a wide range of healthcare technology developers that promotes the welfare of patients and workers in the healthcare sector, the Secretary of HHS shall identify and, as appropriate and consistent with applicable law and the activities directed in section 8 of this order, prioritize grantmaking and other awards, as well as undertake related efforts, to support responsible AI development and use, including:

(i) collaborating with appropriate private sector actors through HHS programs that may support the advancement of AI-enabled tools that develop personalized immune-response profiles for patients, consistent with section 4 of this order;

(ii) prioritizing the allocation of 2024 Leading Edge Acceleration Project cooperative agreement awards to initiatives that explore ways to improve healthcare-data quality to support the responsible development of AI tools for clinical care, real-world-evidence programs, population health, public health, and related research; and

(iii) accelerating grants awarded through the National Institutes of Health Artificial Intelligence/Machine Learning Consortium to Advance Health Equity and Researcher Diversity (AIM–AHEAD) program and showcasing current AIM–AHEAD activities in underserved communities.

(f) To advance the development of AI systems that improve the quality of veterans' healthcare, and in order to support small businesses' innovative capacity, the Secretary of Veterans Affairs shall:

(i) within 365 days of the date of this order, host two 3-month nationwide AI Tech Sprint competitions; and

(ii) as part of the AI Tech Sprint competitions and in collaboration with appropriate partners, provide participants access to technical assistance, mentorship opportunities, individualized expert feedback on products under development, potential contract opportunities, and other programming and resources.

(g) Within 180 days of the date of this order, to support the goal of strengthening our Nation's resilience against climate change impacts and building an equitable clean energy economy for the future, the Secretary of Energy, in consultation with the Chair of the Federal Energy Regulatory Commission, the Director of OSTP, the Chair of the Council on Environmental Quality, the Assistant to the President and National Climate Advisor, and the heads of other relevant agencies as the Secretary of Energy may deem appropriate, shall:

(i) issue a public report describing the potential for AI to improve planning, permitting, investment, and operations for electric grid infrastructure and to enable the provision of clean, affordable, reliable, resilient, and secure electric power to all Americans;

(ii) develop tools that facilitate building foundation models useful for basic and applied science, including models that streamline permitting and environmental reviews while improving environmental and social outcomes;

(iii) collaborate, as appropriate, with private sector organizations and members of academia to support development of AI tools to mitigate climate change risks;

(iv) take steps to expand partnerships with industry, academia, other agencies, and international allies and partners to utilize the Department of Energy's computing capabilities and AI testbeds to build foundation models that support new applications in science and energy, and for national security, including partnerships that increase community preparedness for climate-related risks, enable clean-energy deployment (including addressing delays in permitting reviews), and enhance grid reliability and resilience; and

(v) establish an office to coordinate development of AI and other critical and emerging technologies across Department of Energy programs and the 17 National Laboratories.

(h) Within 180 days of the date of this order, to understand AI's implications for scientific research, the President's Council of Advisors on Science and Technology shall submit to the President and make publicly available a report on the potential role of AI, especially given recent developments in AI, in research aimed at tackling major societal and global challenges. The report shall include a discussion of issues that may hinder the effective use of AI in research and practices needed to ensure that AI is used responsibly for research.

5.3. Promoting Competition. (a) The head of each agency developing policies and regulations related to AI shall use their authorities, as appropriate and consistent with applicable law, to promote competition in AI and related technologies, as well as in other markets. Such actions include addressing risks arising from concentrated control of key inputs, taking steps to stop unlawful collusion and prevent dominant firms from disadvantaging competitors, and working to provide new opportunities for small businesses and entrepreneurs. In particular, the Federal Trade Commission is encouraged to consider, as it deems appropriate, whether to exercise the Commission's existing authorities, including its rulemaking authority under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.,* to ensure fair competition in the AI marketplace and to ensure that consumers and workers are protected from harms that may be enabled by the use of AI.

(b) To promote competition and innovation in the semiconductor industry, recognizing that semiconductors power AI technologies and that their availability is critical to AI competition, the Secretary of Commerce shall, in implementing division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022, promote competition by:

(i) implementing a flexible membership structure for the National Semiconductor Technology Center that attracts all parts of the semiconductor and microelectronics ecosystem, including startups and small firms;

(ii) implementing mentorship programs to increase interest and participation in the semiconductor industry, including from workers in underserved communities;

(iii) increasing, where appropriate and to the extent permitted by law, the availability of resources to startups and small businesses, including:

(A) funding for physical assets, such as specialty equipment or facilities, to which startups and small businesses may not otherwise have access;

(B) datasets—potentially including test and performance data—collected, aggregated, or shared by CHIPS research and development programs;

(C) workforce development programs;

(D) design and process technology, as well as IP, as appropriate; and

(E) other resources, including technical and intellectual property assistance, that could accelerate commercialization of new technologies by startups and small businesses, as appropriate; and

(iv) considering the inclusion, to the maximum extent possible, and as consistent with applicable law, of competition-increasing measures in notices of funding availability for commercial research-and-development facilities focused on semiconductors, including measures that increase access to facility capacity for startups or small firms developing semiconductors used to power AI technologies.

(c) To support small businesses innovating and commercializing AI, as well as in responsibly adopting and deploying AI, the Administrator of the Small Business Administration shall:

(i) prioritize the allocation of Regional Innovation Cluster program funding for clusters that support planning activities related to the establishment of one or more Small Business AI Innovation and Commercialization Institutes that provide support, technical assistance, and other resources to small businesses seeking to innovate, commercialize, scale, or otherwise advance the development of AI;

(ii) prioritize the allocation of up to $2 million in Growth Accelerator Fund Competition bonus prize funds for accelerators that support the incorporation or expansion of AI-related curricula, training, and technical assistance, or other AI-related resources within their programming; and

(iii) assess the extent to which the eligibility criteria of existing programs, including the State Trade Expansion Program, Technical and Business Assistance funding, and capital-access programs—such as the 7(a) loan program, 504 loan program, and Small Business Investment Company (SBIC) program—support appropriate expenses by small businesses related to the adoption of AI and, if feasible and appropriate, revise eligibility criteria to improve support for these expenses.

(d) The Administrator of the Small Business Administration, in coordination with resource partners, shall conduct outreach regarding, and raise awareness of, opportunities for small businesses to use capital-access programs described in subsection 5.3(c) of this section for eligible AI-related purposes, and for eligible investment funds with AI-related expertise—particularly those seeking to serve or with experience serving underserved communities—to apply for an SBIC license.

Sec. 6. *Supporting Workers.* (a) To advance the Government's understanding of AI's implications for workers, the following actions shall be taken within 180 days of the date of this order:

(i) The Chairman of the Council of Economic Advisers shall prepare and submit a report to the President on the labor-market effects of AI.

(ii) To evaluate necessary steps for the Federal Government to address AI-related workforce disruptions, the Secretary of Labor shall submit to the President a report analyzing the abilities of agencies to support workers displaced by the adoption of AI and other technological advancements. The report shall, at a minimum:

(A) assess how current or formerly operational Federal programs designed to assist workers facing job disruptions—including unemployment insurance and programs authorized by the Workforce Innovation

and Opportunity Act (Public Law 113–128)—could be used to respond to possible future AI-related disruptions; and

(B) identify options, including potential legislative measures, to strengthen or develop additional Federal support for workers displaced by AI and, in consultation with the Secretary of Commerce and the Secretary of Education, strengthen and expand education and training opportunities that provide individuals pathways to occupations related to AI.

(b) To help ensure that AI deployed in the workplace advances employees' well-being:

(i) The Secretary of Labor shall, within 180 days of the date of this order and in consultation with other agencies and with outside entities, including labor unions and workers, as the Secretary of Labor deems appropriate, develop and publish principles and best practices for employers that could be used to mitigate AI's potential harms to employees' well-being and maximize its potential benefits. The principles and best practices shall include specific steps for employers to take with regard to AI, and shall cover, at a minimum:

(A) job-displacement risks and career opportunities related to AI, including effects on job skills and evaluation of applicants and workers;

(B) labor standards and job quality, including issues related to the equity, protected-activity, compensation, health, and safety implications of AI in the workplace; and

(C) implications for workers of employers' AI-related collection and use of data about them, including transparency, engagement, management, and activity protected under worker-protection laws.

(ii) After principles and best practices are developed pursuant to subsection (b)(i) of this section, the heads of agencies shall consider, in consultation with the Secretary of Labor, encouraging the adoption of these guidelines in their programs to the extent appropriate for each program and consistent with applicable law.

(iii) To support employees whose work is monitored or augmented by AI in being compensated appropriately for all of their work time, the Secretary of Labor shall issue guidance to make clear that employers that deploy AI to monitor or augment employees' work must continue to comply with protections that ensure that workers are compensated for their hours worked, as defined under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.,* and other legal requirements.

(c) To foster a diverse AI-ready workforce, the Director of NSF shall prioritize available resources to support AI-related education and AI-related workforce development through existing programs. The Director shall additionally consult with agencies, as appropriate, to identify further opportunities for agencies to allocate resources for those purposes. The actions by the Director shall use appropriate fellowship programs and awards for these purposes.

Sec. 7. *Advancing Equity and Civil Rights.*

7.1. Strengthening AI and Civil Rights in the Criminal Justice System. (a) To address unlawful discrimination and other harms that may be exacerbated by AI, the Attorney General shall:

(i) consistent with Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), Executive Order 14091, and 28 CFR 0.50–51, coordinate with and support agencies in their implementation and enforcement of existing Federal laws to address civil rights and civil liberties violations and discrimination related to AI;

(ii) direct the Assistant Attorney General in charge of the Civil Rights Division to convene, within 90 days of the date of this order, a meeting of the heads of Federal civil rights offices—for which meeting the heads of civil rights offices within independent regulatory agencies will be encouraged to join—to discuss comprehensive use of their respective authorities and offices to: prevent and address discrimination in the use of automated systems, including algorithmic discrimination; increase coordination between the Department of Justice's Civil Rights Division and Federal civil rights offices concerning issues related to AI and algorithmic discrimination; improve external stakeholder engagement to promote public awareness of potential discriminatory uses and effects of AI; and develop, as appropriate, additional training, technical assistance, guidance, or other resources; and

(iii) consider providing, as appropriate and consistent with applicable law, guidance, technical assistance, and training to State, local, Tribal, and territorial investigators and prosecutors on best practices for investigating and prosecuting civil rights violations and discrimination related to automated systems, including AI.

(b) To promote the equitable treatment of individuals and adhere to the Federal Government's fundamental obligation to ensure fair and impartial justice for all, with respect to the use of AI in the criminal justice system, the Attorney General shall, in consultation with the Secretary of Homeland Security and the Director of OSTP:

(i) within 365 days of the date of this order, submit to the President a report that addresses the use of AI in the criminal justice system, including any use in:

(A) sentencing;

(B) parole, supervised release, and probation;

(C) bail, pretrial release, and pretrial detention;

(D) risk assessments, including pretrial, earned time, and early release or transfer to home-confinement determinations;

(E) police surveillance;

(F) crime forecasting and predictive policing, including the ingestion of historical crime data into AI systems to predict high-density ''hot spots'';

(G) prison-management tools; and

(H) forensic analysis;

(ii) within the report set forth in subsection 7.1(b)(i) of this section:

(A) identify areas where AI can enhance law enforcement efficiency and accuracy, consistent with protections for privacy, civil rights, and civil liberties; and

(B) recommend best practices for law enforcement agencies, including safeguards and appropriate use limits for AI, to address the concerns set forth in section 13(e)(i) of Executive Order 14074 as well as the best practices and the guidelines set forth in section 13(e)(iii) of Executive Order 14074; and

(iii) supplement the report set forth in subsection 7.1(b)(i) of this section as appropriate with recommendations to the President, including with respect to requests for necessary legislation.

(c) To advance the presence of relevant technical experts and expertise (such as machine-learning engineers, software and infrastructure engineering, data privacy experts, data scientists, and user experience researchers) among law enforcement professionals:

(i) The interagency working group created pursuant to section 3 of Executive Order 14074 shall, within 180 days of the date of this order, identify and share best practices for recruiting and hiring law enforcement professionals who have the technical skills mentioned in subsection 7.1(c) of this section, and for training law enforcement professionals about responsible application of AI.

(ii) Within 270 days of the date of this order, the Attorney General shall, in consultation with the Secretary of Homeland Security, consider those best practices and the guidance developed under section 3(d) of Executive Order 14074 and, if necessary, develop additional general recommendations for State, local, Tribal, and territorial law enforcement agencies and criminal justice agencies seeking to recruit, hire, train, promote, and retain highly qualified and service-oriented officers and staff with relevant technical knowledge. In considering this guidance, the Attorney General shall consult with State, local, Tribal, and territorial law enforcement agencies, as appropriate.

(iii) Within 365 days of the date of this order, the Attorney General shall review the work conducted pursuant to section 2(b) of Executive Order 14074 and, if appropriate, reassess the existing capacity to investigate law enforcement deprivation of rights under color of law resulting from the use of AI, including through improving and increasing training of Federal law enforcement officers, their supervisors, and Federal prosecutors on how to investigate and prosecute cases related to AI involving the deprivation of rights under color of law pursuant to 18 U.S.C. 242.

7.2. Protecting Civil Rights Related to Government Benefits and Programs. (a) To advance equity and civil rights, consistent with the directives of Executive Order 14091, and in addition to complying with the guidance on Federal Government use of AI issued pursuant to section 10.1(b) of this order, agencies shall use their respective civil rights and civil liberties offices and authorities—as appropriate and consistent with applicable law—to prevent and address unlawful discrimination and other harms that result from uses of AI in Federal Government programs and benefits administration. This directive does not apply to agencies' civil or criminal enforcement authorities. Agencies shall consider opportunities to ensure that their respective civil rights and civil liberties offices are appropriately consulted on agency decisions regarding the design, development, acquisition, and use of AI in Federal Government programs and benefits administration. To

further these objectives, agencies shall also consider opportunities to increase coordination, communication, and engagement about AI as appropriate with community-based organizations; civil-rights and civil-liberties organizations; academic institutions; industry; State, local, Tribal, and territorial governments; and other stakeholders.

(b) To promote equitable administration of public benefits:

(i) The Secretary of HHS shall, within 180 days of the date of this order and in consultation with relevant agencies, publish a plan, informed by the guidance issued pursuant to section 10.1(b) of this order, addressing the use of automated or algorithmic systems in the implementation by States and localities of public benefits and services administered by the Secretary, such as to promote: assessment of access to benefits by qualified recipients; notice to recipients about the presence of such systems; regular evaluation to detect unjust denials; processes to retain appropriate levels of discretion of expert agency staff; processes to appeal denials to human reviewers; and analysis of whether algorithmic systems in use by benefit programs achieve equitable and just outcomes.

(ii) The Secretary of Agriculture shall, within 180 days of the date of this order and as informed by the guidance issued pursuant to section 10.1(b) of this order, issue guidance to State, local, Tribal, and territorial public-benefits administrators on the use of automated or algorithmic systems in implementing benefits or in providing customer support for benefit programs administered by the Secretary, to ensure that programs using those systems:

(A) maximize program access for eligible recipients;

(B) employ automated or algorithmic systems in a manner consistent with any requirements for using merit systems personnel in public-benefits programs;

(C) identify instances in which reliance on automated or algorithmic systems would require notification by the State, local, Tribal, or territorial government to the Secretary;

(D) identify instances when applicants and participants can appeal benefit determinations to a human reviewer for reconsideration and can receive other customer support from a human being;

(E) enable auditing and, if necessary, remediation of the logic used to arrive at an individual decision or determination to facilitate the evaluation of appeals; and

(F) enable the analysis of whether algorithmic systems in use by benefit programs achieve equitable outcomes.

7.3. Strengthening AI and Civil Rights in the Broader Economy. (a) Within 365 days of the date of this order, to prevent unlawful discrimination from AI used for hiring, the Secretary of Labor shall publish guidance for Federal contractors regarding nondiscrimination in hiring involving AI and other technology-based hiring systems.

(b) To address discrimination and biases against protected groups in housing markets and consumer financial markets, the Director of the Federal Housing Finance Agency and the Director of the Consumer Financial Protection Bureau are encouraged to consider using their authorities, as they deem appropriate, to require their respective regulated entities, where

possible, to use appropriate methodologies including AI tools to ensure compliance with Federal law and:

(i) evaluate their underwriting models for bias or disparities affecting protected groups; and

(ii) evaluate automated collateral-valuation and appraisal processes in ways that minimize bias.

(c) Within 180 days of the date of this order, to combat unlawful discrimination enabled by automated or algorithmic tools used to make decisions about access to housing and in other real estate-related transactions, the Secretary of Housing and Urban Development shall, and the Director of the Consumer Financial Protection Bureau is encouraged to, issue additional guidance:

(i) addressing the use of tenant screening systems in ways that may violate the Fair Housing Act (Public Law 90–284), the Fair Credit Reporting Act (Public Law 91–508), or other relevant Federal laws, including how the use of data, such as criminal records, eviction records, and credit information, can lead to discriminatory outcomes in violation of Federal law; and

(ii) addressing how the Fair Housing Act, the Consumer Financial Protection Act of 2010 (title X of Public Law 111–203), or the Equal Credit Opportunity Act (Public Law 93–495) apply to the advertising of housing, credit, and other real estate-related transactions through digital platforms, including those that use algorithms to facilitate advertising delivery, as well as on best practices to avoid violations of Federal law.

(d) To help ensure that people with disabilities benefit from AI's promise while being protected from its risks, including unequal treatment from the use of biometric data like gaze direction, eye tracking, gait analysis, and hand motions, the Architectural and Transportation Barriers Compliance Board is encouraged, as it deems appropriate, to solicit public participation and conduct community engagement; to issue technical assistance and recommendations on the risks and benefits of AI in using biometric data as an input; and to provide people with disabilities access to information and communication technology and transportation services.

Sec. 8. *Protecting Consumers, Patients, Passengers, and Students.* (a) Independent regulatory agencies are encouraged, as they deem appropriate, to consider using their full range of authorities to protect American consumers from fraud, discrimination, and threats to privacy and to address other risks that may arise from the use of AI, including risks to financial stability, and to consider rulemaking, as well as emphasizing or clarifying where existing regulations and guidance apply to AI, including clarifying the responsibility of regulated entities to conduct due diligence on and monitor any third-party AI services they use, and emphasizing or clarifying requirements and expectations related to the transparency of AI models and regulated entities' ability to explain their use of AI models.

(b) To help ensure the safe, responsible deployment and use of AI in the healthcare, public-health, and human-services sectors:

(i) Within 90 days of the date of this order, the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an HHS AI Task Force that shall, within 365 days

of its creation, develop a strategic plan that includes policies and frameworks—possibly including regulatory action, as appropriate—on responsible deployment and use of AI and AI-enabled technologies in the health and human services sector (including research and discovery, drug and device safety, healthcare delivery and financing, and public health), and identify appropriate guidance and resources to promote that deployment, including in the following areas:

(A) development, maintenance, and use of predictive and generative AI-enabled technologies in healthcare delivery and financing—including quality measurement, performance improvement, program integrity, benefits administration, and patient experience—taking into account considerations such as appropriate human oversight of the application of AI-generated output;

(B) long-term safety and real-world performance monitoring of AI-enabled technologies in the health and human services sector, including clinically relevant or significant modifications and performance across population groups, with a means to communicate product updates to regulators, developers, and users;

(C) incorporation of equity principles in AI-enabled technologies used in the health and human services sector, using disaggregated data on affected populations and representative population data sets when developing new models, monitoring algorithmic performance against discrimination and bias in existing models, and helping to identify and mitigate discrimination and bias in current systems;

(D) incorporation of safety, privacy, and security standards into the software-development lifecycle for protection of personally identifiable information, including measures to address AI-enhanced cybersecurity threats in the health and human services sector;

(E) development, maintenance, and availability of documentation to help users determine appropriate and safe uses of AI in local settings in the health and human services sector;

(F) work to be done with State, local, Tribal, and territorial health and human services agencies to advance positive use cases and best practices for use of AI in local settings; and

(G) identification of uses of AI to promote workplace efficiency and satisfaction in the health and human services sector, including reducing administrative burdens.

(ii) Within 180 days of the date of this order, the Secretary of HHS shall direct HHS components, as the Secretary of HHS deems appropriate, to develop a strategy, in consultation with relevant agencies, to determine whether AI-enabled technologies in the health and human services sector maintain appropriate levels of quality, including, as appropriate, in the areas described in subsection (b)(i) of this section. This work shall include the development of AI assurance policy—to evaluate important aspects of the performance of AI-enabled healthcare tools—and infrastructure needs for enabling pre-market assessment and post-market oversight of AI-enabled healthcare-technology algorithmic system performance against real-world data.

(iii) Within 180 days of the date of this order, the Secretary of HHS shall, in consultation with relevant agencies as the Secretary of HHS deems appropriate, consider appropriate actions to advance the prompt understanding of, and compliance with, Federal nondiscrimination laws by health and human services providers that receive Federal financial assistance, as well as how those laws relate to AI. Such actions may include:

(A) convening and providing technical assistance to health and human services providers and payers about their obligations under Federal nondiscrimination and privacy laws as they relate to AI and the potential consequences of noncompliance; and

(B) issuing guidance, or taking other action as appropriate, in response to any complaints or other reports of noncompliance with Federal nondiscrimination and privacy laws as they relate to AI.

(iv) Within 365 days of the date of this order, the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an AI safety program that, in partnership with voluntary federally listed Patient Safety Organizations:

(A) establishes a common framework for approaches to identifying and capturing clinical errors resulting from AI deployed in healthcare settings as well as specifications for a central tracking repository for associated incidents that cause harm, including through bias or discrimination, to patients, caregivers, or other parties;

(B) analyzes captured data and generated evidence to develop, wherever appropriate, recommendations, best practices, or other informal guidelines aimed at avoiding these harms; and

(C) disseminates those recommendations, best practices, or other informal guidance to appropriate stakeholders, including healthcare providers.

(v) Within 365 days of the date of this order, the Secretary of HHS shall develop a strategy for regulating the use of AI or AI-enabled tools in drug-development processes. The strategy shall, at a minimum:

(A) define the objectives, goals, and high-level principles required for appropriate regulation throughout each phase of drug development;

(B) identify areas where future rulemaking, guidance, or additional statutory authority may be necessary to implement such a regulatory system;

(C) identify the existing budget, resources, personnel, and potential for new public/private partnerships necessary for such a regulatory system; and

(D) consider risks identified by the actions undertaken to implement section 4 of this order.

(c) To promote the safe and responsible development and use of AI in the transportation sector, in consultation with relevant agencies:

(i) Within 30 days of the date of this order, the Secretary of Transportation shall direct the Nontraditional and Emerging Transportation Technology (NETT) Council to assess the need for information, technical assistance, and guidance regarding the use of AI in transportation. The Secretary of Transportation shall further direct the NETT Council, as part of any such efforts, to:

(A) support existing and future initiatives to pilot transportation-related applications of AI, as they align with policy priorities articulated in the Department of Transportation's (DOT) Innovation Principles, including, as appropriate, through technical assistance and connecting stakeholders;

(B) evaluate the outcomes of such pilot programs in order to assess when DOT, or other Federal or State agencies, have sufficient information to take regulatory actions, as appropriate, and recommend appropriate actions when that information is available; and

(C) establish a new DOT Cross-Modal Executive Working Group, which will consist of members from different divisions of DOT and coordinate applicable work among these divisions, to solicit and use relevant input from appropriate stakeholders.

(ii) Within 90 days of the date of this order, the Secretary of Transportation shall direct appropriate Federal Advisory Committees of the DOT to provide advice on the safe and responsible use of AI in transportation. The committees shall include the Advanced Aviation Advisory Committee, the Transforming Transportation Advisory Committee, and the Intelligent Transportation Systems Program Advisory Committee.

(iii) Within 180 days of the date of this order, the Secretary of Transportation shall direct the Advanced Research Projects Agency-Infrastructure (ARPA–I) to explore the transportation-related opportunities and challenges of AI—including regarding software-defined AI enhancements impacting autonomous mobility ecosystems. The Secretary of Transportation shall further encourage ARPA–I to prioritize the allocation of grants to those opportunities, as appropriate. The work tasked to ARPA–I shall include soliciting input on these topics through a public consultation process, such as an RFI.

(d) To help ensure the responsible development and deployment of AI in the education sector, the Secretary of Education shall, within 365 days of the date of this order, develop resources, policies, and guidance regarding AI. These resources shall address safe, responsible, and nondiscriminatory uses of AI in education, including the impact AI systems have on vulnerable and underserved communities, and shall be developed in consultation with stakeholders as appropriate. They shall also include the development of an ''AI toolkit'' for education leaders implementing recommendations from the Department of Education's AI and the Future of Teaching and Learning report, including appropriate human review of AI decisions, designing AI systems to enhance trust and safety and align with privacy-related laws and regulations in the educational context, and developing education-specific guardrails.

(e) The Federal Communications Commission is encouraged to consider actions related to how AI will affect communications networks and consumers, including by:

(i) examining the potential for AI to improve spectrum management, increase the efficiency of non-Federal spectrum usage, and expand opportunities for the sharing of non-Federal spectrum;

(ii) coordinating with the National Telecommunications and Information Administration to create opportunities for sharing spectrum between Federal and non-Federal spectrum operations;

(iii) providing support for efforts to improve network security, resiliency, and interoperability using next-generation technologies that incorporate AI, including self-healing networks, 6G, and Open RAN; and

(iv) encouraging, including through rulemaking, efforts to combat unwanted robocalls and robotexts that are facilitated or exacerbated by AI and to deploy AI technologies that better serve consumers by blocking unwanted robocalls and robotexts.

Sec. 9. *Protecting Privacy*. (a) To mitigate privacy risks potentially exacerbated by AI—including by AI's facilitation of the collection or use of information about individuals, or the making of inferences about individuals—the Director of OMB shall:

(i) evaluate and take steps to identify commercially available information (CAI) procured by agencies, particularly CAI that contains personally identifiable information and including CAI procured from data brokers and CAI procured and processed indirectly through vendors, in appropriate agency inventory and reporting processes (other than when it is used for the purposes of national security);

(ii) evaluate, in consultation with the Federal Privacy Council and the Interagency Council on Statistical Policy, agency standards and procedures associated with the collection, processing, maintenance, use, sharing, dissemination, and disposition of CAI that contains personally identifiable information (other than when it is used for the purposes of national security) to inform potential guidance to agencies on ways to mitigate privacy and confidentiality risks from agencies' activities related to CAI;

(iii) within 180 days of the date of this order, in consultation with the Attorney General, the Assistant to the President for Economic Policy, and the Director of OSTP, issue an RFI to inform potential revisions to guidance to agencies on implementing the privacy provisions of the E-Government Act of 2002 (Public Law 107–347). The RFI shall seek feedback regarding how privacy impact assessments may be more effective at mitigating privacy risks, including those that are further exacerbated by AI; and

(iv) take such steps as are necessary and appropriate, consistent with applicable law, to support and advance the near-term actions and long-term strategy identified through the RFI process, including issuing new or updated guidance or RFIs or consulting other agencies or the Federal Privacy Council.

(b) Within 365 days of the date of this order, to better enable agencies to use PETs to safeguard Americans' privacy from the potential threats exacerbated by AI, the Secretary of Commerce, acting through the Director of NIST, shall create guidelines for agencies to evaluate the efficacy of differential-privacy-guarantee protections, including for AI. The guidelines

shall, at a minimum, describe the significant factors that bear on differential-privacy safeguards and common risks to realizing differential privacy in practice.

(c) To advance research, development, and implementation related to PETs:

(i) Within 120 days of the date of this order, the Director of NSF, in collaboration with the Secretary of Energy, shall fund the creation of a Research Coordination Network (RCN) dedicated to advancing privacy research and, in particular, the development, deployment, and scaling of PETs. The RCN shall serve to enable privacy researchers to share information, coordinate and collaborate in research, and develop standards for the privacy-research community.

(ii) Within 240 days of the date of this order, the Director of NSF shall engage with agencies to identify ongoing work and potential opportunities to incorporate PETs into their operations. The Director of NSF shall, where feasible and appropriate, prioritize research—including efforts to translate research discoveries into practical applications—that encourage the adoption of leading-edge PETs solutions for agencies' use, including through research engagement through the RCN described in subsection (c)(i) of this section.

(iii) The Director of NSF shall use the results of the United States-United Kingdom PETs Prize Challenge to inform the approaches taken, and opportunities identified, for PETs research and adoption.

Sec. 10. *Advancing Federal Government Use of AI.*

10.1. Providing Guidance for AI Management. (a) To coordinate the use of AI across the Federal Government, within 60 days of the date of this order and on an ongoing basis as necessary, the Director of OMB shall convene and chair an interagency council to coordinate the development and use of AI in agencies' programs and operations, other than the use of AI in national security systems. The Director of OSTP shall serve as Vice Chair for the interagency council. The interagency council's membership shall include, at minimum, the heads of the agencies identified in 31 U.S.C. 901(b), the Director of National Intelligence, and other agencies as identified by the Chair. Until agencies designate their permanent Chief AI Officers consistent with the guidance described in subsection 10.1(b) of this section, they shall be represented on the interagency council by an appropriate official at the Assistant Secretary level or equivalent, as determined by the head of each agency.

(b) To provide guidance on Federal Government use of AI, within 150 days of the date of this order and updated periodically thereafter, the Director of OMB, in coordination with the Director of OSTP, and in consultation with the interagency council established in subsection 10.1(a) of this section, shall issue guidance to agencies to strengthen the effective and appropriate use of AI, advance AI innovation, and manage risks from AI in the Federal Government. The Director of OMB's guidance shall specify, to the extent appropriate and consistent with applicable law:

(i) the requirement to designate at each agency within 60 days of the issuance of the guidance a Chief Artificial Intelligence Officer who shall hold primary responsibility in their agency, in coordination with other responsible officials, for coordinating their agency's use of AI, promoting

AI innovation in their agency, managing risks from their agency's use of AI, and carrying out the responsibilities described in section 8(c) of Executive Order 13960 of December 3, 2020 (Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government), and section 4(b) of Executive Order 14091;

(ii) the Chief Artificial Intelligence Officers' roles, responsibilities, seniority, position, and reporting structures;

(iii) for the agencies identified in 31 U.S.C. 901(b), the creation of internal Artificial Intelligence Governance Boards, or other appropriate mechanisms, at each agency within 60 days of the issuance of the guidance to coordinate and govern AI issues through relevant senior leaders from across the agency;

(iv) required minimum risk-management practices for Government uses of AI that impact people's rights or safety, including, where appropriate, the following practices derived from OSTP's Blueprint for an AI Bill of Rights and the NIST AI Risk Management Framework: conducting public consultation; assessing data quality; assessing and mitigating disparate impacts and algorithmic discrimination; providing notice of the use of AI; continuously monitoring and evaluating deployed AI; and granting human consideration and remedies for adverse decisions made using AI;

(v) specific Federal Government uses of AI that are presumed by default to impact rights or safety;

(vi) recommendations to agencies to reduce barriers to the responsible use of AI, including barriers related to information technology infrastructure, data, workforce, budgetary restrictions, and cybersecurity processes;

(vii) requirements that agencies identified in 31 U.S.C. 901(b) develop AI strategies and pursue high-impact AI use cases;

(viii) in consultation with the Secretary of Commerce, the Secretary of Homeland Security, and the heads of other appropriate agencies as determined by the Director of OMB, recommendations to agencies regarding:

(A) external testing for AI, including AI red-teaming for generative AI, to be developed in coordination with the Cybersecurity and Infrastructure Security Agency;

(B) testing and safeguards against discriminatory, misleading, inflammatory, unsafe, or deceptive outputs, as well as against producing child sexual abuse material and against producing non-consensual intimate imagery of real individuals (including intimate digital depictions of the body or body parts of an identifiable individual), for generative AI;

(C) reasonable steps to watermark or otherwise label output from generative AI;

(D) application of the mandatory minimum risk-management practices defined under subsection 10.1(b)(iv) of this section to procured AI;

(E) independent evaluation of vendors' claims concerning both the effectiveness and risk mitigation of their AI offerings;

(F) documentation and oversight of procured AI;

(G) maximizing the value to agencies when relying on contractors to use and enrich Federal Government data for the purposes of AI development and operation;

(H) provision of incentives for the continuous improvement of procured AI; and

(I) training on AI in accordance with the principles set out in this order and in other references related to AI listed herein; and

(ix) requirements for public reporting on compliance with this guidance.

(c) To track agencies' AI progress, within 60 days of the issuance of the guidance established in subsection 10.1(b) of this section and updated periodically thereafter, the Director of OMB shall develop a method for agencies to track and assess their ability to adopt AI into their programs and operations, manage its risks, and comply with Federal policy on AI. This method should draw on existing related efforts as appropriate and should address, as appropriate and consistent with applicable law, the practices, processes, and capabilities necessary for responsible AI adoption, training, and governance across, at a minimum, the areas of information technology infrastructure, data, workforce, leadership, and risk management.

(d) To assist agencies in implementing the guidance to be established in subsection 10.1(b) of this section:

(i) within 90 days of the issuance of the guidance, the Secretary of Commerce, acting through the Director of NIST, and in coordination with the Director of OMB and the Director of OSTP, shall develop guidelines, tools, and practices to support implementation of the minimum risk-management practices described in subsection 10.1(b)(iv) of this section; and

(ii) within 180 days of the issuance of the guidance, the Director of OMB shall develop an initial means to ensure that agency contracts for the acquisition of AI systems and services align with the guidance described in subsection 10.1(b) of this section and advance the other aims identified in section 7224(d)(1) of the Advancing American AI Act (Public Law 117–263, div. G, title LXXII, subtitle B).

(e) To improve transparency for agencies' use of AI, the Director of OMB shall, on an annual basis, issue instructions to agencies for the collection, reporting, and publication of agency AI use cases, pursuant to section 7225(a) of the Advancing American AI Act. Through these instructions, the Director shall, as appropriate, expand agencies' reporting on how they are managing risks from their AI use cases and update or replace the guidance originally established in section 5 of Executive Order 13960.

(f) To advance the responsible and secure use of generative AI in the Federal Government:

(i) As generative AI products become widely available and common in online platforms, agencies are discouraged from imposing broad general bans or blocks on agency use of generative AI. Agencies should instead limit access, as necessary, to specific generative AI services based on specific risk assessments; establish guidelines and limitations on the appropriate use of generative AI; and, with appropriate safeguards in place, provide their personnel and programs with access to secure and reliable generative AI capabilities, at least for the purposes of experimentation

and routine tasks that carry a low risk of impacting Americans' rights. To protect Federal Government information, agencies are also encouraged to employ risk-management practices, such as training their staff on proper use, protection, dissemination, and disposition of Federal information; negotiating appropriate terms of service with vendors; implementing measures designed to ensure compliance with record-keeping, cybersecurity, confidentiality, privacy, and data protection requirements; and deploying other measures to prevent misuse of Federal Government information in generative AI.

(ii) Within 90 days of the date of this order, the Administrator of General Services, in coordination with the Director of OMB, and in consultation with the Federal Secure Cloud Advisory Committee and other relevant agencies as the Administrator of General Services may deem appropriate, shall develop and issue a framework for prioritizing critical and emerging technologies offerings in the Federal Risk and Authorization Management Program authorization process, starting with generative AI offerings that have the primary purpose of providing large language model-based chat interfaces, code-generation and debugging tools, and associated application programming interfaces, as well as prompt-based image generators. This framework shall apply for no less than 2 years from the date of its issuance. Agency Chief Information Officers, Chief Information Security Officers, and authorizing officials are also encouraged to prioritize generative AI and other critical and emerging technologies in granting authorities for agency operation of information technology systems and any other applicable release or oversight processes, using continuous authorizations and approvals wherever feasible.

(iii) Within 180 days of the date of this order, the Director of the Office of Personnel Management (OPM), in coordination with the Director of OMB, shall develop guidance on the use of generative AI for work by the Federal workforce.

(g) Within 30 days of the date of this order, to increase agency investment in AI, the Technology Modernization Board shall consider, as it deems appropriate and consistent with applicable law, prioritizing funding for AI projects for the Technology Modernization Fund for a period of at least 1 year. Agencies are encouraged to submit to the Technology Modernization Fund project funding proposals that include AI—and particularly generative AI—in service of mission delivery.

(h) Within 180 days of the date of this order, to facilitate agencies' access to commercial AI capabilities, the Administrator of General Services, in coordination with the Director of OMB, and in collaboration with the Secretary of Defense, the Secretary of Homeland Security, the Director of National Intelligence, the Administrator of the National Aeronautics and Space Administration, and the head of any other agency identified by the Administrator of General Services, shall take steps consistent with applicable law to facilitate access to Federal Government-wide acquisition solutions for specified types of AI services and products, such as through the creation of a resource guide or other tools to assist the acquisition workforce. Specified types of AI capabilities shall include generative AI and specialized computing infrastructure.

(i) The initial means, instructions, and guidance issued pursuant to subsections 10.1(a)–(h) of this section shall not apply to AI when it is used

as a component of a national security system, which shall be addressed by the proposed National Security Memorandum described in subsection 4.8 of this order.

10.2. Increasing AI Talent in Government. (a) Within 45 days of the date of this order, to plan a national surge in AI talent in the Federal Government, the Director of OSTP and the Director of OMB, in consultation with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Assistant to the President and Domestic Policy Advisor, and the Assistant to the President and Director of the Gender Policy Council, shall identify priority mission areas for increased Federal Government AI talent, the types of talent that are highest priority to recruit and develop to ensure adequate implementation of this order and use of relevant enforcement and regulatory authorities to address AI risks, and accelerated hiring pathways.

(b) Within 45 days of the date of this order, to coordinate rapid advances in the capacity of the Federal AI workforce, the Assistant to the President and Deputy Chief of Staff for Policy, in coordination with the Director of OSTP and the Director of OMB, and in consultation with the National Cyber Director, shall convene an AI and Technology Talent Task Force, which shall include the Director of OPM, the Director of the General Services Administration's Technology Transformation Services, a representative from the Chief Human Capital Officers Council, the Assistant to the President for Presidential Personnel, members of appropriate agency technology talent programs, a representative of the Chief Data Officer Council, and a representative of the interagency council convened under subsection 10.1(a) of this section. The Task Force's purpose shall be to accelerate and track the hiring of AI and AI-enabling talent across the Federal Government, including through the following actions:

(i) within 180 days of the date of this order, tracking and reporting progress to the President on increasing AI capacity across the Federal Government, including submitting to the President a report and recommendations for further increasing capacity;

(ii) identifying and circulating best practices for agencies to attract, hire, retain, train, and empower AI talent, including diversity, inclusion, and accessibility best practices, as well as to plan and budget adequately for AI workforce needs;

(iii) coordinating, in consultation with the Director of OPM, the use of fellowship programs and agency technology-talent programs and human-capital teams to build hiring capabilities, execute hires, and place AI talent to fill staffing gaps; and

(iv) convening a cross-agency forum for ongoing collaboration between AI professionals to share best practices and improve retention.

(c) Within 45 days of the date of this order, to advance existing Federal technology talent programs, the United States Digital Service, Presidential Innovation Fellowship, United States Digital Corps, OPM, and technology talent programs at agencies, with support from the AI and Technology Talent Task Force described in subsection 10.2(b) of this section, as appropriate and permitted by law, shall develop and begin to implement plans to support the rapid recruitment of individuals as part of a Federal Government-wide AI talent surge to accelerate the placement of key AI and AI-

enabling talent in high-priority areas and to advance agencies' data and technology strategies.

(d) To meet the critical hiring need for qualified personnel to execute the initiatives in this order, and to improve Federal hiring practices for AI talent, the Director of OPM, in consultation with the Director of OMB, shall:

(i) within 60 days of the date of this order, conduct an evidence-based review on the need for hiring and workplace flexibility, including Federal Government-wide direct-hire authority for AI and related data-science and technical roles, and, where the Director of OPM finds such authority is appropriate, grant it; this review shall include the following job series at all General Schedule (GS) levels: IT Specialist (2210), Computer Scientist (1550), Computer Engineer (0854), and Program Analyst (0343) focused on AI, and any subsequently developed job series derived from these job series;

(ii) within 60 days of the date of this order, consider authorizing the use of excepted service appointments under 5 CFR 213.3102(i)(3) to address the need for hiring additional staff to implement directives of this order;

(iii) within 90 days of the date of this order, coordinate a pooled-hiring action informed by subject-matter experts and using skills-based assessments to support the recruitment of AI talent across agencies;

(iv) within 120 days of the date of this order, as appropriate and permitted by law, issue guidance for agency application of existing pay flexibilities or incentive pay programs for AI, AI-enabling, and other key technical positions to facilitate appropriate use of current pay incentives;

(v) within 180 days of the date of this order, establish guidance and policy on skills-based, Federal Government-wide hiring of AI, data, and technology talent in order to increase access to those with nontraditional academic backgrounds to Federal AI, data, and technology roles;

(vi) within 180 days of the date of this order, establish an interagency working group, staffed with both human-resources professionals and recruiting technical experts, to facilitate Federal Government-wide hiring of people with AI and other technical skills;

(vii) within 180 days of the date of this order, review existing Executive Core Qualifications (ECQs) for Senior Executive Service (SES) positions informed by data and AI literacy competencies and, within 365 days of the date of this order, implement new ECQs as appropriate in the SES assessment process;

(viii) within 180 days of the date of this order, complete a review of competencies for civil engineers (GS–0810 series) and, if applicable, other related occupations, and make recommendations for ensuring that adequate AI expertise and credentials in these occupations in the Federal Government reflect the increased use of AI in critical infrastructure; and

(ix) work with the Security, Suitability, and Credentialing Performance Accountability Council to assess mechanisms to streamline and accelerate personnel-vetting requirements, as appropriate, to support AI and fields related to other critical and emerging technologies.

(e) To expand the use of special authorities for AI hiring and retention, agencies shall use all appropriate hiring authorities, including Schedule

A(r) excepted service hiring and direct-hire authority, as applicable and appropriate, to hire AI talent and AI-enabling talent rapidly. In addition to participating in OPM-led pooled hiring actions, agencies shall collaborate, where appropriate, on agency-led pooled hiring under the Competitive Service Act of 2015 (Public Law 114–137) and other shared hiring. Agencies shall also, where applicable, use existing incentives, pay-setting authorities, and other compensation flexibilities, similar to those used for cyber and information technology positions, for AI and data-science professionals, as well as plain-language job titles, to help recruit and retain these highly skilled professionals. Agencies shall ensure that AI and other related talent needs (such as technology governance and privacy) are reflected in strategic workforce planning and budget formulation.

(f) To facilitate the hiring of data scientists, the Chief Data Officer Council shall develop a position-description library for data scientists (job series 1560) and a hiring guide to support agencies in hiring data scientists.

(g) To help train the Federal workforce on AI issues, the head of each agency shall implement—or increase the availability and use of—AI training and familiarization programs for employees, managers, and leadership in technology as well as relevant policy, managerial, procurement, regulatory, ethical, governance, and legal fields. Such training programs should, for example, empower Federal employees, managers, and leaders to develop and maintain an operating knowledge of emerging AI technologies to assess opportunities to use these technologies to enhance the delivery of services to the public, and to mitigate risks associated with these technologies. Agencies that provide professional-development opportunities, grants, or funds for their staff should take appropriate steps to ensure that employees who do not serve in traditional technical roles, such as policy, managerial, procurement, or legal fields, are nonetheless eligible to receive funding for programs and courses that focus on AI, machine learning, data science, or other related subject areas.

(h) Within 180 days of the date of this order, to address gaps in AI talent for national defense, the Secretary of Defense shall submit a report to the President through the Assistant to the President for National Security Affairs that includes:

(i) recommendations to address challenges in the Department of Defense's ability to hire certain noncitizens, including at the Science and Technology Reinvention Laboratories;

(ii) recommendations to clarify and streamline processes for accessing classified information for certain noncitizens through Limited Access Authorization at Department of Defense laboratories;

(iii) recommendations for the appropriate use of enlistment authority under 10 U.S.C. 504(b)(2) for experts in AI and other critical and emerging technologies; and

(iv) recommendations for the Department of Defense and the Department of Homeland Security to work together to enhance the use of appropriate authorities for the retention of certain noncitizens of vital importance to national security by the Department of Defense and the Department of Homeland Security.

Sec. 11. *Strengthening American Leadership Abroad.* (a) To strengthen United States leadership of global efforts to unlock AI's potential and meet

its challenges, the Secretary of State, in coordination with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of OSTP, and the heads of other relevant agencies as appropriate, shall:

(i) lead efforts outside of military and intelligence areas to expand engagements with international allies and partners in relevant bilateral, multilateral, and multi-stakeholder fora to advance those allies' and partners' understanding of existing and planned AI-related guidance and policies of the United States, as well as to enhance international collaboration; and

(ii) lead efforts to establish a strong international framework for managing the risks and harnessing the benefits of AI, including by encouraging international allies and partners to support voluntary commitments similar to those that United States companies have made in pursuit of these objectives and coordinating the activities directed by subsections (b), (c), (d), and (e) of this section, and to develop common regulatory and other accountability principles for foreign nations, including to manage the risk that AI systems pose.

(b) To advance responsible global technical standards for AI development and use outside of military and intelligence areas, the Secretary of Commerce, in coordination with the Secretary of State and the heads of other relevant agencies as appropriate, shall lead preparations for a coordinated effort with key international allies and partners and with standards development organizations, to drive the development and implementation of AI-related consensus standards, cooperation and coordination, and information sharing. In particular, the Secretary of Commerce shall:

(i) within 270 days of the date of this order, establish a plan for global engagement on promoting and developing AI standards, with lines of effort that may include:

(A) AI nomenclature and terminology;

(B) best practices regarding data capture, processing, protection, privacy, confidentiality, handling, and analysis;

(C) trustworthiness, verification, and assurance of AI systems; and

(D) AI risk management;

(ii) within 180 days of the date the plan is established, submit a report to the President on priority actions taken pursuant to the plan; and

(iii) ensure that such efforts are guided by principles set out in the NIST AI Risk Management Framework and United States Government National Standards Strategy for Critical and Emerging Technology.

(c) Within 365 days of the date of this order, to promote safe, responsible, and rights-affirming development and deployment of AI abroad:

(i) The Secretary of State and the Administrator of the United States Agency for International Development, in coordination with the Secretary of Commerce, acting through the director of NIST, shall publish an AI in Global Development Playbook that incorporates the AI Risk Management Framework's principles, guidelines, and best practices into the social, technical, economic, governance, human rights, and security conditions of contexts beyond United States borders. As part of this work, the Secretary of State and the Administrator of the United States

Agency for International Development shall draw on lessons learned from programmatic uses of AI in global development.

(ii) The Secretary of State and the Administrator of the United States Agency for International Development, in collaboration with the Secretary of Energy and the Director of NSF, shall develop a Global AI Research Agenda to guide the objectives and implementation of AI-related research in contexts beyond United States borders. The Agenda shall:

(A) include principles, guidelines, priorities, and best practices aimed at ensuring the safe, responsible, beneficial, and sustainable global development and adoption of AI; and

(B) address AI's labor-market implications across international contexts, including by recommending risk mitigations.

(d) To address cross-border and global AI risks to critical infrastructure, the Secretary of Homeland Security, in coordination with the Secretary of State, and in consultation with the heads of other relevant agencies as the Secretary of Homeland Security deems appropriate, shall lead efforts with international allies and partners to enhance cooperation to prevent, respond to, and recover from potential critical infrastructure disruptions resulting from incorporation of AI into critical infrastructure systems or malicious use of AI.

(i) Within 270 days of the date of this order, the Secretary of Homeland Security, in coordination with the Secretary of State, shall develop a plan for multilateral engagements to encourage the adoption of the AI safety and security guidelines for use by critical infrastructure owners and operators developed in section 4.3(a) of this order.

(ii) Within 180 days of establishing the plan described in subsection (d)(i) of this section, the Secretary of Homeland Security shall submit a report to the President on priority actions to mitigate cross-border risks to critical United States infrastructure.

Sec. 12. *Implementation.* (a) There is established, within the Executive Office of the President, the White House Artificial Intelligence Council (White House AI Council). The function of the White House AI Council is to coordinate the activities of agencies across the Federal Government to ensure the effective formulation, development, communication, industry engagement related to, and timely implementation of AI-related policies, including policies set forth in this order.

(b) The Assistant to the President and Deputy Chief of Staff for Policy shall serve as Chair of the White House AI Council.

(c) In addition to the Chair, the White House AI Council shall consist of the following members, or their designees:

(i) the Secretary of State;

(ii) the Secretary of the Treasury;

(iii) the Secretary of Defense;

(iv) the Attorney General;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of HHS;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Education;

(xiii) the Secretary of Veterans Affairs;

(xiv) the Secretary of Homeland Security;

(xv) the Administrator of the Small Business Administration;

(xvi) the Administrator of the United States Agency for International Development;

(xvii) the Director of National Intelligence;

(xviii) the Director of NSF;

(xix) the Director of OMB;

(xx) the Director of OSTP;

(xxi) the Assistant to the President for National Security Affairs;

(xxii) the Assistant to the President for Economic Policy;

(xxiii) the Assistant to the President and Domestic Policy Advisor;

(xxiv) the Assistant to the President and Chief of Staff to the Vice President;

(xxv) the Assistant to the President and Director of the Gender Policy Council;

(xxvi) the Chairman of the Council of Economic Advisers;

(xxvii) the National Cyber Director;

(xxviii) the Chairman of the Joint Chiefs of Staff; and

(xxix) the heads of such other agencies, independent regulatory agencies, and executive offices as the Chair may from time to time designate or invite to participate.

(d) The Chair may create and coordinate subgroups consisting of White House AI Council members or their designees, as appropriate.

Sec. 13. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party

against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
October 30, 2023.

Executive Order 14111 of November 27, 2023

Interagency Security Committee

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the quality and effectiveness of security in and protection of buildings and facilities in the United States occupied by Federal employees or Federal contractor workers for nonmilitary activities, and to provide an ongoing entity to address continuing Government-wide security for Federal facilities, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the Interagency Security Committee (Committee). The Committee shall consist of:

(a) the Secretary of Homeland Security (Secretary);

(b) representatives from the following executive departments and agencies (agencies), designated by the heads of such agencies:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Commerce;

(viii) the Department of Labor;

(ix) the Department of Health and Human Services;

(x) the Department of Housing and Urban Development;

(xi) the Department of Transportation;

(xii) the Department of Energy;

(xiii) the Department of Education;

(xiv) the Department of Veterans Affairs;

(xv) the Environmental Protection Agency;

(xvi) the Office of Management and Budget;

(xvii) the Office of the Director of National Intelligence; and

(xviii) the General Services Administration;

(c) the following officials or their designees:

(i) the Director of the United States Marshals Service;

(ii) the Director of the Federal Protective Service;

(iii) the Director of the Central Intelligence Agency;

(iv) the Director of the Office of Personnel Management; and

(v) the Director of the Federal Bureau of Investigation; and

(d) such other Federal officials as the President may from time to time designate.

Sec. 2. *Chair.* The Committee shall be chaired by the Secretary or the designee of the Secretary.

Sec. 3. *Working Groups.* The Committee is authorized to establish interagency working groups to perform such tasks as may be directed by the Committee.

Sec. 4. *Consultation.* The Committee may consult with officials in other Federal Government entities, including the Administrative Office of the United States Courts and the United States Postal Service, to perform its responsibilities under this order, and, at the discretion of the Committee, officials from other Federal Government entities may participate in the interagency working groups.

Sec. 5. *Duties and Responsibilities.* The Committee shall:

(a) establish policies and standards for security in and protection of Federal facilities;

(b) evaluate existing security standards for Federal facilities and develop a strategy to monitor the implementation of such standards to ensure compliance by agencies;

(c) take such actions as may be necessary to enhance the quality and effectiveness of security in and protection of Federal facilities, including:

(i) encouraging agencies with security responsibilities to share security-related intelligence in a timely and cooperative manner;

(ii) assessing technology and information systems as means of providing cost-effective improvements to security in Federal facilities;

(iii) developing long-term construction standards for those locations with threat levels or missions that require blast-resistant structures or other specialized security requirements;

(iv) evaluating standards for the location of, and special security related to, child care centers in Federal facilities;

(v) assisting the Secretary in developing and maintaining a centralized security database of all Federal facilities; and

(vi) providing best practices for securing a mobile Federal workforce; and

(d) no later than 1 year after the date of this order and biennially thereafter, prepare and provide to the Director of the Office of Management and Budget and the Assistant to the President for National Security Affairs a summary report describing the results of compliance under subsection 6(c) of this order.

Sec. 6. *Agency Support and Cooperation.* (a) To the extent permitted by law and subject to the availability of appropriations, the Secretary shall provide the Committee such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions under this order.

(b) Each agency shall cooperate and comply with the requirements of this order and the policies and standards of the Committee issued pursuant to this order, except in situations in which the Director of National Intelligence, or other United States Intelligence Community official within the Office of the Director of National Intelligence designated by the Director of National Intelligence, determines that compliance would jeopardize intelligence sources and methods. To the extent permitted by law and subject to the availability of appropriations, agencies shall provide such cooperation and compliance as may be necessary to enable the Committee to perform its duties and responsibilities under this order.

(i) Each agency shall designate a senior official who shall be responsible for agency implementation of, and compliance with, this order.

(ii) The senior official shall ensure that the official's agency supports Facility Security Committees, as applicable, in the performance of the official's duties.

(c) The Secretary shall monitor agency compliance with the policies and standards of the Committee. Monitoring compliance shall consist, at a minimum, of the following:

(i) maintaining compliance benchmarks to measure compliance progress;

(ii) requiring periodic compliance reporting by all relevant agencies; and

(iii) conducting risk-based compliance verification.

(d) In situations in which a Federal facility is occupied by multiple agencies for both military and nonmilitary activities, and each such occupancy is substantial, those occupants shall coordinate on the security of the facility.

Sec. 7. *Administrative Provision.* This order supersedes Executive Order 12977 of October 19, 1995 (Interagency Security Committee), which is hereby revoked. To the extent that this order is inconsistent with any provision of any previous Executive Order or Presidential Memorandum, this order shall control. All policies and standards implemented by the Interagency Security Committee that was established pursuant to Executive Order 12977 shall remain in effect until rescinded or replaced by the Committee established pursuant to this order.

Sec. 8. *Definitions.* For purposes of this order:

(a) ''Agency'' means an executive agency, as defined in section 105 of title 5, United States Code.

(b) ''Federal facility'' means a federally owned or leased building, structure, or the land it resides on, in whole or in part, that is regularly occupied by Federal employees or Federal contractor workers for nonmilitary activities. The term ''Federal facility'' also means any building or structure acquired by a contractor through ownership or leasehold interest, in whole

or in part, solely for the purpose of executing a nonmilitary Federal mission or function under the direction of an agency. The term ''Federal facility'' does not include public domain land, including improvements thereon; withdrawn lands; or buildings or facilities outside of the United States.

(c) ''Federal employee'' means an employee, as defined in section 2105 of title 5, United States Code, of an agency.

(d) ''Federal contractor worker'' means any individual who performs work for or on behalf of any agency under a contract, subcontract, or contract-like instrument and who, in order to perform the work specified under the contract, subcontract, or contract-like instrument, requires access to space, information, information technology systems, staff, or other assets of the Federal Government in buildings and facilities of the United States. Such contracts include the following:

(i) personal service contracts;

(ii) contracts between any non-Federal entity and any agency; and

(iii) subcontracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with an agency.

(e) ''Facility Security Committee'' means a committee that is established in accordance with an Interagency Security Committee standard, and that is responsible for addressing facility-specific security issues and approving the implementation of security measures and practices in multi-tenant facilities.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

November 27, 2023.

Executive Order 14112 of December 6, 2023

Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. My Administration is committed to protecting and supporting Tribal sovereignty and self-determination, and to honoring our trust and treaty obligations to Tribal Nations. We recognize the right of Tribal Nations to self-determination, and that Federal support for Tribal self-determination has been the most effective policy for the economic growth of Tribal Nations and the economic well-being of Tribal citizens. Federal policies of past eras, including termination, relocation, and assimilation, collectively represented attacks on Tribal sovereignty and did lasting damage to Tribal communities, Tribal economies, and the institutions of Tribal governance. By contrast, the self-determination policies of the last 50 years—whereby the Federal Government has worked with Tribal Nations to promote and support Tribal self-governance and the growth of Tribal institutions—have revitalized Tribal economies, rebuilt Tribal governments, and begun to heal the relationship between Tribal Nations and the United States.

Despite the progress of the last 50 years, Federal funding and support programs that are the backbone of Federal support for Tribal self-determination are too often administered in ways that leave Tribal Nations unduly burdened and frustrated with bureaucratic processes. The Federal funding that Tribal Nations rely on comes from myriad sources across the Federal Government, often with varying and complex application and reporting processes. While Tribal Nations continue to rebuild, grow, and thrive, some Tribal Nations do not have the capacity and resources they need to access Federal funds—and even for those that do, having to repeatedly navigate Federal processes often unnecessarily drains those resources.

My Administration has taken steps to meaningfully reform existing Federal processes for Tribal Nations. Executive Order 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government), directed executive departments and agencies (agencies) to reduce administrative burdens and improve efficiency in public-facing and internal Federal processes, while the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), and the Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation), reiterated our commitment to, and established uniform standards for, Tribal consultation. These previous actions have laid an important foundation for the policies and procedures set forth in this order.

Now is the time to build upon this foundation by ushering in the next era of self-determination policies and our unique Nation-to-Nation relationships, during which we will better acknowledge and engage with Tribal Nations as respected and vital self-governing sovereigns. As we continue to support Tribal Nations, we must respect their sovereignty by better ensuring that they are able to make their own decisions about where and how

to meet the needs of their communities. No less than for any other sovereign, Tribal self-governance is about the fundamental right of a people to determine their own destiny and to prosper and flourish on their own terms.

This order solidifies my Administration's commitment to this next era of Tribal self-determination policies that are rooted in prioritizing partnerships with Tribal leaders, respect for Tribal sovereignty, trust in Tribal priorities, and dignity for Tribal Nations. In keeping with our trust and treaty obligations to Tribal Nations, and our commitment to advancing Tribal sovereignty, it is the policy of the United States to design and administer Federal funding and support programs for Tribal Nations, consistent with applicable law and to the extent practicable, in a manner that better recognizes and supports Tribal sovereignty and self-determination. To realize this policy, the Federal Government must improve how it approaches the work of administering Tribal programs and supporting Tribal communities.

We must ensure that Federal programs, to the maximum extent possible and practicable under Federal law, provide Tribal Nations with the flexibility to improve economic growth, address the specific needs of their communities, and realize their vision for their future. We must improve our Nation-to-Nation relationships by reducing administrative burdens and by administering funding in a manner that provides Tribal Nations with the greatest possible autonomy to address the specific needs of their people. We must make it easier for Tribal Nations to access the Federal funding and resources for which they are eligible and that they need to help grow their economies and provide their citizens with vital and innovative services. We must promote partnerships with Tribal Nations, recognizing that they bring invaluable expertise on countless matters from how to more effectively meet the needs of their citizens to how to steward their ancestral homelands. We must promote effective consideration of the unique needs of Tribal Nations from the very beginning of our design, update, or review of processes and throughout every step of administering Federal funding and support programs. We must implement laws, policies, and programs in ways that allow Tribal Nations to take ownership of resources and services for their communities. We need to identify any statutory and regulatory changes that are necessary or may be helpful to ensure that Federal funding and support programs effectively address the needs of Tribal Nations, and recommend legislative changes, where appropriate. Finally, we must, through Tribal consultation, continually improve our understanding of the funding and programmatic needs of Tribal Nations. The foregoing is not only good policy, but is also consistent with our commitment to fulfilling the United States' unique trust responsibility to Tribal Nations and the deep respect we have for Tribal Nations.

Sec. 2. *Definitions.* For purposes of this order:

(a) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) The term ''Federal funding and support programs for Tribal Nations'' includes funding, programs, technical assistance, loans, grants, or other financial support or direct services that the Federal Government provides to Tribal Nations or Indians because of their status as Indians. It also includes actions or programs that do not exclusively serve Tribes, but for which

Tribal Nations are eligible along with non-Tribal entities. It does not include programs for which both Indians and non-Indians are eligible.

(c) The terms ''Tribes'' and ''Tribal Nations'' mean any Indian tribe, band, nation, or other organized group or community considered an ''Indian Tribe'' under section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304.

Sec. 3. *Agency Coordination on Better Supporting Tribal Nations and Identifying Opportunities for Reform.* Agencies shall work with the White House Council on Native American Affairs (WHCNAA) to coordinate implementation of this order, share leading practices, and identify potential opportunities for Federal policy reforms that would promote accessible, equitable, and flexible administration of Federal funding and support programs for Tribal Nations. The WHCNAA shall assist agencies in coordinating the Tribal consultations required by section 4 of this order to minimize the burden on Tribal Nations in participating.

Sec. 4. *Embracing Our Trust Responsibilities by Assessing Unmet Federal Obligations to Support Tribal Nations.* The Director of the Office of Management and Budget (OMB) and the Assistant to the President and Domestic Policy Advisor (Domestic Policy Advisor) shall lead an effort, in collaboration with WHCNAA, to identify chronic shortfalls in Federal funding and support programs for Tribal Nations, and shall submit recommendations to the President describing the additional funding and programming necessary to better live up to the Federal Government's trust responsibilities and help address the needs of all Tribal Nations, as follows:

(a) Within 240 days of the date of this order, the Director of OMB and the Domestic Policy Advisor shall, in consultation with the head of each agency that is a member of WHCNAA, and in consultation with Tribal leaders or their designees, develop guidance for assessing the additional funding each agency needs for its existing Federal funding and support programs for Tribal Nations to better live up to the Federal Government's trust responsibilities and help address the needs of all Tribal Nations.

(b) Within 540 days of the date of this order, the head of each agency that is a member of WHCNAA shall consult the guidance developed under subsection (a) of this section and submit a report to the Director of OMB and the Domestic Policy Advisor that identifies the funding needed for each agency's existing Federal funding and support programs for Tribal Nations to better live up to the Federal Government's trust responsibilities and help address the needs of Tribal Nations in the agency's areas of responsibility.

(c) The Director of OMB and the Domestic Policy Advisor shall develop, based on the agency reports provided under subsection (b) of this section and in consultation with Tribes and WHCNAA, recommendations for the Federal Government to take steps toward better living up to its trust responsibilities and helping address the needs of all Tribal Nations. These recommendations should identify any budgetary, statutory, regulatory, or other changes that may be necessary to ensure that Federal laws, policies, practices, and programs support Tribal Nations more effectively. These recommendations shall be submitted to the President, and shall be considered by agencies and OMB in developing the President's Budget beginning with the next regular President's Budget development cycle.

(d) After submission of the reports and recommendations described in subsections (b) and (c) of this section, the Executive Director of WHCNAA shall annually convene appropriate representatives of WHCNAA member agencies to share best practices, track progress on implementing the recommendations, and evaluate the need for reassessment of funding.

(e) Following submission of the recommendations described in subsection (c) of this section, WHCNAA member agencies shall report annually to the Director of OMB on progress made in response to such recommendations. The Director of OMB shall provide a summary of agencies' progress and any new recommendations to Tribal leaders at the annual White House Tribal Nations Summit.

Sec. 5. *Agency Actions to Increase the Accessibility, Equity, Flexibility, and Utility of Federal Funding and Support Programs for Tribal Nations.* Agency heads shall take the following actions to increase the accessibility, equity, flexibility, and utility of Federal funding and support programs for Tribal Nations, while increasing the transparency and efficiency of Federal funding processes to better live up to the Federal Government's trust responsibilities and support Tribal self-determination:

(a) Agencies shall design, revise, provide waivers for, and otherwise administer Federal funding and support programs for Tribal Nations to achieve the following objectives, to the maximum extent practicable and consistent with applicable law:

(i) promote compacting, contracting, co-management, co-stewardship, and other agreements with Tribal Nations that allow them to partner with the Federal Government to administer Federal programs and services;

(ii) identify funding programs that may allow for Tribal set-asides or other similar resource or benefits prioritization measures and, where appropriate, establish Tribal set-asides or prioritization measures that meet the needs of Tribal Nations;

(iii) design application and reporting criteria and processes in ways that reduce administrative burdens, including by consolidating and streamlining such criteria and processes within individual agencies;

(iv) take into account the unique needs, limited capacity, or significant barriers faced by Tribal Nations by providing reasonable and appropriate exceptions or accommodations where necessary;

(v) increase the flexibility of Federal funding for Tribal Nations by removing, where feasible, unnecessary limitations on Tribal spending, including by maximizing the portion of Federal funding that can be used for training, administrative costs, and additional personnel;

(vi) improve accessibility by identifying matching or cost-sharing requirements that may unduly reduce the ability of Tribal Nations to access resources and removing those burdens where appropriate;

(vii) respect Tribal data sovereignty and recognize the importance of Indigenous Knowledge by, when appropriate and permitted by statute, allowing Tribal Nations to use self-certified data and avoiding the establishment of processes that require Tribal Nations to apply to, or obtain permission from, State or local governments to access Federal funding or to be part of a Federal program;

(viii) provide Tribal Nations with the flexibility to apply for Federal funding and support programs through inter-Tribal consortia or other entities while requiring non-Tribal entities that apply for Federal funding on behalf of, or to directly benefit, Tribal Nations to include proof of Tribal consent; and

(ix) provide ongoing outreach and technical assistance to Tribal Nations throughout the application and implementation process while continually improving agencies' understanding of Tribal Nations' unique needs through Tribal consultation and meaningful partnerships.

(b) Agencies, in coordination with OMB and consistent with applicable law, should assess Tribal Nations' access to competitive grant funding by tracking applications from Tribal Nations to competitive grant programs and their funding award success rate.

(c) Agencies should proactively and systematically identify and address, where possible, any additional undue burdens not discussed in this order that Tribal Nations face in accessing or effectively using Federal funding and support programs for Tribal Nations and their root causes, including those causes that are regulatory, technological, or process-based.

(d) Agencies' implementation efforts shall appropriately maintain or enhance protections afforded under existing Federal law and policy, including those related to treaty rights and trust obligations, Tribal sovereignty and jurisdiction, civil rights, civil liberties, privacy, confidentiality, Indigenous Knowledge, and information access and security.

(e) The WHCNAA, with support from the Secretary of the Interior as appropriate, shall ensure that Tribal Nations can easily identify in one location all sources of Federal funding and support programs for Tribal Nations, and all agencies that provide such funding shall coordinate with the Secretary of the Interior or the Secretary's designee to compile and regularly update the necessary information to support this resource.

(f) Agencies shall identify opportunities, as appropriate and consistent with applicable law, to modify their respective regulations, internal and public-facing guidance, internal budget development processes, and policies to include responsiveness to and support for the needs of Tribal Nations as part of their respective agencies' missions.

(g) Agencies shall issue internal guidance or directives, and provide additional staff training or support, as needed and as appropriate and consistent with applicable law, to promote the implementation of the leading practices identified in this section and their integration into agencies' processes for developing policies and programs.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Agencies not covered by section 2(a) of this order, including independent agencies, are strongly encouraged to comply with the provisions of this order.

(d) This order is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
December 6, 2023.

Executive Order 14113 of December 21, 2023

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7401, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

(a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under

section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2024. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2024.

Sec. 8. *Prior Order Superseded.* Executive Order 14090 of December 23, 2022, is superseded as of the effective dates specified in section 7 of this order.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
December 21, 2023.

Schedule 1--General Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Grade	1	2	3	4	5	6	7	8	9	10
GS-1	$21,986	$22,724	$23,454	$24,183	$24,912	$25,339	$26,063	$26,792	$26,821	$27,502
GS-2	24,722	25,310	26,129	26,821	27,124	27,922	28,720	29,518	30,316	31,114
GS-3	26,975	27,874	28,773	29,672	30,571	31,470	32,369	33,268	34,167	35,066
GS-4	30,280	31,289	32,298	33,307	34,316	35,325	36,334	37,343	38,352	39,361
GS-5	33,878	35,007	36,136	37,265	38,394	39,523	40,652	41,781	42,910	44,039
GS-6	37,765	39,024	40,283	41,542	42,801	44,060	45,319	46,578	47,837	49,096
GS-7	41,966	43,365	44,764	46,163	47,562	48,961	50,360	51,759	53,158	54,557
GS-8	46,475	48,024	49,573	51,122	52,671	54,220	55,769	57,318	58,867	60,416
GS-9	51,332	53,043	54,754	56,465	58,176	59,887	61,598	63,309	65,020	66,731
GS-10	56,528	58,412	60,296	62,180	64,064	65,948	67,832	69,716	71,600	73,484
GS-11	62,107	64,177	66,247	68,317	70,387	72,457	74,527	76,597	78,667	80,737
GS-12	74,441	76,922	79,403	81,884	84,365	86,846	89,327	91,808	94,289	96,770
GS-13	88,520	91,471	94,422	97,373	100,324	103,275	106,226	109,177	112,128	115,079
GS-14	104,604	108,091	111,578	115,065	118,552	122,039	125,526	129,013	132,500	135,987
GS-15	123,041	127,142	131,243	135,344	139,445	143,546	147,647	151,748	155,849	159,950

Schedule 2--Foreign Service Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$123,041	$99,700	$80,787	$65,461	$53,043	$47,419	$42,391	$37,896	$33,878
2	126,732	102,691	83,211	67,425	54,634	48,842	43,663	39,033	34,894
3	130,534	105,772	85,707	69,448	56,273	50,307	44,973	40,204	35,941
4	134,450	108,945	88,278	71,531	57,962	51,816	46,322	41,410	37,019
5	138,484	112,213	90,926	73,677	59,700	53,371	47,711	42,652	38,130
6	142,638	115,580	93,654	75,887	61,491	54,972	49,143	43,932	39,274
7	146,917	119,047	96,464	78,164	63,336	56,621	50,617	45,250	40,452
8	151,325	122,618	99,358	80,509	65,236	58,319	52,136	46,607	41,666
9	155,865	126,297	102,339	82,924	67,193	60,069	53,700	48,006	42,916
10	159,950	130,086	105,409	85,412	69,209	61,871	55,311	49,446	44,203
11	159,950	133,988	108,571	87,974	71,285	63,727	56,970	50,929	45,529
12	159,950	138,008	111,828	90,613	73,424	65,639	58,679	52,457	46,895
13	159,950	142,148	115,183	93,332	75,627	67,608	60,439	54,031	48,302
14	159,950	146,413	118,638	96,132	77,895	69,636	62,253	55,652	49,751

Schedule 3--Veterans Health Administration Schedules
Department of Veterans Affairs

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306) and Directors of Medical Centers and Veterans Integrated Service Networks (38 U.S.C. 7401(4))*

	Minimum	Maximum
	$147,649	$221,900**

Physician, Podiatrist, and Dentist Base and Longevity Pay Schedule***	Minimum	Maximum
Physician Grade	$121,020	$177,496
Dentist Grade	121,020	177,496
Podiatrist Grade	121,020	177,496

Chiropractor and Optometrist Schedule	Minimum	Maximum
Chief Grade	$123,041	$159,950
Senior Grade	104,604	135,987
Intermediate Grade	88,520	115,079
Full Grade	74,441	96,770
Associate Grade	62,107	80,737

Expanded-Function Dental Auxiliary Schedule****	Minimum	Maximum
Director Grade	$123,041	$159,950
Assistant Director Grade	104,604	135,987
Chief Grade	88,520	115,079
Senior Grade	74,441	96,770
Intermediate Grade	62,107	80,737
Full Grade	51,332	66,731
Associate Grade	44,173	57,421
Junior Grade	37,765	49,096

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* Pursuant to 38 U.S.C. 7404(a)(2)(A) and (e), this schedule does not apply to the Director of Nursing Service or any incumbents who are physicians, podiatrists, or dentists. Pursuant to 38 U.S.C. 7404(a)(2)(B), this schedule also does not apply to the basic pay of any incumbents who are registered nurses or physician assistants if that basic pay is determined by the Secretary under subchapter IV of chapter 74 of title 38, United States Code.

** Pursuant to 38 U.S.C. 7404(a)(3)(B), for positions that are covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level II of the Executive Schedule. For positions that are not covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level III of the Executive Schedule.

*** Pursuant to 38 U.S.C. 7431, Veterans Health Administration physicians, podiatrists, and dentists paid under the Physician, Podiatrist, and Dentist Base and Longevity Pay schedule may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

Schedule 4--Senior Executive Service

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$147,649	$221,900
Agencies without a Certified SES Performance Appraisal System	$147,649	$204,000

Schedule 5--Executive Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Level I	$246,400
Level II	221,900
Level III	204,000
Level IV	191,900
Level V	180,000

Schedule 6--Vice President and Members Of Congress

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Vice President	$284,600
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

Schedule 7--Judicial Salaries

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Chief Justice of the United States	$312,200
Associate Justices of the Supreme Court	298,500
Circuit Judges	257,900
District Judges	243,300
Judges of the Court of International Trade	243,300

Schedule 8--Pay of The Uniformed Services
(Effective January 1, 2024)

Part I--Monthly Basic Pay
Years of Service (Computed Under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
Commissioned Officers											
O-10*	-	-	-	-	-	-	-	-	-	-	-
O-9*	-	-	-	-	-	-	-	-	-	-	-
O-8	$12,803.70	$13,223.70	$13,501.80	$13,579.20	$13,926.90	$14,506.50	$14,641.80	$15,192.60	$15,351.30	$15,825.90	$16,512.90
O-7	10,638.90	11,133.00	11,361.90	11,544.00	11,872.80	12,198.30	12,574.20	12,948.90	13,325.40	14,506.50	15,504.30
O-6**	8,067.90	8,863.20	9,444.90	9,444.90	9,481.20	9,887.40	9,941.40	9,941.40	10,506.30	11,505.00	12,091.20
O-5	6,725.70	7,576.50	8,100.90	8,199.60	8,527.20	8,722.50	9,153.00	9,469.80	9,878.10	10,501.80	10,799.10
O-4	5,803.20	6,717.30	7,166.40	7,265.40	7,681.50	8,127.90	8,684.10	9,116.10	9,416.70	9,589.50	9,689.10
O-3***	5,102.10	5,783.70	6,241.80	6,806.10	7,132.80	7,490.70	7,721.70	8,102.10	8,301.00	8,301.00	8,301.00
O-2***	4,408.50	5,020.80	5,782.80	5,978.10	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80
O-1***	3,826.20	3,982.80	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70
Commissioned Officers with Over 4 Years Active Duty Service as an Enlisted Member or Warrant Officer**											
O-3E	-	-	-	$6,806.10	$7,132.80	$7,490.70	$7,721.70	$8,102.10	$8,423.40	$8,607.90	$8,859.00
O-2E	-	-	-	5,978.10	6,100.80	6,294.90	6,622.80	6,876.60	7,065.00	7,065.00	7,065.00
O-1E	-	-	-	4,814.70	5,141.10	5,331.30	5,525.70	5,716.50	5,978.10	5,978.10	5,978.10
Warrant Officers											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$5,273.10	$5,671.50	$5,834.40	$5,994.60	$6,270.60	$6,543.60	$6,820.20	$7,235.40	$7,599.90	$7,946.70	$8,231.10
W-3	4,815.60	5,015.70	5,222.10	5,289.00	5,504.40	5,928.90	6,370.80	6,579.00	6,819.90	7,067.40	7,513.80
W-2	4,260.90	4,663.80	4,787.70	4,873.20	5,149.20	5,578.50	5,791.80	6,001.20	6,257.40	6,457.80	6,639.00
W-1	3,739.80	4,143.00	4,250.70	4,479.60	4,749.90	5,148.30	5,334.30	5,595.30	5,850.90	6,052.20	6,237.60

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2024, which is $18,491.70 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2024, which is $15,000.00 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member, which are creditable toward reserve retirement, also qualify for these rates.

Schedule 8--Pay of The Uniformed Services (Page 2)
(Effective January 1, 2024)
Part I--Monthly Basic Pay
Years of Service (Computed Under 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
Commissioned Officers											
O-10*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*	$18,491.70*
O-9	18,096.00	18,357.30	18,491.70*	18,491.70*	18,491.70*	18,491.70*	18,491.70*	18,491.70*	18,491.70*	18,491.70*	18,491.70*
O-8	17,145.60	17,568.60	17,568.60	17,568.60	17,568.60	18,008.40	18,008.40	18,458.10	18,458.10	18,458.10	18,458.10
O-7	15,504.30	15,504.30	15,504.30	15,584.10	15,584.10	15,895.80	15,895.80	15,895.80	15,895.80	15,895.80	15,895.80
O-6**	12,677.10	13,010.70	13,348.50	14,002.80	14,002.80	14,282.40	14,282.40	14,282.40	14,282.40	14,282.40	14,282.40
O-5	11,093.10	11,426.70	11,426.70	11,426.70	11,426.70	11,426.70	11,426.70	11,426.70	11,426.70	11,426.70	11,426.70
O-4	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10	9,689.10
O-3***	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00	8,301.00
O-2***	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80	6,100.80
O-1***	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70	4,814.70
Commissioned Officers with Over 4 Years Active Duty Service As An Enlisted Member Or Warrant Officer****											
O-3E	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00	$8,859.00
O-2E	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00	7,065.00
O-1E	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10	5,978.10
Warrant Officers											
W-5	$9,375.60	$9,851.10	$10,205.70	$10,597.20	$10,597.20	$11,128.20	$11,128.20	$11,683.50	$11,683.50	$12,269.10	$12,269.10
W-4	8,508.30	8,914.50	9,248.70	9,629.70	9,629.70	9,821.70	9,821.70	9,821.70	9,821.70	9,821.70	9,821.70
W-3	7,814.70	7,994.70	8,186.10	8,447.10	8,447.10	8,447.10	8,447.10	8,447.10	8,447.10	8,447.10	8,447.10
W-2	6,856.20	6,998.70	7,111.80	7,111.80	7,111.80	7,111.80	7,111.80	7,111.80	7,111.80	7,111.80	7,111.80
W-1	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90	6,462.90

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2024, which is $18,491.70 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2024, which is $15,000.00 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member, which are creditable toward reserve retirement, also qualify for these rates.

Schedule 8--Pay of The Uniformed Services (Page 3)
(Effective January 1, 2024)
Part I--Monthly Basic Pay
Years Of Service (Computed Under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
Enlisted Members											
E-9*	-	-	-	-	-	-	$6,370.50	$6,514.80	$6,696.60	$6,910.50	$7,127.10
E-8	-	-	-	-	-	$5,214.90	5,445.60	5,588.40	5,759.40	5,944.50	6,279.30
E-7	$3,624.90	$3,956.40	$4,108.20	$4,308.30	$4,465.50	4,734.60	4,886.40	5,155.20	5,379.30	5,532.30	5,694.90
E-6	3,135.60	3,450.60	3,603.00	3,750.90	3,904.80	4,252.50	4,387.80	4,649.70	4,729.80	4,788.00	4,856.40
E-5	2,872.20	3,065.70	3,214.20	3,365.70	3,601.80	3,848.70	4,052.10	4,076.40	4,076.40	4,076.40	4,076.40
E-4	2,633.70	2,768.40	2,918.40	3,066.30	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40
E-3	2,377.50	2,526.90	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20
E-2	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10
E-1**	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20
E-1***	1,865.10	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Chief Master Sergeant of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $10,294.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

Schedule 8--Pay of The Uniformed Services (Page 4)
(Effective January 1, 2024)
Part I--Monthly Basic Pay

	Years Of Service (Computed Under 37 U.S.C. 205)										
Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					Enlisted Members						
E-9*	$7,472.10	$7,765.20	$8,072.70	$8,544.00	$8,544.00	$8,970.30	$8,970.30	$9,419.40	$9,419.40	$9,891.30	$9,891.30
E-8	6,449.10	6,737.40	6,897.30	7,291.20	7,291.20	7,437.30	7,437.30	7,437.30	7,437.30	7,437.30	7,437.30
E-7	5,757.90	5,969.70	6,083.10	6,515.70	6,515.70	6,515.70	6,515.70	6,515.70	6,515.70	6,515.70	6,515.70
E-6	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40	4,856.40
E-5	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40	4,076.40
E-4	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40	3,197.40
E-3	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20	2,680.20
E-2	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10	2,261.10
E-1**	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20	2,017.20
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Chief Master Sergeant of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $10,294.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

Schedule 8--Pay of The Uniformed Services (Page 5)

Part II--Rate of Monthly Cadet or Midshipman Pay

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,339.50.

Schedule 9--Locality-Based Comparability Payments

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

Locality Pay Area*	Rate
Alaska	31.96%
Albany-Schenectady, NY-MA	20.25%
Albuquerque-Santa Fe-Las Vegas, NM	18.05%
Atlanta–Athens-Clarke County–Sandy Springs, GA-AL	23.45%
Austin-Round Rock-Georgetown, TX	19.99%
Birmingham-Hoover-Talladega, AL	17.91%
Boston-Worcester-Providence, MA-RI-NH-CT-ME-VT	31.97%
Buffalo-Cheektowaga-Olean, NY	21.99%
Burlington-South Burlington-Barre, VT	18.97%
Charlotte-Concord, NC-SC	19.26%
Chicago-Naperville, IL-IN-WI	30.41%
Cincinnati-Wilmington-Maysville, OH-KY-IN	21.69%
Cleveland-Akron-Canton, OH-PA	22.01%
Colorado Springs, CO	19.73%
Columbus-Marion-Zanesville, OH	21.80%
Corpus Christi-Kingsville-Alice, TX	17.40%
Dallas-Fort Worth, TX-OK	26.91%
Davenport-Moline, IA-IL	18.66%
Dayton-Springfield-Kettering, OH	21.14%
Denver-Aurora, CO	29.88%
Des Moines-Ames-West Des Moines, IA	17.68%
Detroit-Warren-Ann Arbor, MI	28.82%
Fresno-Madera-Hanford, CA	17.15%
Harrisburg-Lebanon, PA	19.10%
Hartford-East Hartford, CT-MA	31.62%
Hawaii	21.79%
Houston-The Woodlands, TX	34.72%
Huntsville-Decatur, AL-TN	21.48%
Indianapolis-Carmel-Muncie, IN	17.89%
Kansas City-Overland Park-Kansas City, MO-KS	18.65%
Laredo, TX	21.33%
Las Vegas-Henderson, NV-AZ	19.23%
Los Angeles-Long Beach, CA	35.84%
Miami-Port St. Lucie-Fort Lauderdale, FL	24.42%
Milwaukee-Racine-Waukesha, WI	22.15%
Minneapolis-St. Paul, MN-WI	27.15%
New York-Newark, NY-NJ-CT-PA	37.24%
Omaha-Council Bluffs-Fremont, NE-IA	17.94%
Palm Bay-Melbourne-Titusville, FL	17.60%
Philadelphia-Reading-Camden, PA-NJ-DE-MD	28.55%
Phoenix-Mesa, AZ	22.02%
Pittsburgh-New Castle-Weirton, PA-OH-WV	20.78%
Portland-Vancouver-Salem, OR-WA	25.66%
Raleigh-Durham-Cary, NC	21.90%
Reno-Fernley, NV	17.11%
Richmond, VA	21.91%
Rochester-Batavia-Seneca Falls, NY	17.35%
Sacramento-Roseville, CA-NV	29.16%
San Antonio-New Braunfels-Pearsall, TX	18.49%
San Diego-Chula Vista-Carlsbad, CA	33.05%
San Jose-San Francisco-Oakland, CA	45.41%
Seattle-Tacoma, WA	30.81%
Spokane-Spokane Valley-Coeur d'Alene, WA-ID	17.18%
St. Louis-St. Charles-Farmington, MO-IL	19.63%
Tucson-Nogales, AZ	18.92%
Virginia Beach-Norfolk, VA-NC	18.46%
Washington-Baltimore-Arlington, DC-MD-VA-WV-PA	33.26%
Rest of U.S.	16.82%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2024)

AL-3/A	$128,200
AL-3/B	138,000
AL-3/C	147,900
AL-3/D	157,900
AL-3/E	167,900
AL-3/F	177,600
AL-2	187,300
AL-1*	191,900

* Pursuant to 5 U.S.C. 5372(b)(1)(C), the rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

Executive Order 14114 of December 22, 2023

Taking Additional Steps With Respect to the Russian Federation's Harmful Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, in view of the Russian Federation's continued use of its military-industrial base to aid its effort to undermine security in countries and regions important to United States national security, including its reliance on the international financial system for the procurement of dual-use and other critical items from third countries, and in order to take additional steps with respect to the national emergency declared in Executive Order 14024 of April 15, 2021, expanded by Executive Order 14066 of March 8, 2022, and relied on for additional steps taken in Executive Order 14039 of August 20, 2021, Executive Order 14068 of March 11, 2022, and Executive Order 14071 of April 6, 2022, hereby order:

Section 1. *Amendments to Executive Order 14024.* Executive Order 14024 is hereby amended by redesignating section 11 of that order as section 12 and adding a new section 11 to read as follows:

''**Sec. 11**. (a) The Secretary of the Treasury, in consultation with the Secretary of State, and with respect to subsection (a)(ii) of this section, in consultation with the Secretary of State and the Secretary of Commerce, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section, upon determining that the foreign financial institution has:

(i) conducted or facilitated any significant transaction or transactions for or on behalf of any person designated pursuant to section 1(a)(i) of this order for operating or having operated in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian Federation economy, or other such sectors as may be determined to support Russia's military-industrial base by the Secretary of the Treasury, in consultation with the Secretary of State; or

(ii) conducted or facilitated any significant transaction or transactions, or provided any service, involving Russia's military-industrial base, including the sale, supply, or transfer, directly or indirectly, to the Russian Federation of any item or class of items as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce.

(b) With respect to any foreign financial institution determined to meet the criteria set forth in subsection (a) of this section, the Secretary of the Treasury, in consultation with the Secretary of State, may:

(i) prohibit the opening of, or prohibit or impose strict conditions on the maintenance of, correspondent accounts or payable-through accounts in the United States; or

(ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

(d) I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (b)(ii) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by subsection (b)(ii) of this section.

(e) The prohibitions in subsection (b)(ii) of this section include:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to subsection (b)(ii) of this section; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(f) For purposes of this section, the term ''foreign financial institution'' means any foreign entity that is engaged in the business of accepting deposits; making, granting, transferring, holding, or brokering loans or credits; purchasing or selling foreign exchange, securities, futures or options; or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions; banks; savings banks; money services businesses; operators of credit card systems; trust companies; insurance companies; securities brokers and dealers; futures and options brokers and dealers; forward contract and foreign exchange merchants; securities and commodities exchanges; clearing corporations; investment companies; employee benefit plans; dealers in precious metals, stones, or jewels; and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Office of Foreign Assets Control.''.

Sec. 2. *Additional Amendments to Executive Order 14024.* Executive Order 14024 is hereby amended by striking section 7 and inserting, in lieu thereof, the following:

''**Sec. 7**. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice

of a listing or determination made pursuant to section 1 or section 11 of this order.''.

Sec. 3. *Amendments to Executive Order 14068.* Executive Order 14068 is hereby amended as follows:

(a) in section 1, by striking subsection (a)(i) and inserting, in lieu thereof, the following:

(i) the importation and entry into the United States, including importation for admission into a foreign trade zone located in the United States, of:

(A) the following products of Russian Federation origin: fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian Federation origin, as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce;

(B) categories of any of the following products as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security, that were mined, extracted, produced, or manufactured wholly or in part in the Russian Federation, or harvested in waters under the jurisdiction of the Russian Federation or by Russia-flagged vessels, notwithstanding whether such products have been incorporated or substantially transformed into other products outside of the Russian Federation: fish, seafood, and preparations thereof; diamonds; and any other such products as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security;

(C) products containing any of the products subject to the prohibitions of subsections (a)(i)(A)–(B) of this section, as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security; and

(D) products subject to the prohibitions of subsections (a)(i)(A)–(C) of this section that transited through or were exported from or by the Russian Federation, as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security;'';

(b) in section 1, by adding new subsections (c)–(f) to read as follows:

''(c) The prohibitions in subsection (a)(i) of this section apply with respect to:

(i) products subject to the prohibitions of subsection (a)(i)(A) of this section imported on or after the date of this order or the date specified in any determinations made pursuant to that subsection, unless otherwise specified or authorized; and

(ii) products subject to the prohibitions of subsections (a)(i)(B)–(D) of this section imported on or after the date specified in any determinations made pursuant to those subsections, unless otherwise specified or authorized.

(d) The Secretary of Homeland Security, with the concurrence of the Secretary of the Treasury, shall prescribe rules and regulations to collect, including through an authorized electronic data interchange system as appropriate, any documentation or information as may be necessary to enforce subsections (a)(i)(B)–(D) and (c) of this section as expeditiously as possible.'';

(c) in section 4, by striking ''and'' at the end of subsection 4(c), by striking the period at the end of subsection (d) and replacing it with ''; and'', and by inserting the following new subsection after subsection (d):

''(e) the term ''diamond'' includes any diamonds classifiable under subheadings 7102.10, 7102.31, and 7102.39 of the Harmonized Tariff Schedule of the United States and under any other subheadings of the Harmonized Tariff Schedule of the United States specified in determinations made pursuant to section (1)(a)(i) of this order.''; and

(d) by striking section 5 and inserting, in lieu thereof, the following:

''**Sec. 5**. The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Homeland Security, in consultation with the Secretary of State, are hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Homeland Security may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury, the Department of Commerce, and the Department of Homeland Security, respectively. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.''.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other persons.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,
December 22, 2023.

OTHER PRESIDENTIAL DOCUMENTS

Subchapter B—Administrative Orders

Memorandum of January 6, 2023

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $2.85 billion in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.

JOSEPH R. BIDEN, JR.

THE WHITE HOUSE,

Washington, January 6, 2023.