

S. HRG. 116-646

**NOMINATIONS TO THE
U.S. DEPARTMENT OF TRANSPORTATION,
FEDERAL COMMUNICATIONS COMMISSION,
CONSUMER PRODUCT SAFETY COMMISSION,
AND THE U.S. DEPARTMENT OF COMMERCE**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

JUNE 16, 2020

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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CONSUMER PRODUCT SAFETY COMMISSION,
AND THE U.S. DEPARTMENT OF COMMERCE**

TUESDAY, JUNE 16, 2020

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room SD-G50, Dirksen Senate Office Building, Hon. Roger Wicker, Chairman of the Committee, presiding.

Present: Senators Wicker [presiding], Thune, Blunt, Cruz, Fischer, Moran, Sullivan, Blackburn, Capito, Lee, Young, Scott, Cantwell, Blumenthal, Udall, Peters, Baldwin, Duckworth, Tester, Sinema, and Rosen.

**OPENING STATEMENT OF HON. ROGER WICKER,
U.S. SENATOR FROM MISSISSIPPI**

The CHAIRMAN. The hearing will come to order.

Today the Committee will consider five nominations to important positions across the jurisdiction of the Committee. The nominees before us today are: Joel Szabat, to be Under Secretary of Transportation Policy; Michael O'Rielly, who has been nominated for a new term as Commissioner at the Federal Communications Commission; Nancy Beck, who has been nominated to be a Commissioner and Chairman of the Consumer Product Safety Commission; Michael Walsh, nominated to be General Counsel of the Department of Commerce; and Mary Toman, the nominee to be Under Secretary of Commerce for Economic Affairs.

Mr. Szabat has been known and respected by the members of this committee for many years. He has held key positions in the transportation sector, including his service as Deputy Assistant Secretary for Transportation Policy, Deputy Assistant Secretary for Management and Budget, and Executive Director of the Maritime Administration.

Mr. Szabat was previously considered by this committee and unanimously confirmed by the full Senate in January 2019 to the position of Assistant Secretary for Aviation and International Affairs. In recent months, he has also served as the Acting Under Secretary of Transportation for Policy and has performed the duties of this position, giving him valuable experience for future continued service in this role for which he has been nominated.

Commissioner Michael O’Rielly has served as a member of the FCC since 2013, having been unanimously confirmed twice by the full Senate. He has now been nominated to serve a new term at this agency. During his tenure, he has been a leader on spectrum and video policy issues and has made other important contributions to the work of the Commission. Prior to his service at the FCC, Commissioner O’Rielly held a number of staff positions in the U.S. Congress, including service with the House Committee on Energy and Commerce and on the staffs of a number of Senators, including former and current members of this committee.

Dr. Nancy Beck has been nominated to serve as Commissioner and as Chairman of the Consumer Product Safety Commission. She has an accomplished academic record, demonstrated by her Bachelor’s Degree in Microbiology from Cornell University and her Master’s and Doctorate degrees in Environmental Health from the University of Washington. Dr. Beck has gained broad career experience in the private sector with the Washington State Department of Health, the Office of Management and Budget, the American Chemistry Council, and her current position as Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention with the U.S. Environmental Protection Agency. Recently she completed a detail as a policy advisor with the National Economic Council.

Michael Walsh has built an impressive legal career, beginning with his law degree from Columbia Law School and continuing through associate, counsel, and partner positions at respected firms. Mr. Walsh began his service at the Department of Commerce as Deputy General Counsel before becoming Chief of Staff. Additionally, he has been performing the delegated duties of the General Counsel for almost a year, and he appears before this committee today as the nominee for this role.

And then appearing remotely by video is Mary Toman. Her educational and career background are part of her strong record of achievement, which has resulted in her nomination to serve as Under Secretary of Commerce for Economic Affairs. She holds a degree in economics from Stanford University and an M.B.A. from Harvard Business School. Earlier in her career, she was a Deputy Assistant Secretary of Commerce, and she also was the Deputy Treasurer of the State of California. Her current private sector position focuses on the creation and management of a successful stock and real estate portfolio.

I would like to thank all the nominees for testifying today and for your willingness to serve in these key roles in our government.

And I will now turn to Ranking Member Cantwell for her opening remarks. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

Today we have five nominees for key positions at several agencies. Let me start first with the nominee for Chairman and Commissioner of the U.S. Consumer Product Safety Commission.

The Consumer Product Safety Commission has jurisdiction over thousands of consumer products, including toys and many other

products used by infants and small children. The agency is literally the last line of defense against defects and toxic hazards in consumer products that can kill and cause serious injuries.

Unfortunately, Dr. Beck's record is clear. She has repeatedly sided with an industry to represent the American Chemistry Council over the safety of American families. I believe that she has a glaring failure in the lack of meaningful address to the health risk posed by a class of highly persistent chemicals referred to, PFAS.

PFAS are a class of toxic chemicals that have been linked to cancers, thyroid disease, decreased response to vaccines, birth defects, and immune system disorders. These chemicals are found in many consumer products like carpets, clothing, paint, nonstick cookware, as well as fire fighting foam that is used at military bases. In fact, they have contaminated over 300 military installations across the country, including several in the State of Washington.

Just last week, the Agency for Toxic Substances and Disease Registry, which is part of the Centers for Disease Control and Prevention, released PFAS exposure assessments for 333 people living near Fairchild Air Force Base in Spokane. The assessment showed that almost all the people studied had PFAS levels higher than the national average.

Washington has been a leader in the Nation in dealing with PFAS. It was the first state to ban the use of the fire fighting foam containing PFAS, as well as PFAS in food packaging, but it will cost billions of dollars to clean up the mess, much of that Federal dollars, and millions of people will continue to be harmed from the exposures for years to come.

Dr. Beck has repeatedly stood in the way of progress on this issue. At EPA, Dr. Beck assisted in delaying the release of a government study which found that the EPA's current health advisory for PFAS in drinking water was too weak to protect the public. The propose health advisory would show that PFAS is dangerous at a much lower level than previously thought.

And as a White House official in an e-mail to the Office of Management and Budget, deemed the report a public relations nightmare, impervious to the public health nightmare that was unfolding around the country with PFAS. In fact, the final report is still stuck at the White House where Dr. Beck was detailed to work on environmental regulations for the National Economic Council.

This is one of the reasons why the Secretary of the Washington State Department of Health where Dr. Beck has worked sent me a letter yesterday strongly opposing her nomination. The International Association of Fire Fighters also strongly oppose her nomination, stating, quote, "her record promoting the interests of the chemical industry at the expense of workers' health and safety makes her ill-suited for this position." I will put these two letters, Mr. Chairman, in the record.

The CHAIRMAN. Without objection, they will be placed in at this point.

[The information referred to follows:]

WASHINGTON STATE DEPARTMENT OF HEALTH
June 15, 2020

Hon. ROGER WICKER,
Chairman,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Dear Chairman Wicker and Ranking Member Cantwell:

We write to express our grave concerns regarding the nomination of Dr. Nancy Beck to chair the Consumer Product Safety Commission (CPSC) due to her past actions to undermine the public's health. We urge you to vigorously oppose her confirmation.

Over the past 40 years, CPSC has kept people safe across the United States by reducing the unreasonable risk of injuries and deaths from over approximately 10,000 types of products, including baby strollers, cribs, and bath seats, to cigarette lighters and lawn mowers.¹ CPSC has broad authority under the law to ensure consumer product safety, including by restricting toxic chemicals like lead, formaldehyde, asbestos, and fire retardants in consumer products.² Dr. Beck is grossly unfit to chair the CPSC after having worked inside and outside of government to roll back regulations aimed at protecting people from the serious risk of toxic chemicals.³ As someone with a clear record of implementing policies that benefit industry at the expense of consumer protection, Dr. Beck has no place leading an agency whose mission is to protect consumer health and safety from being harmed by the very products they believe are safe to bring in their homes.

Dr. Beck has repeatedly attempted to roll back or water down Federal regulation on environmental health while working at the Office of Information and Regulatory Affairs (OIRA) during the Bush Administration, and more recently, at the Office of Chemical Safety and Pollution Prevention in the Environmental Protection Agency (EPA) during the Trump Administration. For example:

- Dr. Beck advocated for the revision of language in Federal lead paint regulations to diminish the link to cardiovascular disease in adults.⁴
- She helped slow down efforts to protect drinking water from perchlorate, an ingredient in rocket fuel.⁵
- While at OIRA, she helped draft the 2006 Proposed Risk Assessment Bulletin that would limit how the Federal government assesses risks to human health.⁶ The Office of Management and Budget requested the nonpartisan National Academy of Sciences' (NAS) National Research Council to review the guidance and NAS published a report finding the guidance was fundamentally flawed.⁷ Fortunately, OMB did not finalize the draft guidance.⁸
- While at EPA, she attempted to implement flawed concepts of the 2006 Proposed Risk Assessment Bulletin during implementation the Consumer Product Safety Improvement Act of 2016. These proposed regulations were appealed to the Ninth Circuit and reversed, in part on grounds that the EPA's exclusion of

¹ See David Carpenter, *The Consumer Product Safety Act: A Lego Analysis*, Congressional Research Service, available at <https://fas.org/sgp/crs/misc/R45174.pdf>

² See David Carpenter, *The Consumer Product Safety Act: A legal Analysis*, Congressional Research Service, available at <https://fas.org/sgp/crs/misc/R45174.pdf>

³ See Eric Lipton, *Why Has the E.P.A. Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots*, The New York Times, Oct 21, 2017, available at <https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>

⁴ *Id.*

⁵ See Majority Staff of the Subcommittee on Investigations and Oversight for the U.S. House of Representatives Committee on Science and Technology, *Nipping IRIS in the Bud: Suppression of Environmental Science by the Bush Administration's Office of Management And Budget*, June 11, 2009, available at <https://www.documentcloud.org/documents/4113586-EPA-and-Toxic-Chemical-Rules.html#document/p94/a382944>

⁶ See Office of Management and Budget, *Proposed Risk Assessment Bulletin*, available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/proposed_risk_assessment_bulletin_010906.pdf

⁷ See National Research Council. 2007. *Scientific Review of the Proposed Risk Assessment Bulletin from the Office of Management and Budget*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/11811>

⁸ Office of Management and Budget, *Updated Principles/or Risk Analysis*, September 19, 2007, available at <https://georgewbush-whitehouse.archives.gov/omb/memoranda/fy2007/m07-24.pdf>

legacy uses and associated disposals from the definition of “conditions of use” is unlawful.⁹

- Dr. Beck scaled back several policies curbing Federal limits on chemicals, including two powerful solvents linked to neurological defects.¹⁰
- She also pressured EPA to make changes to loosen a potential regulation of PFAS.¹¹

The Committee should be deeply concerned by Dr. Beck’s significant connections to the very industry she is supposed to regulate. Dr. Beck worked as a senior policy director at the American Chemistry Council (ACC), a powerful chemical industry lobbying group.¹² ACC has opposed protections against numerous toxic chemicals, including flame retardants.¹³ The CPSC granted a petition to initiate rulemaking on the use of certain flame retardants in four categories of consumer products, including children’s products.¹⁴ A number of flame retardants are linked to thyroid disruption, cancer, and learning deficits.¹⁵ If Dr. Beck were appointed chair of CPSC, we firmly believe she would fail to put the health of the American public before industry interests.

Additionally, Dr. Beck has a record of ignoring the advice of scientific advisors and interfering with the development of evidence-based policy. According to press reports, she was involved in the shelving of the Centers for Disease Control and Prevention (CDC) coronavirus guidance while on detail with NEC.¹⁶ Timely national guidance from scientific experts at CDC would have been instrumental in helping states, territories, and local health officials develop guidance on how to safely reopen communities. As state officials charged with protecting the public health, we were deeply troubled to learn Dr. Beck was involved in this matter. CPSC needs leadership that uses the advice of scientific experts to help guide policy.

Finally, we have serious concerns that Dr. Beck’s appointment could lead to CPSC action to preempt our robust state laws.¹⁷ Washington State has a number of state laws that protect children from mercury, lead, flame retardants, PFAS, and other chemicals and that offer robust consumer and environmental protection.¹⁸ Because the chemicals in consumer products can be released into the environment during product use and disposal, safer consumer products are important for pollution prevention. Based on Dr. Beck’s history of advocating for the national chemical industry, which frequently takes positions against state-based regulations, we have reason to believe she would support rolling back our important consumer protections through Federal preemption.

For the reasons stated above, we urge you to oppose Dr. Nancy Beck’s confirmation as chair of the Consumer Product Safety Commission. Her record makes clear that she will fail to put the health and safety of Americans first. If you have any

⁹ Concerned Scientists *Safer Chemicals, Healthy Families v. U.S. Evtl. Prot. Agency*, 943 F.3d 397 (9th Cir. 2019)

¹⁰ See Todd Frankel and Juliet Eilperin, *Trump may appoint former chemical industry executive to lead Consumer Product Safety Commission*, The Washington Post, December 10, 2019, available at <https://www.washingtonpost.com/business/2019/12/10/white-house-considering-former-chemical-industry-executive-lead-consumer-product-safety-commission/>

¹¹ See Senator Carper’s letter to Administrator Andrew Wheeler, dated April 17, 2020, available at <https://www.epw.senate.gov/public/cache/files/c/1/c15a8ced-03b1-4a46-bb05-aba15d10e36e/DC527687B68D0EF6DDE2A93C26A6D6FC.04-17-20-tc-pfas-snur-letter-to-wheeler.pdf>

¹² See Frankel and Eilperin, December 10, 2019

¹³ See American Chemistry Council, *NASEM Report Confirms Organohalogen Flame Retardant Cannot Be Assessed for Hazards as a Single Class*, May 15, 2019, available at <https://www.americanchemistry.com/Media/PressReleasesTranscripts/ACC-news-releases/NASEM-Report-Confirms-Organohalogen-Flame-Retardants-Cannot-Be-Assessed-for-Hazards-as-a-Single-Class.html>

¹⁴ See U.S. Consumer Product Safety Commission webpage on flame retardants, available at <https://www.cpsc.gov/Business-Manufacturing/Business-Education/Business-Guidance/flame-retardants>

¹⁵ Washington State Department of Ecology, *Children’s Safe Products Reporting Rule Rationale for Reporting List of Chemicals of High Concern to Children 2011–2017*, Publication Number 18–04–025, dated November 2018, available at <https://fortress.wa.gov/ecy/publications/SummaryPages/1804025>

¹⁶ See Jason Dearen and Michael Biesecker, *E-mails: Trump nominee involved in shelving CDC virus guide*, Associated Press, May 13, 2020, available at <https://www.post-gazette.com/news/nation/2020/05/13/E-mails-Trump-nominee-involved-in-shelving-CDC-virus-guide/stories/202005130139>

¹⁷ See David Carpenter, *The Consumer Product Safety Act: A Legal Analysis*, Congressional Research Service, available at <https://fas.org/sgp/crs/misc/R45174.pdf>

¹⁸ See chapters 70.95M, 70.280, 70.365 of the Revised Code of Washington available at <https://app.leg.wa.gov/rcw/>

questions, please contact the Director of Governor Inslee's Washington, D.C. office, Casey Katims, at Casey.Katims@gov.wa.gov.

Sincerely,

JOHN WIESMAN, DRPH, MPH

Secretary,

Washington State Department of Health.

LAURA WATSON,

Director,

Washington State Department of Ecology.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®

Washington, DC, May 12, 2020

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and
Transportation,
U.S. Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
U.S. Senate,
Washington, DC.

Dear Chairman Wicker and Ranking Member Cantwell,

On behalf of the more than 320,000 professional fire fighters and emergency medical personnel of the International Association of Fire Fighters (IAFF), I am writing to express our opposition to the nomination of Nancy Beck to Chair the U.S. Consumer Product Safety Commission (CPSC). We believe her record promoting the interests of the chemical industry at the expense of workers' health and safety makes her ill-suited for this position.

As a lobbyist and former executive for the chemical industry, Ms. Beck opposed efforts to ban toxic flame retardants from consumer products despite research demonstrating their negative health impacts on vulnerable populations and workers, including fire fighters. Additionally, in her current role as Principal Deputy Assistant Administrator in the EPA's Office of Chemical Safety and Pollution Prevention, Ms. Beck has actively weakened safety protections and undermined rules on emerging hazards such as PFAS. She also demonstrated her disinterest in protecting workers through her work to exclude exposure to legacy asbestos in the chemical's risk evaluation under TSCA.

Ms. Beck's professional record, while working for the chemical industry, the EPA and in the White House, illustrates a consistent disregard for the risks that toxic chemicals pose to workers' health. Fire fighters are particularly concerned with the potential cancer risk posed by toxic flame retardants, and have worked in the states to ban their use. As CPSC Chair, Ms. Beck would be poised to undermine the significant progress states have made to ban flame retardants and could reverse the Commission's planned rulemaking on the use of organohalogen flame retardants in various consumer products.

The IAFF believes if Ms. Beck is appointed as chair to the CPSC Commission she will continue to advance the agenda of the chemical industry and reverse health and safety protections for fire fighters and consumers across the country. We urge you to reject her nomination.

Sincerely,

HAROLD A. SCHAITBERGER,

General President.

Senator CANTWELL. Thank you, Mr. Chairman.

We cannot afford to go backward on regulation of toxic chemicals like PFAS which are often found in consumer products. And PFAS is not the only safety issue that I am concerned about.

Dr. Beck's efforts to implement overwhelming—efforts to implement the overwhelming bipartisan reform of the Toxic Substances Control Act led to the Ninth Circuit saying that the Trump administration was ignoring clear requirements of the law. And rather than addressing the science evidence showing that a toxic chemical, TCE, caused birth defects, Dr. Beck simply directed the Trump

EPA to delete that evidence from the risk evaluation in the first place.

The *Associated Press* reported that at OMB, Dr. Beck was involved in a push to block the release of COVID-19 safety guidance to states and localities from the Centers of Disease Control.

Now, last December, we released a report about the serious recall process at the Consumer Product Safety Commission, including issues about strollers and serious injuries from infant sleepers. So I want to see someone at the leadership of the Consumer Product Safety Commission that will help us in protecting the public.

So, Mr. Chairman, I know we will hear from the witness, and I look forward to hearing what comments and having a chance to ask questions about these very important issues.

In addition, Michael Walsh is here to serve as the General Counsel at the Department of Commerce. He has previously served as the Department Deputy General Counsel and the Chief of Staff and has now moved to Acting General Counsel.

Mr. Walsh appears to have been involved in efforts last summer to stifle career National Weather Service staff who attempted to correct President Trump's erroneous statements about Hurricane Dorian.

Just yesterday, NOAA released the findings of an independent review of allegations of misconduct related to Dorian, and two officials were found to have knowingly and willfully or with reckless disregard violated NOAA's own scientific integrity policy, and unnamed officials at the Department of Commerce were also implicated.

So, Mr. Chairman, I ask that the assessment and that NOAA's responses of the IG be listed in the record.

The CHAIRMAN. Without objection.

[The information referred to follows:]

10/3/2019



Scientific Integrity Filing

National Oceanic and Atmospheric Administration Mail - Scientific Integrity Filing

Tom Gleason - NOAA Federal <tom.gleason@noaa.gov>

Craig McKean - NOAA Federal <craig.mckean@noaa.gov>
Cc: Tom Gleason - NOAA Federal <tom.gleason@noaa.gov>, Jodi Scharf - NOAA Federal <jodi.scharf@noaa.gov>
Cc: Tom Gleason - NOAA Federal <tom.gleason@noaa.gov>, Benjamin Peterson - NOAA Federal <benjamin.peterson@noaa.gov>

Wed, Sep 11, 2019 at 7:02 PM

Further to my initial complaint of September 10th, reporting among other conduct violations of scientific integrity policies of NOAA found in NOAA Administrative Order (NAO) 202-7250, I provide the following further information:

1. Name of person making allegation: Craig H. McKean, Acting Chief Scientist, NOAA, Assistant Administrator for Research, NOAA.
2. Name of person or organization alleged to have committed the misconduct, contributed to the misconduct, or should be interviewed in relation to the misconduct:
 - (a) The Executive Branch of the United States
 - (b) President Donald J. Trump
 - (c) Secretary of Defense James Mattis
 - (d) Secretary of Commerce Wilbur Ross
 - (e) Department of Commerce Under Secretary for Oceans and Fisheries, Michael M. Cohen
 - (f) NOAA Director of Communications, Julie Roberts

3. Facts: During the course of the recent development and passage of Hurricane Dorian, there was a complex issue involving the President's public statements on the path of the hurricane and possibly inaccurate and misleading information. The NWS Forecasters() corrected any public misstatement as a result of the President's public comments, and did so in an expert and timely way. There followed, on Friday, September 6, an unsigned press release from "NOAA" that inaccurately stated the NWS forecast and the President's comments. The press release is very concerning as it compromises the ability of NOAA to convey life-saving information necessary to avoid substantial and specific danger to public health and safety. If the public cannot trust our information, or we deliver our forecasters' warnings and products, that is a significant danger to the public.

4. Documents directly supporting the Allegation: Numerous. NOAA Press Release: https://www.noaa.gov/media/releases/2019/09/06/19090611_politics_1_trump-subsists-noaa, and, <https://www.nytimes.com/2019/09/11/politics/1-trump-subsists-noaa>.
Mistakenly Asked Agency to Repudiate Weather Forecasts, Trump Ordered Staff to Force Federal Agency to Contradict ... and others.

5. List of potential witnesses:
 - (a) Jodi Scharf, NOAA Federal
 - (b) Scott Strieder, Deputy Director, NOAA Public Affairs.
6. The Agency's conduct fully violates these and other provisions of NAO 202-7250, in at least but not limited to: §§ 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 6.24, 6.25, 6.26, 6.27, 6.28, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, 6.35, 6.36, 6.37, 6.38, 6.39, 6.40, 6.41, 6.42, 6.43, 6.44, 6.45, 6.46, 6.47, 6.48, 6.49, 6.50, 6.51, 6.52, 6.53, 6.54, 6.55, 6.56, 6.57, 6.58, 6.59, 6.60, 6.61, 6.62, 6.63, 6.64, 6.65, 6.66, 6.67, 6.68, 6.69, 6.70, 6.71, 6.72, 6.73, 6.74, 6.75, 6.76, 6.77, 6.78, 6.79, 6.80, 6.81, 6.82, 6.83, 6.84, 6.85, 6.86, 6.87, 6.88, 6.89, 6.90, 6.91, 6.92, 6.93, 6.94, 6.95, 6.96, 6.97, 6.98, 6.99, 7.00, 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, 7.31, 7.32, 7.33, 7.34, 7.35, 7.36, 7.37, 7.38, 7.39, 7.40, 7.41, 7.42, 7.43, 7.44, 7.45, 7.46, 7.47, 7.48, 7.49, 7.50, 7.51, 7.52, 7.53, 7.54, 7.55, 7.56, 7.57, 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September 9, 2019

Cynthia Decker
 NOAA Scientific Integrity Officer
 cynthia.decker@noaa.gov

Craig McLean
 NOAA Acting Chief Scientist
 Craig.mclean@noaa.gov

Dear Dr. Decker and Mr. McLean:

As former NOAA leaders, we are writing to request a comprehensive investigation into all potential violations of the NOAA Scientific Integrity Policy (cf. NOAA Administrative Order 202-735D: Scientific Integrity, and associated Procedural Handbook) related to communication around Hurricane Dorian. Recent actions to censor NWS scientists put public safety at risk, are inconsistent with NOAA's scientific integrity principles, violate the public trust, and compromise the independence and reliability of the National Weather Service.

We also request that you encourage NOAA and Department of Commerce political leadership to make positive, proactive statements that reaffirm the rights of NWS experts to share their expertise publicly regardless of the political inconvenience of that work. Public safety depends on unfettered access to accurate scientific information, and both NWS staff and the public are looking for affirmation that political interference in the communication of such information will not be tolerated.

First, an inaccurate, non-attributable press release was issued on Friday, September 6 that repudiated correct information provided by the National Weather Service that happened to contradict an erroneous presidential tweet. More troublingly, according to multiple reports, experts were told during Hurricane Dorian not to speak publicly about risks to various states, and to route any media requests to public affairs. It is unconscionable that government experts would be prevented from communicating relative risk of hurricanes directly to the public, or to go through political filters to do so, particularly in times of emergency.

The NOAA Scientific Integrity Policy explicitly gives experts the right to speak publicly about their scientific work without asking for permission. Section 4.05 states that:

"To be open and transparent about their work, and consistent with DAO 219-1 on (Public Communications) and their official duties, NOAA scientists may freely speak to the media and the public about scientific and technical matters based on their official work, including scientific and technical ideas, approaches, findings, and conclusions based on their official work. Additional guidance for employees is available in DAO 219-1. Communication by e-mail or other electronic means in response to inquiries from the media, and concerning scientific or technical matters based on an employee's official work, are considered to be the same as oral communication and not subject to approval . . ."

The policy also gives scientists the right to review official communications that rely on their work. Specifically, Section 7.01 requires that NOAA ensures that:

"Appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process . . ."

We are encouraged by Mr. McLean's pledge to investigate the circumstances around the September 6 NOAA press release. However, we believe that the investigation should be considerably more comprehensive to measure the full extent of losses of scientific integrity at NOAA in order to develop a plan that prevents future losses of scientific integrity.

Specifically, we would ask you to consider the following:

- Did the White House or Department of Commerce put pressure on NOAA to publicly undermine the NWS Birmingham social media?
- Who within NOAA and NWS was involved in developing the NOAA September 6 statement?
- Who within NOAA, NWS, the Department of Commerce, and the White House was involved in restricting the ability of NWS staff to publicly communicate up-to-date information about Hurricane Dorian and when were those restrictions communicated?

- Why were these restrictions deemed necessary?

Maintaining high scientific integrity standards is essential to the ability of NOAA and the National Weather Service to protect the public and maintain their trust. Thank you in advance for considering this request for a thorough investigation.

Sincerely,

Dr. Jane Lichen, Oregon State University
NOAA Administrator, 2009–2013

Dr. Richard Spinrad, Marine Technology Society

NOAA Chief Scientist, 2014–2017

NOAA Assistant Administrator, 2003–2010

Dr. Andrew Rosenberg, Union of Concerned Scientists

NOAA Deputy Director, National Marine Fisheries Service, 1998–2000

NOAA SCIENTIFIC INTEGRITY OFFICE

ALLEGATION 2019-009 ALLEGATION

CARL CHILDS, PRESIDENT, EMERGENCY RESPONSE DIVISION CHAPTER

Email Message 09/11/19

Dear Sir or Madam,

I am writing in regard to the series of events that occurred last week surrounding warnings and advisories from the federal government about the approach of hurricane Dorian. Several of these events constitute scientific misconduct under NOAA's Scientific Integrity Policy (NAO 202-735D).

On the morning of Sept 1, the President tweeted that Alabama, as well as Florida, South Carolina, North Carolina and Georgia, would "most likely be hit (much) harder than anticipated." This did not agree with the National Hurricane Center (Miami FL) discussion 32, produced at 0500 EDT on Sept 1 by Forecaster Pasch, or any later discussions.

It is unclear what led up to the President's mistaken remarks. He may have received an inadequate briefing by representatives of the agency or he may have disregarded what he was told. Regardless of the reason, the statements of the President regarding potential hazards from Dorian in the state of Alabama were incorrect.

About 20 minutes after the President's tweets, the National Weather Service's (NWS) Weather Forecast Office (WFO) in Birmingham, Ala., appeared to *step in on Twitter* to clear up the confusion about the storm's effects on the state,

"Alabama will NOT see any impacts from Dorian. We repeat, no impacts from Hurricane #Dorian will be felt across Alabama. The system will remain too far east."

Misleading guidance from any part of the Federal government regarding threats to the public health and welfare are potentially dangerous in and of themselves. The quick response of the Birmingham WFO was entirely necessary and appropriate to counter a high profile incorrect message affecting public safety. Additionally, this statement as well as the forecasted hurricane impact maps constitute emergency official communications, covered by Department of Commerce Directive DAO-209-Section 10. As such, they may be made "without first obtaining approval, so long as the procedures of the relevant operating unit (if any) are followed and applicable law is complied with."

The White House subsequently released an altered NWS forecast of the hurricane risk area ("the Sharpie map"). It is unclear who was responsible for this modification. If this alteration was done by a NOAA employee then this constitutes a clear violation of NAO 202-735D on the grounds of falsifying data. It is also possible that this alteration of the forecast trajectory could constitute a crime as a counterfeit forecast under 18 U.S. Code § 2074.

On September 6, with no attribution to a specific official, NOAA public relations released the following statement

"From Wednesday, August 28, through Monday, September 2, the information provided by NOAA and the National Hurricane Center to President Trump and the wider public demonstrated that tropical-storm-force winds from Hurricane Dorian could impact Alabama. This is clearly demonstrated in Hurricane Advisories #15 through #41, which can be viewed at the following link (not provided here)."

"The Birmingham National Weather Service's Sunday morning tweet spoke in absolute terms that were inconsistent with probabilities from the best forecast products available at the time."

No attempt was apparently made to contact the NOAA staff who generated the original (unmodified) hurricane forecast before the statement release. The September 6 statement was an intentional misrepresentation of scientific findings that damages the scientific standing of the NWS and the entire agency. It casts unwarranted doubt on the performance of NWS forecasters and jeopardizes public faith in NOAA as an impartial communicator of vital public safety information. It is clear that the statement from NOAA management serves only to deflect criticism of the source of the misleading information at the expense of NWS employees who safeguarded the public in manner consistent with the best scientific information available.

NAO 202-735D: (Scientific Integrity) Section 7.01 requires that appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process.

This was not done in the September 6 release.

Section 8.01 of the same directive says that Scientific and Research Misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of these activities. Scientific and Research Misconduct specifically includes: intentional circumvention of the integrity of the science and research process by violation of NOAA's Code of Ethics for Science Supervision and Management; and actions that compromise the scientific process by violating NOAA's Code of Scientific Conduct. At minimum, there is the appearance of violation of Section 8.01 by NOAA Public Affairs.

I am the president of the bargaining unit representing the scientists in NOAA's Emergency Response Division (OR&R/NOS) and this matter is of immediate and direct concern to our members. We are charged with providing scientific assessments of the threat to the public welfare resulting from natural disasters, oil spills and hazardous materials releases. We cannot be expected to perform these critical responsibilities in an environment where our own leadership will second guess our judgement based on trivial political concerns. I look forward to your rapid response and the results of your investigation into these clear violations of our Scientific Integrity Policy.

Respectfully,

CARL R. CHILDS, PH.D.,
President, BRD Chapter,
IFPTE Local 8A

U.S. HOUSE OF REPRESENTATIVES
20TH DISTRICT, NEW YORK
September 10, 2019

Dr. Cynthia J. Decker, Scientific Integrity Officer
National Oceanic and Atmospheric Administration (NOAA)
Washington, DC

Dear Dr. Decker,

I am writing to request a formal investigation by the National Oceanic and Atmospheric Administration (NOAA) into actions allegedly taken by Administration appointees following President Trump's unsupported public statements about Hurricane Dorian path projections, in order to determine precisely whether these actions violated the NOAA Administrative Order on Scientific Integrity.

Recent reporting in *The New York Times*, conducted by three veteran political reporters who cite multiple sources with knowledge of the acts in question, indicates that political leadership responsible for overseeing NOAA may have communicated threats and applied political pressure in an effort to suppress the release of vital, current forecasting information critical to emergency preparedness. I have also received evidence of an agency-wide directive sent on September 1, 2019 restricting National Weather Service (NWS) from releasing information that could be seen as contradicting President Trump's false claim that Alabama would "most likely be hit (much) harder than anticipated," even as forecast guidance indicated that the state was not at risk. This was reportedly followed by an unsigned statement on Sep-

tember 6, 2019 attributed only to NOAA generally that supported the president’s scientifically groundless assertions.

When the National Weather Service office in Birmingham, Alabama identified the presence of inaccurate information about the storm, it clarified to the public that Alabama would not see any impacts from Hurricane Dorian. Following this correction, the office was rebuked by NOAA in a September 6, 2019 statement attributable to an unnamed NOAA spokesperson, who asserted that the Birmingham office “spoke in absolute terms that were inconsistent with probabilities from the best forecast products available at the time.” Since its release, numerous former NOAA leaders as well as meteorologists around the country have criticized NOAA’s statement for its rebuke of the Birmingham office, and voiced concerns about political interference in science. *The Washington Post* reported that NOAA’s acting Chief Scientist Craig McLean found that this “intervention to contradict the forecaster was not based on science but on external factors including reputation and appearance, or simply put, political,” and that he will be pursuing potential violations of the NOAA Administrative Order on Scientific Integrity.

Countless state and local leaders, first responders, emergency managers and American households depend on the communication of clear scientifically sound information by the National Weather Service to make critical and sometimes life-saving decisions. The NOAA Administrative Order on Scientific Integrity has instituted measures to ensure that such science conducted by the agency is safeguarded from interference. The order states clearly that NOAA employees, whether political appointees or civil servants, must not “intimidate or coerce employees, contractors . . . into altering or censoring scientific findings” or “suppress, alter, or otherwise impede the timely release of scientific or technological findings or conclusions unless explicitly required by a Department or government-wide statute, regulation, Executive Order, Presidential Memorandum, or other legal authority.

As one of America’s foremost scientific agencies responsible for supporting public safety, NOAA’s policy of upholding scientific integrity standards is one of the most important in our Federal government. The reported abuses by high-ranking political appointees, in contravention of agency convention and best practices, appear to violate the NOAA Administrative Order on Scientific Integrity. This policy exists for the very purpose of preventing political interests from interfering with the agency’s protection of the safety and welfare of the American people.

Accordingly, I ask NOAA to follow the guidance of your own Administrative Order on Scientific Integrity, which says it is intended to strengthen widespread confidence in the quality, validity, and reliability of NOAA science, and uphold your agency’s commitment to support for science, the safety of the American people and the official duties of your employees. I respectfully request you open an investigation into this matter immediately.

Should any employee or contractor of NOAA experience retaliation in relation to this matter, Congress will exercise its oversight authority and will expect NOAA to fully investigate such subsequent violations of your agency’s scientific integrity policy.

Thank you for your prompt attention to this critical matter.

Sincerely,

PAUL D. TONKO,
Member of Congress.

Table E-1. Rationale for Selection of Reviewed Allegations

Policies Allegedly Violated	Complainants	Response
NAO 202-735 D		
Section 4.05: NOAA scientists may freely speak to the media and public about scientific and technical matters based on their official work.	Lubchenko, Rosenberg, Spinrad. Allegation 2019-008	Allegation was accepted and subsumed as part of Allegation 1.

Table E-1. Rationale for Selection of Reviewed Allegations—Continued

Policies Allegedly Violated	Complainants	Response
Section 5.02(d): Ensure NOAA and Department of Commerce public communication guidance's provide procedures by which scientist may speak to the media and public about scientific and technical matters based on their official work and areas of expertise.	McLean. Allegation 2019-007	Allegation was accepted and subsumed as part of Allegation 1.
Sections 5.02(k): Ensure the sharing of best administrative and management practices that promote the integrity of NOAA's scientific activities.	McLean. Allegation 2019-007	Allegation was accepted and subsumed as part of Allegation 1.
Section 6.01: <i>Code of Scientific Conduct</i> .	McLean. Allegation 2019-007	Allegation was dismissed, did not rise to the level of this inquiry. Section 6.01 focuses on the agency's research and scientific efforts.
Section 7.01: NOAA science managers and supervisors will adhere to the guidelines for Scientific Integrity established in the March 9, 2009, <i>Presidential Memo to Heads of the Executive Department and Agencies</i> and NOAA's Scientific Integrity Policy.	McLean. Allegation 2019-007 Lubchenco, Rosenberg, Spinrad. Allegation 2019-008 Childs. Allegation 2019-009	Allegation was accepted and discussed herein as Allegation 2.
Section 7.02: NOAA science managers and supervisors must adhere to NOAA's Code for Ethics for Science Supervision and Management.	McLean. Allegation 2019-007 Tonka. Allegation 2019-0010	Allegation was accepted and discussed herein as Allegation 3.
Section 7.03: Decisions to approve or not approve a Fundamental Research Communications (FRCs) must be based ONLY on where the work is scientifically meritorious NOT on policy, budget, or management implications.	McLean. Allegation 2019-007	Allegation was dismissed; the September 6 Statement is not an FRC.

Table E-1. Rationale for Selection of Reviewed Allegations—Continued

Policies Allegedly Violated	Complainants	Response
Section 8.01: Scientific and Research Misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of these activities.	McLean. Allegation 2019-007 Childs. Allegation 2019-009	Allegation was accepted but subsumed as part of the Panel's adjudication standards (6.2 Adjudication Standards).
Procedural Handbook accompanying NAO 202-735D		
Section 2.03: Coercive manipulation, intimidation, misrepresentation, censorship, or other misconduct that affects the quality, reliability of scientific information may involve the loss of scientific integrity.	McLean. Allegation 2019-007	Allegation was accepted but subsumed as part of the Panel's adjudication standards (6.2 Adjudication Standards.)
Department of Commerce DAO 219-1		
Section 4.01: Guidelines for the release and development of Department of Commerce Public Communications	McLean. Allegation 2019-007	Allegation was accepted and subsumed as part of Allegation 1.
Section 5.03: All Commerce public affairs employees shall follow best practices.	McLean. Allegation 2019-007	Allegation was accepted and subsumed as part of Allegation 1, 2, and 3.
18 U.S. Code§ 2074 False weather reports	McLean. Allegation 2019-007	Allegation dismissed, out of the scope of this investigation.

September 1 Birmingham WFO Tweet



NWS Birmingham
@NWSBirmingham



Alabama will NOT see any impacts from #Dorian. We repeat, no impacts from Hurricane #Dorian will be felt across Alabama. The system will remain too far east.
#alwx

9:11 AM · Sep 1, 2019 · TweetDeck

September 6 NOAA Public Statement



NOAA COMMUNICATIONS
UNITED STATES DEPARTMENT OF COMMERCE



Statement attributable to a NOAA Spokesperson

September 6, 2019

From Wednesday, August 28, through Monday, September 2, the information provided by NOAA and the National Hurricane Center to President Trump and the wider public demonstrated that tropical-storm-force winds from Hurricane Dorian could impact Alabama. This is clearly demonstrated in Hurricane Advisories #15 through #41, which can be viewed at the following [link](#).

The Birmingham National Weather Service's Sunday morning tweet spoke in absolute terms that were inconsistent with probabilities from the best forecast products available at the time.

• • • • •

NOAA's mission is to understand and predict changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and to conserve and manage our coastal and marine resources. Join us on [Twitter](#), [Facebook](#), [Instagram](#) and our other [social media channels](#).

Stay Connected:



Appendix G: Weather Forecast Office Tweets Using Absolute Terms

Tweet 1

National Weather Service (NWS) New Orleans Weather Forecast Office (WFO). September 4, 2013. "TD 7 has strengthened into a tropical storm. It has been named TS Gabrielle and is the 7th named storm of the season. No impact to LA/MS."



NWS New Orleans ✓
@NWSNewOrleans

TD 7 has strengthened into a tropical storm. It has been named TS Gabrielle and is the 7th named storm of the season. No impact to LA/MS.

10:37 PM · Sep 4, 2013 · Twitter Web Client

Tweet 2

NWS Birmingham WFO. November 6, 2017. "This will have no impact whatsoever on central Alabama."



NWS Birmingham ✓
@NWSBirmingham

This will have no impact whatsoever on central Alabama.



National Hurricane Center ✓ @NHC_Atlantic · Nov 6, 2017

Tropical Storm #Rina Advisory 4: Depression Becomes Tropical Storm Rina.
go.usa.gov/W3H

9:37 PM · Nov 6, 2017 · Hootsuite

Tweet 3

NWS Mobile WFO. May 28, 2016. "Tropical Depression #2 forecast to become TS Bonnie later today. NO IMPACT TO GULF COAST."



NWS Mobile @NWSMobile

Tropical Depression #2 forecast to become TS Bonnie later today. NO IMPACT TO GULF COAST.

hurricanes.gov



National Hurricane Center @NHC_Atlantic · May 28, 2016

Tropical Depression #Two advisory 4 issued. Depression forecast to become a tropical storm later today go.usa.gov/W3H

11:04 AM · May 28, 2016 · TweetDeck

Tweet 4

NWS Mobile WFO. May 19, 2019. "HEADS UP (5/19) – Special Tropical Weather Outlook issued by the National Hurricane Center for an area of low pressure expected to form southwest of Bermuda. This will have NO IMPACT to our area. #mobwx"



NWS Mobile @NWSMobile · May 19, 2019

HEADS UP [05/19] - Special Tropical Weather Outlook issued by the National Hurricane Center for an area of low pressure expected to form southwest of Bermuda. This will have NO IMPACT to our area. #mobwx

hurricanes.gov

weather.gov/srh/tropical?o...



National Hurricane Center @NHC_Atlantic · May 19, 2019

130p Sunday: An area of low pressure expected to form SW of Bermuda has a 40% (medium) chance of becoming a short-lived subtropical or tropical cyclone by Tuesday while moving to the N or NE. Interests in Bermuda should monitor this system's progress. More hurricanes.gov

Show this thread

Tweet 5

NWS Hanford WFO. March 5, 2019. "7:55 PM: Current radar imagery shows moderate to heavy rain with embedded thunderstorms moving through the southern San Joaquin Valley this evening. Blackwells Corner, Delano, Corcoran, Alpaugh, and Porterville will be impacted over the next couple of hours."



NWS Hanford @NWSHanford · Mar 5, 2019

7:55 PM: Current radar imagery shows moderate to heavy rain with embedded thunderstorms moving through the southern San Joaquin Valley this evening. Blackwells Corner, Delano, Corcoran, Alpaugh, and Porterville **will be impacted** over the next couple of hours.

Tweet 6

NWS Salt Lake City WFO. June 12, 2019. "We have issued a Flood Warning for the Duchesne River in Duchesne County through early next week. Lowland areas along the Duchesne River from Hanna downstream to Myton as well as upstream roads, bridges, and infrastructure will be impacted by flood waters."



NWS Salt Lake City
@NWSSaltLakeCity

We have issued a Flood Warning for the Duchesne River in Duchesne County through early next week.

Lowland areas along the Duchesne River from Hanna downstream to Myton as well as upstream roads, bridges, and infrastructure will be impacted by flood waters.

Tweet 7

NWS Glasgow WFO. June 9, 2016. "Areas along and south of Highway 200 will be impacted with large hail and winds to 60 mph possible. #mtwx"



NWS Glasgow @NWSGlasgow

Areas along and south of Highway 200 will be impacted with large hail and winds to 60 mph possible. #mtwx
weather.gov/images/crh/imp...

6:58 PM · Jun 9, 2016 · Twitter Web Client

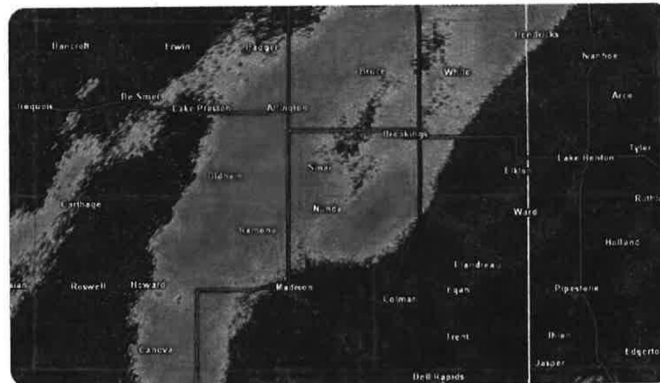
Tweet 8

NWS Sioux Falls WFO. February 14, 2019. "Look for light snow and visibilities to a half mile or lower along the I-29 corridor through 1 pm. Areas from Brookings south through Sioux Falls and Beresford will be impacted."



NWS Sioux Falls @NWSSiouxFalls · Feb 14, 2019

Look for light snow and visibilities to a half mile or lower along the I-29 corridor through 1 pm. Areas from Brookings south through Sioux Falls and Beresford **will be impacted.**



APPENDIX H: LIST OF RECORDS REVIEWED

The following is a record of documents received from NOAA that the Academy Team reviewed.

Allegations Submitted to the NOAA Scientific Integrity Officer

- Childs, Carl R. 2019. "Allegation 2019-009." September 11.
 Lubchenco, Jane, Richard Spinrad, and Andrew Rosenberg. 2019. "Allegation 2019-008." September 9.
 McLean, Craig N. 2019. "Allegation 2019-007." September 10.
 Tonko, Paul D. 2019. "Allegation 2019-0010." September 10.

Interview Transcripts and their Associated Exhibits and Documents

- Darden, Chris, interview by Academy Team. 2020. "Interview of Chris Darden." Calera, AL, (January 21).
 Darden, Chris, interview by NOAA General Counsel. 2019. "Interview of Chris Darden." Calera, AL, (October 21).
 Friedman, Benjamin, interview by NOAA General Counsel. 2019. "Interview of Benjamin Friedman." Silver Spring, MD, (October 24).
 Jacobs, Neil, interview by Academy Team. 2020. "Interview of Neil Jacobs." Washington, DC, (February 3).
 Jacobs, Neil, interview by NOAA General Counsel. 2019. "Interview of Neil Jacobs." Washington, DC, (November 6).
 Levenbach, Stuart, interview by NOAA General Counsel. 2019. "Interview of Stuart Levenbach." Washington, DC, (October 29).
 McLean, Craig, interview by Academy Team. 2020. "Interview of Craig McLean." Washington, DC, (January 23).
 NWS Birmingham WFO Meteorologist. 2020. "Written Statement from Decision Support Services Staff Member on September 1, 2019." Calera, AL, (January 22).
 Roberts, Julie Kay, interview by Academy Team. 2020. "Interview of Julie Roberts." Washington, DC, (January 23).
 Roberts, Julie Kay, interview by NOAA General Counsel. 2019. "Interview of Julie Roberts." Washington, DC, (October 11).
 Uccellini, Louis, interview by NOAA General Counsel. 2019. "Interview of Louis Uccellini." Silver Spring, MD, (November 26).
 Vaccaro, Chris, interview by Academy Team. 2020. "Interview of Chris Vaccaro." Washington, DC, (January 20).

Social Media Related to This Investigation

- National Weather Service Birmingham Weather Forecast Office. 2019. Twitter post. September 1, 10:11 a.m. Eastern Time Zone.
 NOAA Communications. 2019. "Statement attributable to a NOAA Spokesperson." September 6, 4:45 p.m. Eastern Time Zone.
 President Donald Trump. 2019. Twitter post. September 1, 9:51 a.m. Eastern Time Zone.

Freedom of Information Act (FOIA) Documents

Documents released from FOIA requests.

Memoranda, Letters, and Transmittals Regarding this Investigation

- Decker, Cynthia J. 2019. "Memorandum from Cynthia J. Decker for The Record, Subject: Scientific Integrity Allegations 2019-007/8/9/10 Inquiry and Investigation Process."
 —. 2019. "Memorandum to Zach Goldstein and Douglas Perry, Subject: Request to Search E-mail Accounts in Connection with Scientific Integrity Complaints." October 2.
 —. 2019. "Transmittal for the Inquiry/Investigation Team."
 Friedman, Benjamin. 2019. "Recusal of DUS-O Benjamin Friedman, appointing Stephen Volz the Determining Officer."

Congressional Documents

Memoranda and Letters Regarding Other Ongoing Investigations

- Gustafson, Peggy E. 2019. "Memorandum for Dr. Neil Jacobs, Subject: Request for Information Pursuant to the Inspector General, Act of 1978, as Amended." September 7.
- Johnson, Eddie Bernice. 2019. "Letter to Peggy E. Gustafson." September 10.
- . 2019. "Letter to President Donald J. Trump." September 5.
- . 2019. "Letter to Secretary Wilbur Ross." October 10.
- Johnson, Eddie Bernice, and Mike Sherrill. 2019. "Letter to Secretary Wilbur Ross." September 11.
- Johnson, Eddie Bernice, Lizzie Fletcher, and Mikie Sherrill. 2019. "Letter to Acting Under Secretary Dr. Neil Jacobs." September 12.

Testimony

- Clement, Joel. 2019. "Testimony of Joel Clement from the Joint Hearing on Scientific Integrity in Federal Agencies." July 17.
- Halpern, Michael. 2019. "Testimony for Michael Halpern from the Joint Subcommittee Hearing on Scientific Integrity in Federal Agencies." July 17.
- Johnson, Eddie Bernice. 2019. "Opening Statement from the Joint Subcommittee Hearing: Scientific Integrity in Federal Agencies." July 17.
- Pielke Jr., Roger. 2019. "Statement of Dr. Roger Pielke, Jr. to the Subcommittee on Research and Technology & Subcommittee on Investigations and Oversight." July 17.
- Sherrill, Mikie. 2019. "Opening Statement from the Joint Subcommittee Hearing: Scientific Integrity in Federal Agencies." July 19.
- Stevens, Haley. 2019. "Opening Statement from the Joint Subcommittee Hearing: Scientific Integrity in Federal Agencies." July 17.
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Federal Agencies' Policies, Procedures, Reports, and Other Sources

National Oceanic and Atmospheric Administration

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- . 2015. "Approval of Scientific Integrity Committee Terms of Reference." June.
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- . 2017. National Weather Service Office of the Chief Learning Officer. "Radar & Applications Course, Storm-Based Warning Fundamentals, Lesson 12: Impact Based Warnings: Overview."
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- . 2008. "National Weather Service Central Region Service Assessment."
- . 2013. "Social Media Guidebook." January 30.

Other Federal Agencies

- National Aeronautics and Space Administration, Office of Inspector General. 2008. "Investigation Summary Regarding Allegations that NASA Suppressed Climate Change Science and Denied Media Access to Dr. James E. Hansen, a NASA Scientist" June 2.
- National Institutes of Health, Office of the Director. 2012. "NIH Policies and Procedures for Promoting Scientific Integrity." November.
- Office of Science and Technology Policy. "Federal Policy on Research Misconduct; Preamble for Research Misconduct Policy." Federal Register 65, no. 235 (December 6, 2000.) 76260–76264. <https://www.govinfo.gov/content/pkg/FR-2000-12-06/pdf/00-30852.pdf>.

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- . 2016. "Procedures for Responding to Allegations of Compromised Scientific Integrity." Departmental Manual OM 1074-001, November 18.
- U.S. Department of Interior, Office of Inspector General. 2019. "FWS Alleged Scientific Integrity Violation and Retaliation." August 28.
- . 2016. "Inspection of Scientific Integrity Incident at USGS Energy Geochemistry Laboratory." June 15.
- U.S. Environmental Protection Agency. 2012. "Scientific Integrity Policy."
- . "Basic Information about Scientific Integrity." <https://www.epa.gov/osa/basic-information-about-scientific-integrity>.
- U.S. Environmental Protection Agency, Office of Inspector General. 2011. "Office of Research and Development Should Increase Awareness of Scientific Integrity Policies." July 22.
- . 2013. "Quick Reaction Report: EPA Must Take Steps to Implement Requirements of Its Scientific Integrity Policy." August 28.
- U.S. Government Accountability Office. Scientific Integrity Policies. Additional Actions Could Strengthen Integrity of Federal Research (GAO-19-265). April 2019.

Other Memoranda Regarding Scientific Integrity and Research Misconduct

- General Counsel of the United States Department of Commerce. 2011. "Memorandum for All Chief Counsels and General Counsels—Implementation of Administration Policy on Scientific Integrity." December 16.
- Holden, John P. 2010. "Memorandum to the Heads of Executive Departments and Agencies, Subject: Scientific Integrity." December 17.
- Kerry, Cameron F. 2011. "Memorandum to all Chief Counsels and General Counsels, Subject: Implementation of Administration Policy on Scientific Integrity." December 16.
- McLean, Craig N. 2017. "Memorandum for the Record, Subject: FY 2016 Scientific and Research Misconduct Annual Report." March 1.
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- Spinrad, Richard. 2015. "Memorandum for the Record, Subject: FY 2013–FY 2014 Scientific and Research Misconduct Annual Report." April 15.
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- Demuth, Julie L., Morss, Rebecca E., Morrow, Betty and Jeffrey Lazo. 2012. "Creation and Communication of Hurricane Risk Information." *American Meteorological Society*. August.
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- National Weather Service New Orleans Weather Forecast Office. 2013. Twitter post. September 4, 10:37 p.m. Eastern Time Zone.
- National Weather Service Salt Lake City Weather Forecast Office. 2019. Twitter post. June 12, 6:16 p.m. Eastern Time Zone.
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Relevant News Articles Related to this Investigation

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- Baker, Peter, Friedman, Lisa, and Christopher Flavelle. 2019. "Trump Pressed Top Aide to Have Weather Service 'Clarify' Forecast That Contradicted Trump." The New York Times. September 11.
- . 2019. Commerce Chief Threatened Firings at NOAA after Trump's Dorian Tweets, Sources Say. The New York Times. September 9.

Other

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NOT FOR RELEASE PREDECISIONAL AND DELIBERATIVE

REVIEW OF NAPA'S FINDINGS REGARDING SCIENTIFIC INTEGRITY

Neil A. Jacobs, Ph.D.

NAPA's analysis is based on the premise that either the President's tweet or WFO tweet was right and the statement was choosing between the two. It did not. The statement, if read objectively, approaches it from the perspective that both are accurate and reconciles the two approaches—risk and probability—to conveying information. The NAPA interview summary provides: "Dr. Jacobs also offered his perspective on the correctness of the September 1 tweet from the Birmingham WFO by explaining that in a technical sense while relatively small, the probability of Hurricane Dorian impacting a portion of southeast Alabama existed. However, in terms of communicating the risk to the people of Alabama, the Birmingham WFO was cor-

rect, according to Dr. Jacobs.” NAPA never questions or refutes the scientific veracity of the actual statement.

Applicability of the policy to the tweet and statement

NAPA did not apply the definitions of scientific assessment and scientific activity to include the tweet and statement within the scientific integrity policy. NAPA never explains how the tweet or the statement meet these definitions. Instead, they simply recite the relevant definitions and summarily conclude that “individuals engaged in activities that can be considered scientific activities” and “deduced that the [tweet] and [statement] are examples of scientific product.” The summary conclusions quoted contain the full content. NAPA conducted no analysis of the tweet or statement nor an explanation of how the statements meet, these definitions. In fact, the only supporting explanation is based on interviews of NOAA and GAO personnel and creates a *new* standard for a scientific product to be a communication: (i) based on scientific analysis and (ii) related to the core mission of the agency. Rather than evaluate and apply the actual definitions in the NOAA Scientific Integrity Policy (NAO 202-735D), NAPA created their own definition based on “[i]nterviews with NOAA and GAO personnel” to analyze and apply to determine that the tweet and statement are scientific products subject to the NOAA Scientific Integrity Policy.

As I explained in the interview, they are not the types of science and research to which the policy applies. It is clear that the development of a forecast is a scientific assessment and scientific activity. While the tweet is intended to convey the risks to Alabama residents based on the scientific assessments used to produce the storm forecast, it is far removed from the research and underlying science for which the definitions, policy on integrity of scientific activity, and codes of scientific conduct and ethics for scientific supervision and management are predicated. The September 6 statement is even further removed from science and research. It is a brief comment collecting past factual information and a reconciliation of two concepts contained in tweets in a short statement. NAPA later contradicts their finding, based on their own definition of a scientific product, by concluding that “the development of the statement was not based on science, but appears to be largely driven by external influences from senior Commerce officials who drafted the September 6 Statement.”

The NAPA interview summary provides: “In regard to the September 6 Statement complying with the NOAA Scientific Integrity Policy, Dr. Jacobs expressed that the September 6 Statement did not necessarily meet the standards of the Scientific Integrity Policy. Additionally, Dr. Jacobs explained that his understanding is that the Scientific Integrity Policy was written for science and research and not necessarily press releases. Dr. Jacobs often reviews communications originally written by non-scientists, including people from Commerce and other parts of NOAA, when the science is incorrect. The correction process typically requires scientists to check the validity of the communication and ensure that in a technical sense, the communication is accurate before it is published.” With a Ph.D. in numerical weather prediction, I am eminently qualified, as a scientist, to review scientific research in this field.

Scope of the NOAA Scientific Integrity Policy and NAPA findings

The NOAA Scientific Integrity Policy sets out the elements for what constitutes scientific and research misconduct. The standard for a finding of misconduct is:

- 1) Scientific and Research Misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of these activities. Scientific and Research Misconduct specifically includes: (i) intentional circumvention of the integrity of the science and research process by violation of NOAA’s Code of Ethics for Science Supervision and Management; and (ii) actions that compromise the scientific process by violating NOAA’s Code of Scientific Conduct. Scientific and Research Misconduct does not include honest error or differences of opinion.
- 2) Procedures for lodging and responding to allegations of misconduct are provided in the Procedural Handbook to this Order.

This is not the standard that NAPA applied. NAPA substituted Criteria for Determining Scientific Misconduct in the procedural handbook combined with five criteria that NAPA developed and identified to guide their assessment of the allegations. After creating their own five criteria, NAPA acknowledges the standard for Scientific and Research Misconduct, but then substitutes different and in critical areas conflicting adjudication standards contained in the Procedural Handbook. Under the Scientific Integrity Policy, the elements of Scientific Research Misconduct are clear: A violation of NOAA’s Code of Ethics for Science Supervision and Management must

involve the *intentional* circumvention of the *integrity of the science and research process*. A violation of NOAA's Code of Scientific Conduct must involve *actions that compromise the scientific process* (emphasis added).

Allegation II is based on a violation of the Code of Ethics for Science Supervision and Management. The Scientific Integrity Policy standard for a violation related to the Code of Ethics for Science Supervision and Management requires an intentional circumvention of the integrity of the science and research process. The adjudication standards in the handbook completely disregard the *mens rea* standard and substitute a new, lower standard of intentionally, knowingly or reckless disregard of the Code of Ethics.

In addition, it eliminates the element that any violation of the Code of Ethics for Science Supervision and Management must circumvent the integrity of the science and research process. That critical element is not contained in the adjudication standard nor in the NAPA analysis or their findings. Instead of applying the standard in the policy, NAPA used the criteria they established, applied the lesser standard from the handbook, and completely ignored the requirement that the violation circumvent the integrity of the science and research process.

NAPA ostensibly found a violation of the Code Ethics for Science Supervision and Management by not engaging the Birmingham WFO in the development of the September 6 statement and that the failure was done intentionally, knowingly, or in reckless disregard of the Code of Ethics for Science Supervision and Management. There is no finding—as required by the NOAA Policy that there was an “intentional circumvention of the integrity of the science and research process.” Therefore, there was no scientific and research misconduct.

Allegation III, while styled as external political pressure, is also based on an alleged violation of the Code of Ethics for Science Supervision and Management. The NAPA report focuses primarily on the view that the second paragraph of the statement is a criticism of the Birmingham WFO tweet. While that is a commonly held view, the statement was not intended to imply Birmingham did anything wrong. As stated above, the intent was to reconcile the forecaster's duty to convey information to the public with probabilistic numerical model guidance that was still showing a small, but non-zero, chance of impacts.

NAPA analyzed the statement as a violation of Section 7.02. Here, NAPA fails to apply the appropriate criteria. NAPA sets out the standard as “suppressing or altering scientific findings.” That is not the standard. Under the Scientific Integrity Policy, the standard is: “Suppress, alter or otherwise impede the timely release of scientific or technological findings or conclusions.” Even assuming the September 6 statement is viewed as improper criticism, it in no way could have “suppressed, altered, or otherwise impede the timely release of scientific or technological findings or conclusion” that were contained in a tweet on September 1.

NAPA recognizes this fundamental flaw and in fact concludes that “there was no direct suppression or alteration of scientific findings.” Instead, NAPA attempts to pivot to speculate that “the September 6 statement might suppress the willingness and ability of NOAA scientific staff to express their scientific opinions without reservation in the future.” The policy does not in any way address a speculative, future possibility¹ nor is there any finding that any NOAA scientific staff was suppressed or unable to express scientific opinions or findings. While it is fair to criticize whether issuing such a statement was a wise decision, there was no violation of the Code of Ethics for Science Supervision and Management.

Furthermore, even if there was, the findings in allegation III also fall short. NAPA again applied the wrong standard and there is no finding—as required by the NOAA Policy—that there was an “intentional circumvention of the integrity of the science and research process.” Therefore, there was no scientific and research misconduct.

NAPA found that there was no “direct suppression or alteration of scientific findings.” That alone should have ended the analysis for a violation based on “Suppress, alter or otherwise impede the timely release of scientific or technological findings or conclusions.” Instead, NAPA based a finding of misconduct by intentionally, knowingly, or in reckless disregard of the Code of Ethics for Science Supervision and Management issue a statement that “is viewed by many NOAA/NWS scientists as an inappropriate criticism of the Birmingham office.” However, the report also finds that I objected, but was overridden. It cannot be both. NAPA attempts to reconcile this by characterizing it as “contextual.” It is more than context; the factual deter-

¹ The policy does provide that individuals covered by the policy must not “intimidate or coerce employees, contractors, recipients of financial assistance awards, or others to alter or coerce scientific findings” and no one suggests that this was intended nor does NAPA evaluate the actions as such.

mination of objecting and being overridden is not consistent with a finding of acting with intent, knowing, or reckless disregard of the Code of Ethics for Science Supervision and Management.

Practical limitations using NAPA's interpretation

For reference, the full text of relevant portion of the policy about affording scientists the opportunity to review is: "Appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process."

NAPA takes an overbroad approach to the policy provisions that provides scientists the right to review and correct any official document that cites or references their report. Such a broad interpretation is not practical or workable. For example, if we accept the NAPA interpretation, any scientific work created by NOAA scientists that cites work performed by another NOAA scientist (for example, a biological opinion referencing other NOAA science) would have to have that work reviewed for accuracy by the scientist who completed the study referenced.

Using NAPA's interpretation, all social media posts, including tweets, that referenced any NOAA employee's work would have to be reviewed by the scientist who completed the initial or previous work. Using NAPA's own interpretation, forecasters at the Birmingham WFO would have had to clear the tweet with the NHC before issuing their own interpretation of the official NHC guidance. That certainly cannot be what was intended under the Scientific Integrity Policy, as this would create an untenable policy where thousands of NOAA employees would be forced to sign off on each use or reference to their work. The Scientific Integrity Policy was put in place to ensure that scientific research was conducted objectively using the scientific method and peer-review process. Perhaps the Scientific Integrity Policy should be updated to include these cases, but applying an overly-broad interpretation, as NAPA did, is neither logical or practical.

Such a broad reading also ignores the stated purpose of this provision, which is "to ensure the accuracy has been maintained after the clearance and editing process." This implies that it is the editing and review of the specific report and any accompanying press release or specific characterization of that report. This purpose makes clear that the requirement is for the release of the work itself and accompanying materials, *not* a subsequent citation to the work or later comment on it.

If we consider the peer-review process, NAPA's interpretation would prohibit a NOAA scientist from writing a later scientific analysis critical of the prior work without getting the approval of the original authors to publish. This is fundamentally at odds with the scientific process because no one could ever publish a critique or dissent of any existing science if the scientists of the original work objected.

Conclusion

As a scientist, I appreciate the importance of scientific integrity and fully support the NOAA policy. I do believe it needs to be updated to address issues surrounding handling of social media and non-research-related and publication-bound work. I fully complied with and cooperated with the scientific integrity investigation. I encourage a thorough and thoughtful review and can accept the critique and criticism contained in the report. It is part of the scientific process and how we improve both our policies and the processes. Any findings of misconduct, however, must be based on an objective application of the standards contained in the actual policy.

ADMINISTRATIVE CONFIDENTIAL

March 2020

*A Report by a Panel of the
National Academy of Public Administration
For the National Oceanic and Atmospheric Administration*

An Independent Assessment of Allegations of Scientific Misconduct

filed under the

**National Oceanic and
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**National Oceanic and Atmospheric
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Policy**

PANEL OF FELLOWS

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About the Academy

The National Academy of Public Administration is a non-profit, non-partisan, and independent organization of top public management and organizational leaders who tackle the Nation's most critical and complex public management challenges. With a network of more than 900 distinguished Fellows and an experienced professional staff, the Academy is uniquely qualified and trusted across government to provide objective advice and practical solutions based on systematic research and expert analysis.

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Foreword

The National Oceanic and Atmospheric Administration (NOAA) is a scientific agency that focuses on the study of climate, weather, oceans, coasts, and the conservation and management of coastal and marine ecosystems and resources. The work of NOAA not only supports the safety and well being of the public, but also has great importance to the U.S. economy. To maintain public trust in the agency's work, NOAA must keep scientific integrity at the forefront of all aspects of its scientific activities.

In September 2019, NOAA’s Scientific Integrity Officer received four complaints of alleged violations of scientific integrity related to a specific NOAA public statement issued on September 6, 2019. To ensure that the investigation into these complaints would be conducted with the highest degree of objectivity and neutrality, NOAA engaged the National Academy of Public Administration to conduct an independent assessment of those allegations. The goal of the assessment was to determine by a preponderance of evidence if the NOAA personnel involved with the development and issuance of the September 6 Statement violated NOAA’s Scientific Integrity Policy.

As a congressionally chartered, non-partisan, and non-profit organization with over 900 distinguished Fellows, the Academy is uniquely qualified to assist NOAA with this complex assignment. The Academy convened a Panel of four Academy Fellows with deep experience in the field of public administration, knowledge of scientific research, and execution of agency policy and procedure. The Panel’s determinations and recommendations have been provided to the NOAA Determining Official for final adjudication of the allegations.

This report presents the Panel’s findings and makes nine recommendations to enhance NOAA’s Scientific Integrity Policy. I expect that the Academy Panel’s report will guide the Determining Official’s deliberation on the allegations and strengthen NOAA’s overall framework of scientific integrity.

The Academy is thankful to have the opportunity to serve as an independent integrity review panel on behalf of NOAA.

TERESA W. GERTON,
President and Chief Executive Officer,
National Academy of Public Administration.

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Acronyms and Abbreviations

Acronym or Abbreviation	Definition
Academy	National Academy of Public Administration
Academy Team	The Panel members and study team
AMS	American Meteorological Society
ARS	Agriculture Research Service
Commerce	Department of Commerce
DAO	Department Administrative Order
DOI	Department of the Interior
DSS	Decision Support Service
DUS/O	Deputy Under Secretary of Operations
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FEMA	Federal Emergency Management Agency
FOIA	Freedom of Information Act
FRC	Fundamental Research Communication
FY	Fiscal year
GAO	Government Accountability Office
IRP	Integrity Review Panel
NAO	NOAA Administrative Order
NHC	National Hurricane Center
NOAA	National Oceanic and Atmospheric Administration
NWS	National Weather Service
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSTP	Office of Science and Technology Policy

Acronyms and Abbreviations—Continued

Acronym or Abbreviation	Definition
ROC	Regional Operation Center
SIO	Scientific Integrity Officer
USDA	United States Food Department of Agriculture
WFO	Weather Forecasting Office

Key Terms and Definitions¹

Key Term	Definition
Allegation*	Any written or oral statement or other indication of possible scientific misconduct made to a NOAA employee or contractor, or to an employee of a NOAA research partner.
Complainant*	The person, group, or company that makes an allegation of scientific misconduct or loss of scientific integrity.
Determining Official (DO)*	NOAA official who makes a final determination on an allegation of scientific misconduct or loss of scientific integrity and proposes corrective administrative action, as appropriate.
Integrity Review Panel (IRP)*	Group responsible for conducting an investigation of alleged scientific misconduct or loss of scientific integrity when a determination has been made by the SIO that an investigation is warranted.
Integrity Review Panel Chair (IRPC)*	The agency official responsible for overseeing an investigation, chairing the Integrity Review Panel, and carrying out other responsibilities specified in NOAA's Procedural Handbook. The IRPC is a subject matter expert and is designated for a specific investigation.
Official Communication ²	Any Public Communication by an employee that relates to the Department's programs; policies, or operations and takes place or is prepared: 1. At the direction of a superior of the employee; 2. Substantially during the official working hours of the employee; 3. With the substantial use of U.S. Government resource(s); or 4. With substantial assistance of U.S. Government employee(s) on official duty. All news releases and similar documents are Official Communications.
Preponderance of Evidence	The standard of proof in making a finding of misconduct under NOAA's Scientific Integrity Policy and accompanying Procedural Handbook. Black's Law Dictionary (11th Ed., 2019) defines this term as "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." ³
Respondent*	The person, group, or NOAA entity who responds or makes a reply to an allegation of scientific misconduct or loss of scientific integrity.
Scientific Activities*	Activities that involve inventorying, monitoring, observations, experimentation, study, research, integration, modeling, and scientific assessment. Scientific activities are conducted in a manner specified by standard protocols and procedures and include any of the physical, biological, or social sciences, as well as engineering and mathematics, or any combination of these.
Scientific Assessment*	Evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, and assumptions, and implies the use of best professional judgment to bridge uncertainties in the available information.

¹Key terms and definitions denoted with an asterisk(*) can be found in the NOAA Scientific Integrity Policy (NOAA Administrative Order 202-735D: Scientific Integrity) and the accompanying Procedural Handbook.

²U.S. Department of Commerce. 2008. "Department Administrative Order 219-1 Public Communications." April 30.

³Bryan A. Garner and Henry Campbell Black, *Black's Law Dictionary*, 11th ed. (West Group, 2019).

Key Term	Definition
Scientific Integrity*	The condition resulting from adherence to professional values and practices when conducting and applying the results of science that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, interference, censorship, and inadequate procedural and information security.
Scientific Product*	Presentation of the results of scientific activities including the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of NOAA, the Department of Commerce, or the Nation.
September 6 Statement	Unattributed Public Statement from the National Oceanic and Atmospheric Administration, issued on September 6, 2019 (See Appendix F).
September 1 Birmingham Tweet	Tweet from the National Weather Service Birmingham Weather Forecast Office, posted on September 1, 2019 (See Appendix F).
Tweet	A brief communication made through the internet-based, for-profit social media platform, Twitter.

Executive Summary

The National Oceanic and Atmospheric Administration (NOAA) is a scientific agency within the United States Department of Commerce that focuses on the study of climate, weather, oceans, coasts, and the conservation and management of coastal and marine ecosystems and resources.

In September 2019, NOAA's Scientific Integrity Officer (SIO) received four complaints of alleged violations of scientific integrity filed under the NOAA Scientific Integrity Policy (NOAA Administrative Order 202-735D: Scientific Integrity). The allegations relate to a specific NOAA public statement issued on September 6, 2019 (the September 6 Statement) regarding a tweet previously issued by the National Weather Service (NWS) Weather Forecast Office (WFO) in Birmingham, Alabama, on September 1, 2019 (the September 1 Birmingham Tweet).

NOAA's SIO engaged the National Academy of Public Administration (the Academy) to conduct an independent assessment of those allegations. The goal of the assessment was to determine by a preponderance of evidence, meaning the standard of proof of making a finding of misconduct under NOAA's Scientific Integrity Policy and accompanying Procedural Handbook, if the NOAA personnel involved with the development and issuance of the September 6 Statement violated NOAA's Scientific Integrity Policy and engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Scientific Integrity Policy. Pursuant to the Scope of Work, the Academy was tasked to:

- Determine if scientific misconduct or loss of scientific integrity has not occurred and the allegation be dismissed; or
- Determine if scientific misconduct or loss of scientific integrity has occurred and recommend any specific action by NOAA to restore scientific integrity.

Conducted from December 2019 through March 2020, the assessment employed primarily qualitative research methods. The Academy Team, comprised of a Panel of Academy Fellows and the study team, gathered and analyzed primary and secondary data through a review of prior testimonies and official documents related to the allegations of scientific misconduct. The Academy Team conducted semi-structured interviews with subject matter experts and NOAA staff including personnel from NWS, the Office of Communications, and other senior leaders. The Academy Team also had conversations with representatives from NOAA's Office of General Counsel and the SIO which provided background on the Scientific Integrity Policy. Appendix H contains a list of all records and documents reviewed by the Academy Team.

The inquiry into the alleged scientific misconduct and loss of scientific integrity associated with the September 6 Statement and the September 1 Birmingham Tweet presented a challenge for the Integrity Review Panel. The facts and circumstances surrounding these allegations of misconduct are not a perfect fit with the existing NOAA policies regarding scientific integrity and scientific communication and the Department of Commerce guidance on public communications. The Academy Team, therefore, created a process to assess the facts developed against existing policy and to determine whether personnel and actions were covered under NOAA and Commerce policies. Those rationales are provided later in the report.

This process also allowed the development of recommendations as to how policies might be improved.

In considering the allegations, the Panel recognizes that the September 6 Statement and the September 1 Birmingham Tweet discussed herein are inextricably linked. The September 6 Statement directly addressed the September 1 Birmingham Tweet and the underlying science. Second, the Panel considered both the content and process by which the September 6 Statement was developed and released. Finally, it is the considered opinion of the Panel, that in the aggregate, the evidence gathered in this inquiry is appropriate and sufficient to provide a reasonable basis for the findings and conclusions contained herein. Additionally, the report includes a series of Panel recommendations to safeguard against future violations of scientific integrity for the Determining Official (DO) to consider. The following is a summary of the Panel's major findings and recommendations:

Allegation One: Media guidance issued by NOAA leadership between September 1 and 6, 2019, limited the ability of scientists to communicate with the media and the public about their research findings; Policies allegedly violated include Section 4.05; Section 4.06; and Section 5.02 (a), (d), and (k) of NOM's Scientific Integrity Policy.

Finding One: The Panel determined by a preponderance of the evidence on the record that the allegation that the media guidance issued by NOAA leadership between September 1 and 6, 2019, did not constitute scientific misconduct or a loss of scientific integrity.

Recommendations:

- Develop formal policy guidelines for the issuance of media guidance to NOAA staff. Specifically, these guidelines should clarify roles and responsibilities, institutionalize the process, and identify the circumstances under which the agency should issue media guidance.
- Develop an interagency framework (that includes other Federal agencies and the White House) for the sharing of scientific data and materials concerning severe weather related events. The framework would include protocols for the timely update of information to reflect changing weather conditions and the release of the information to the general public.

Allegation Two: The Birmingham WFO forecasters were not provided the opportunity to review and opine on the September 6 Statement that referenced the September 1 Birmingham Tweet and underlying scientific activity. Policies allegedly violated include Section 7.01. of NOAA's Scientific Integrity Policy.

Finding Two: The Panel determined by a preponderance of the evidence on the record that Dr. Neil Jacobs (Acting Administrator of NOAA) and Julie Roberts (Deputy Chief of Staff and Director of Communications for NOAA)⁴ violated the Code of Ethics for Science Supervision and Management set forth in Section 7.01 of NOAA's Scientific Integrity Policy when they failed to engage the Birmingham WFO in the development of the September 6 Statement. Further, the Panel finds that they engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NOAA's Scientific Integrity Policy.

Recommendations:

- Develop a written policy statement on the right of NOAA scientists to review, comment, and amend any Official Communication that relies on their scientific analysis. This policy statement will complement NOAA's Scientific Integrity Policy.
- Revise NOAA's Scientific Integrity Policy's accompanying Procedural Handbook to include criteria and supporting examples to assist with the determination of scientific misconduct and a loss of scientific integrity. For example, NOAA could cite this case as an example of a violation of NOAA's Scientific Integrity Policy and scientific misconduct with regards to several criteria.

Allegation Three: The drafting of the September 6 Statement was driven by external political pressure from Department of Commerce (Commerce) senior leaders and inappropriately criticized the September 1 Birmingham Tweet and underlying scientific activity. Further, the September 6 Statement compromised NOAA's integrity and reputation as an independent scientific agency and violated Section 7.02 of NOAA's Scientific Integrity Policy.

⁴Julie Roberts left NOAA in December 2019 to join the Economic Development Administration, which is in the Department of Commerce.

Finding Three: The Panel determined by a preponderance of the evidence on the record that the actions of Dr. Neil Jacobs and Julie Roberts involving the development and issuance of the September 6 Statement violated the Code of Ethics for Science Supervision and Management set forth in Section 7 of NOAA's Scientific Integrity Policy. Further, the Panel determined that they engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NOAA's Scientific Integrity Policy.

Recommendations:

- Establish a formal intra-agency agreement to guide the interactions between Commerce and NOAA officials in the drafting of NOAA communications.
- Establish an intra-agency policy to articulate the role of Commerce political appointees in the communication of scientific findings. Develop supporting procedures and identify examples of political interference.
- Incorporate key principles of scientific integrity, including NOAA's Codes of Ethics for Science Supervision and Management, into NOAA's annual ethics training.
- Require NOAA staff and NOAA political officials to take scientific integrity training that includes the Code of Ethics for Science Supervision and Management. Once a staff member has completed the training, he/she will sign a statement confirming they will abide by these principles.
- Establish protocols with the Commerce Office of Inspector General (OIG) and/or other agencies to investigate alleged violations of scientific integrity involving senior NOAA and Commerce political leadership.

CHAPTER 1: BACKGROUND

Background on the National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration (NOAA), created in 1970, is a scientific agency within the Department of Commerce (Commerce) that focuses on the study of climate, weather, oceans, and coasts. NOAA's mission of science, service, and stewardship consists of the following components:

- To understand and predict changes in climate, weather, oceans and coasts;
- To share that knowledge and information with others; and
- To conserve and manage coastal and marine ecosystems and resources.⁵

NOAA's wide-ranging services include, but are not limited to, communicating forecasts and weather advisories, managing the fisheries industry, handling operational environmental satellites, and providing the data and products needed to support the economy as it relates to climate, weather, oceans, and coasts. Figure 1 on the next page provides the organizational chart of the various NOAA operations and senior leadership that was effective on September 6, 2019.

Following a 2009 presidential memorandum calling for Executive Branch departments and agencies to develop scientific integrity policies,⁶ the Department of Commerce instructed NOAA to develop a bureau-specific scientific integrity policy.⁷ NOAA adopted its Scientific Integrity Policy (NOAA Administrative Order 202-735D: Scientific Integrity) on December 7, 2011, and created the position of Scientific Integrity Officer (SIO).

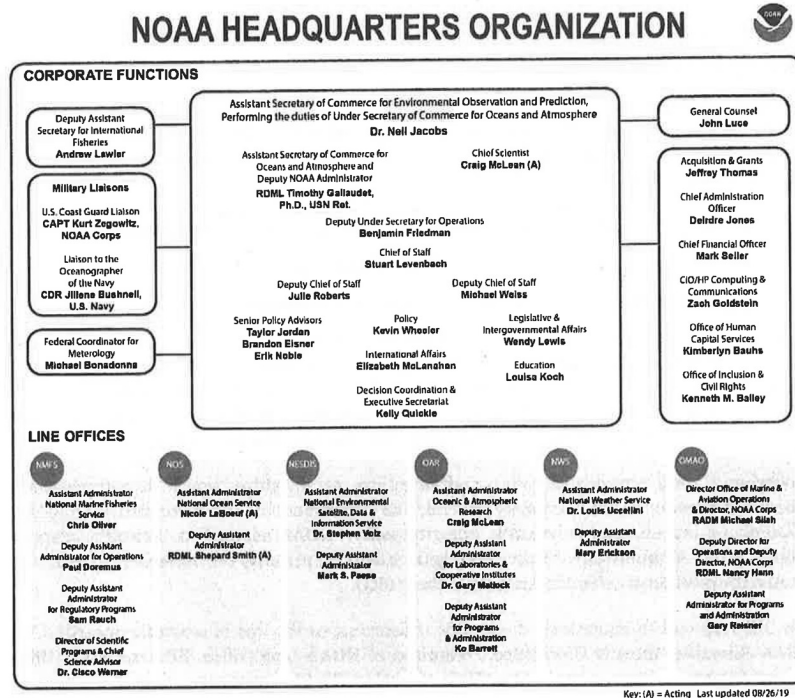
The SIO responds to allegations of scientific misconduct or the loss of scientific integrity. The NOAA Scientific Integrity Committee, comprised of NOAA Line Office Silos and Staff Office Points of Contact, supports the NOAA SIO in this role.⁸ The SIO must ensure that the entirety of the allegation review process is independent and has a thorough and complete methodology.

⁵"Our mission and values," National Oceanic and Atmospheric Administration, <http://www.noaa.gov/our-mission-and-vision>.

⁶White House, Office of the Press Secretary, "Memorandum for the Heads of Executive Departments and Agencies on the Subject of Scientific Integrity," March 9, 2009.

⁷Cameron F. Kerry, "Memorandum for all Chief Counsels and General Counsels, Subject: Implementation of Administration Policy on Scientific Integrity," December 16, 2011.

⁸Craig N. McLean, "Memorandum for Vice Admiral Michael S. Devany and Dr. W. Richard Spinrad, Subject: Approval of Scientific Integrity Committee Terms of Reference," July 15, 2015.

Figure 1. NOAA Organizational Chart⁹

For the SIO and/or Determining Official (DO) to find that an instance of scientific misconduct or misconduct resulting in the loss of scientific integrity occurred, the SIO must determine by a preponderance of the evidence that a person or entity departed significantly from the Scientific Integrity Policy and engaged in the misconduct intentionally, knowingly, or in reckless disregard of that policy. A loss of scientific integrity can also occur without a finding of misconduct. For example, a loss of scientific integrity could arise from an insufficiently rigorous scientific process with no intentional wrongdoing on the part of the individual and/or entity conducting the research.¹⁰ NOAA's Scientific Integrity Policy's Procedural Handbook does not clearly define a loss of scientific integrity.

Background on the alleged violations of NOAA's Scientific Integrity Policy

On Sunday, September 1, 2019, at 10:51 a.m. Eastern Time Zone (ET), President Trump tweeted,

In addition to Florida—South Carolina, North Carolina, Georgia, and Alabama, will most likely be hit (much) harder than anticipated. Looking like one of the largest hurricanes ever. Already category 5. BE CAREFUL! GOD BLESS EVERYONE!

Approximately 20 minutes later, in response to a number of phone calls from individuals worried about Hurricane Dorian's impact to Alabama and unaware of the President's earlier tweet, the National Weather Service's (NWS) Birmingham Weather Forecast Office (WFO) tweeted,

Alabama will NOT see any impacts from #Dorian. We repeat, no impacts from Hurricane #Dorian will be felt across Alabama. The system will remain too far east. #alwx"

⁹This NOAA organizational chart was the version effective on September 6, 2019. An updated chart that reflect changes in NOAA leadership is available on NOAA's website.

¹⁰This example was provided to the Academy Team by NOAA's SIO and representatives from the Office of General Counsel during background conversations on the Scientific Integrity Policy.

A copy of this tweet (referred to as “September 1 Birmingham Tweet”) can be found in Appendix F.

On September 6, 2019, NOAA released an unattributed public statement (referred to as “September 6 Statement”) that stated,

From Wednesday, August 28, through Monday, September 2, the information provided by NOAA and the National Hurricane Center to President Trump and the wider public demonstrated that tropical-storm-force winds from Hurricane Dorian could impact Alabama. This is clearly demonstrated in Hurricane Advisories #15 through #41, which can be viewed at the following link.

The Birmingham National Weather Service’s Sunday morning tweet spoke in absolute terms that were inconsistent with probabilities from the best forecast products available at the time.

A copy of the September 6 Statement can be found in Appendix F.

NOAA subsequently received four complaints of alleged violations of scientific integrity related to the September 6 Statement. Copies of the four complaints can be found in Appendix E. NOAA’s SIO determined that further investigation of those allegations was required.

In considering the posture of the Complainants and Respondents to allegations 2019-007, -008, -009, and -0010, the SIO and NOAA General Counsel determined that NOAA required an external independent expert to investigate and make findings and recommendations. In order to ensure that this investigation maintained the highest degree of independence and neutrality, NOAA’s SIO, in consultation with NOAA’s General Counsel, engaged the National Academy of Public Administration (the Academy) to conduct an independent assessment of the four allegations of scientific misconduct.

As the Panel undertook its assessment, two additional investigations were underway:

- Department of Commerce Office of Inspector General (OIG) began its investigation on September 7, 2019¹¹
- House Committee on Science, Space and Technology began its inquiry on September 11, 2019¹²

While the Panel’s review is focused on NOAA personnel and alleged violations of NOAA’s Scientific Integrity Policy, the House Committee and OIG investigations are broader. The Panel conducted this inquiry independently of the other two inquiries.

Background on the National Academy of Public Administration

As an independent, non-partisan, non-profit, congressionally chartered organization, the Academy is uniquely situated to provide the expertise and skills required of the external investigation requested by NOAA. Driven by the Academy’s core value interdependence, the Panel of Fellows and professional staff (the “Academy Team”) conducted this investigation in an evidence-based, unbiased, and non-partisan manner. The Panel of Fellows was appointed by the Chair of the Academy Board of Directors, based on their collective experience in the field of public administration, knowledge of scientific research, and execution of agency policy and procedure. Please see Appendix A for Panel member biographical sketches.

1.1 Project Scope and Deliverables

NOAA’s SIO engaged the Academy to conduct an independent assessment of allegations of scientific misconduct filed under the NOAA Scientific Integrity Policy. The allegations relate to a specific NOAA public statement issued on September 6, 2019, regarding a tweet previously issued by the NWS Birmingham WFO on September 1, 2019. The September 6 Statement and the September 1 Birmingham Tweet are included in Appendix F.

Pursuant to the Scope of Work, NOAA tasked the Panel with determining whether the NOAA personnel involved with the development and issuance of the September 6 Statement violated NOAA’s Scientific Integrity Policy and engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Scientific Integrity Policy. The Scope of Work tasks the Panel to:

- Determine if scientific misconduct or loss of scientific integrity has not occurred and the allegation dismissed; or

¹¹ Peggy E. Gustafson, “Memorandum for Dr. Neil Jacobs, Subject: Request for Information Pursuant to the Inspector General Act of 1978, as Amended,” September 7, 2019.

¹² Eddie Bernice Johnson and Mikie Sherrill, “Letter to Secretary Wilbur Ross,” September 11, 2019.

- Determine if scientific misconduct or loss of scientific integrity has occurred and recommend any specific action by NOAA to restore scientific integrity.

Further, the final report will include the following components:

- Description of allegation(s)
- Summary of process
- List of records reviewed
- Summaries of interviews
- Recommendations

1.2 Limitations to the Panel's Assessment

In completing its assessment, the Panel did not attempt to validate the scientific accuracy of the September 6 Statement and the September 1 Birmingham Tweet. This matter lies outside the charge to the Panel. Further, the Panel's due diligence was subject to the following limitations that may, in the aggregate, have limited the Panel's ability to assess certain aspects of the allegations:

- *The Academy Team had no access to Department of Commerce employees involved with the drafting and release of the NOAA September 6 Statement.*

The Academy Team inquired with NOAA about interviewing two Commerce employees involved with the drafting and release of the NOAA September 6 Statement. NOAA did not provide the Academy Team access to those employees. NOAA's rationale behind the decision to not allow the Academy Team to conduct the interviews was that NOAA's Scientific Integrity Policy and Procedural Handbook pertains to NOAA employees only and that a review of Commerce staffs actions was outside the scope of the assessment.

- *The Academy Team had no access to information gathered by the Commerce OIG and the House Committee on Science, Space and Technology investigations.*

At the time that the Panel conducted its assessment, two additional investigations were underway. The Academy Team had neither access to the individuals conducting those investigations nor to the evidence gathered by those teams.

- *NOAA's Scientific Integrity Policy and Procedural Handbook lack clear and explicit criteria to determine a loss of scientific integrity and only provide limited guidance.*

While NOAA's Scientific Integrity Policy defines scientific integrity the policy does not provide explicit criteria for determining a potential loss of scientific integrity.¹³

- *The Academy Team had limited access to underlying documentary evidence.*

The Academy Team received an abundance of documentation from NOAA including transcribed statements from key NOAA employees, related e-mail correspondence, and a copy of relevant NOAA and Department of Commerce policies. However, certain evidence related to the events leading up to the drafting and release of the September 6 Statement was not provided to the Academy Team. Specifically, the text messages from the two key Respondents—Dr. Neil Jacobs and Julie Roberts—were not provided to the Panel.¹⁴

In addition, certain e-mails provided to the Academy Team had also been released to requesters pursuant to the Freedom of Information Act (FOIA) and were redacted in accordance with FOIA's exemptions.

1.3 Organization of Report

The report is organized as follows:

- Chapter 1 provides an introduction to the report, which includes background information, project scope and deliverables.
- Chapter 2 summarizes the inquiry methodology and process.
- Chapter 3 provides a summary of the NOAA's Scientific Integrity Policy and adjudication procedures.

¹³National Oceanic and Atmospheric Administration, "NOAA Administrative Order 202-735D: Scientific Integrity," December 7, 2011: Section 3.

¹⁴The Panel was informed that the text messages from Dr. Jacobs contained outside equities and would need to be submitted to the holders of the privilege for a determination concerning assertion of the privilege. Such a determination had not been made in time for the Panel to be provided access to the text messages. Further, Julie Roberts testified that—prior to the Panel's investigation—she had deleted text messages sent to her. Julie Kay Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 81–82.

- Chapter 4 provides a description of the allegations.
- Chapter 5 provides a chronology of key events.
- Chapter 6 provides the Panel's findings and recommendations.

CHAPTER 2: SUMMARY OF METHODOLOGY AND PROCESS

For this assessment, the Academy appointed four Fellows to serve on the Panel. The Panel provided ongoing guidance to the study team throughout the project, including approving the project work plan; participating in the interview process; reviewing the study team's progress; developing, reviewing, and approving the study findings, conclusions, and recommendations; and approving the draft and final report. Their biographical information can be found in Appendix A.

The Panel for this study included the following Academy Fellows:

- Admiral (Ret.) Thad Allen (Chair)
- Dr. Shantanu Agrawal
- Dr. Kaye Husbands Fealing
- Dr. Elizabeth Robinson

Conducted from December 2019 through March 2020, the assessment employed primarily qualitative research methods. This review was conducted in accordance with generally accepted research standards which required that the Academy Team plan and perform the study to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the study objectives. The Panel believes the evidence obtained provides a reasonable basis for the findings and conclusions based on the study objectives.

To identify the appropriate criteria for the assessment, the Academy Team reviewed a broad array of publicly available literature and official documentation including NOAA's Scientific Integrity Policy (NOAA Administrative Order 202–735D: Scientific Integrity), the Department of Commerce's Public Communication Policy (Department Administrative Order 219–1: Public Communication), Federal guidance on scientific integrity policies as promulgated by the Office of Science and Technology Policy (OSTP) guidance, Congressional hearings on scientific integrity, reports authored by the Government Accountability Office (GAO), and other publicly available related literature from several Offices of Inspector General. The review provided a baseline for the Panel's findings and additional context for the Academy Team interviews. See Appendix H for a full list of records reviewed by the Academy team.

Reflecting the requirements of the Scope of Work, the Academy Team focused on several overarching issues to inform the scope of research and selection of assessment questions:

- *Applicable Jurisdiction:* Are the alleged activities; allegations related to the development and release of the September 6, 2019, NOAA unattributed public statement (the September 6 Statement); and Respondents covered under the NOAA Scientific Integrity Policy?
- *Applicable Policies:* What are the applicable NOAA and Department of Commerce policies and procedures that relate to Scientific Integrity and Communication activities?
- *Applicable Assessment Criteria:* What are the applicable assessment criteria to be used to assess a possible breach of NOAA Scientific Integrity and Communication policies?

The Academy Team gathered and analyzed primary and secondary data through a review of prior testimonies and official documents related to the allegations of scientific misconduct. The Academy Team conducted semi-structured in-person interviews with NOAA staff including personnel from NWS and the Office of Communications, and other senior leaders. Academy Team submitted interview topics and procedures to the interviewees prior to the interviews. See Appendix D for a list of interviews and interview questions. The Academy Team also had conversations with representatives from NOAA's Office of General Counsel and SIO which provided background on the Scientific integrity Policy.

To provide greater context to the study and to better understand how social science research can inform the effective communication of severe weather event risk, including emergency preparedness, the Academy Team interviewed subject matter experts from the University of Colorado at Boulder and the National Center for Atmospheric Research.

The Academy Team interviewed representatives from GAO to discuss leading practices to safeguard scientific integrity at Federal agencies.

Subject matter experts spoke to the Academy Team under the condition that their comments would not be for attribution. Copies of the questions asked during the Academy Team's interviews are included in Appendix D.

2.1 Consideration of Alleged Activities, Allegations, and Respondents under the NOAA Scientific Integrity Policy

As the first step of its assessment, the Academy Team determined that the September 1 Birmingham Tweet and the September 6 Statement, the activities underlying the alleged violations, the allegations related to the development and release of September 6 Statement, and certain Respondents named in the allegations were all covered under the NOAA Scientific Integrity Policy. Further, the Academy Team determined that the above NOAA communications were covered under the Department of Commerce's Public Communication Policy, as NOAA does not possess its own communication policy. Separately, NOAA's S10, Dr. Cynthia Decker, confirmed that the four complaints met the basic criteria to be adjudicated pursuant to the NOAA Scientific Integrity Policy's accompanying Procedural Handbook.¹⁵

The Academy Team's analysis was informed by a review of supporting documentation as well as interviews with NOAA staff. The following decision points provide the underlying analysis used to determine the status of individuals and applicability of policy.

Decision Point: Applicability of Policy to Respondents

The allegations list several Respondents. Are those Respondents subject to the NOAA Scientific Integrity Policy and Commerce Public Communication Policy?

Analysis: Although the list of Respondents presented in the allegations includes both NOAA and non-NOAA employees, only NOAA staff (career and political) and certain NOAA contractors are covered under NOAA's Scientific Integrity Policy. The Department of Commerce Public Communication policies extends to all employees of the Commerce Department including NOAA staff.

Pursuant to Section 2.02 of NOAA Scientific Integrity Policy, the policy applies to:

All NOAA employees, political and career, who are engaged in, supervise, or manage scientific activities, analyze and/or publicly communicate information resulting from scientific activities, or use scientific information or analyses in making bureau or office policy, management, or regulatory decisions; and contractors who engage in or assist with activities identified above.

Pursuant to Section 1.01 of Commerce's Public Communications Policy, the policy applies to "Department of Commerce employees engaging in public communications." This policy is also applicable to the Respondents, as they publicly communicated information resulting from scientific activities.

Decision Point: Applicability of NOAA Scientific Integrity Policy to the Communications

The allegations refer to the September 6 Statement and the September 1 Birmingham Tweet. Are the September 6 Statement and September 1 Birmingham Tweet covered under the NOAA Scientific Integrity Policy?

Analysis: In considering this question, the Academy Team reviewed NOAA's Scientific Integrity Policy and concluded that the September 6 Statement and September 1 Birmingham Tweet are covered under NOAA's Scientific Integrity Policy for the following reasons:

Section 3 of the NOAA Scientific Integrity Policy defines a scientific assessment as the:

Evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, and assumptions, and implies the use of best professional judgment to bridge uncertainties in the available information.

The persons involved in developing the September 1 Birmingham Tweet and September 6 Statement conducted a scientific assessment by evaluating and synthesizing the scientific and technical knowledge available to them. To develop the September 1 Birmingham Tweet, Birmingham WFO forecasters evaluated models, fore-

¹⁵ Cynthia J. Decker, "Memorandum from Cynthia J. Decker for The Record, Subject: Scientific Integrity Allegations 2019-007/8/9/10 Inquiry and Investigation Process," 2019.

casts, and other information. In the case of the September 6 Statement, individuals involved in developing the statement evaluated National Hurricane Center (NHC) advisories.

A scientific assessment is included in the list of activities that define a scientific activity per the NOAA Scientific Integrity Policy. Section 3 of the policy defines a scientific activity as:

Activities that involve inventorying, monitoring, observations, experimentation, study, research, modeling, and scientific assessment. Scientific activities are conducted in a manner specified by standard protocols and procedures and include any of the physical, biological, or social sciences, as well as engineering and mathematics, or any combination of these.

In developing the September 1 Birmingham Tweet and September 6 Statement, individuals engaged in activities that can be considered scientific activities.

As defined in Section 3 of the NOAA Scientific Integrity Policy, a scientific product is the:

Presentation of the results of scientific activities including the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of NOAA, the Department of Commerce, or the Nation.

Therefore, it can be reasonably deduced that the September 1 Birmingham Tweet and September 6 Statement are examples of a scientific product. The Academy Team's interviews with NOAA and NWS staff and conversations with representatives from NOAA's Office of General Counsel and SIO about the Scientific Integrity Policy, supported the Academy Team's interpretation.

As scientific products based on scientific activities and assessments, the September 1 Birmingham Tweet and September 6 Statement are subject to the NOAA Scientific Integrity Policy.

Interviews with NOAA and GAO personnel provided guidance that a communication can be considered a scientific product if:

- The communication is based on scientific analysis and
- The communication is related to the core mission of the agency.

In the case of the September 1 Birmingham Tweet and September 6 Statement, both communications involve scientific assessments and activities and relate to the core mission of the agency. Informed by this guidance, the Academy Team determined that both criteria were met and that both the September 1 Birmingham Tweet and September 6 Statement should be considered scientific products because they are based on scientific activities and scientific assessments. The Academy Team determined that the drafting and public release of both communications were consistent with these covered activities.

Decision Point: Applicability of Department of Commerce Public Communication Policy to the Communications

Are the September 6 Statement and September 1 Birmingham Tweet covered under the Department of Commerce Public Communication Policy?

Analysis: The Academy Team determined that the September 6 Statement and September 1 Birmingham Tweet can be considered Official Communications and are covered under the Department of Commerce Public Communication Policy for the following reasons:

The Department of Commerce Public Communication Policy defines Official Communications as:

Any Public Communication by an employee that relates to the Department's programs, policies, operations and takes place or is prepared: (i) At the direction of a superior of the employee; (ii) Substantially during the official working hours of the employee; (iii) With the substantial use of U.S. Government resource(s); or with substantial assistance of U.S. Government employee(s) on official duty.

Section 8 of Commerce's Public Communications Policy provides that:

Any Official Communication intended for the media (e.g., news releases, interviews/news conferences), all written and audiovisual materials that are, or are prepared or received in connection with, the Official Communication must be submitted in a timely manner before the communication occurs to the head of the operating unit or Secretarial office, or their designee(s), and to the Appropriate Public Affairs Office (as defined in Section 8.05) for approval in a timely manner.

Based on the definition of an Official Communication, the Commerce Public Communication Policy is applicable to both the September 1 Birmingham Tweet and September 6 Statement.

Analysis: As the September 1 Birmingham Tweet and September 6 Statement are defined as “Official Communications” per the Commerce Public Communication Policy, they are also subject to the provisions of Section 7 of NOAA’s Scientific Integrity Policy which states:

Appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process.

Section 7 of the NOAA Scientific Integrity Policy mandates a review from the scientists whose scientific work was referenced in the Official Communication. As Official Communications per the Department of Commerce Public Communication Policy, the September 1 Birmingham Tweet and September 6 Statement are subject to Section 7 of the NOAA Scientific Integrity Policy.

Decision Point: Applicability of Policy to Alleged Violations

The allegations cite violations of numerous provisions of NOAA’s Scientific Integrity Policy. Are the alleged violations covered under the NOAA Scientific Integrity Policy and Commerce Public Communication Policy?

Analysis: In considering this question, the Academy Team reviewed NOAA’s Scientific Integrity Policy, Commerce’s Public Communication Policy, OSTP policies, GAO guidance, guidelines followed by other Federal agencies, and conversations with NOAA’s SIO and representatives from the Office of General Counsel on the Scientific Integrity Policy. The Academy Team concluded that the alleged violations are covered under the NOAA Scientific Integrity Policy and Commerce Public Communication Policy.

Decision Point: Filing of Allegations in Accordance with Policy

Were the allegations filed in accordance with the provisions in the NOAA Scientific Integrity Policy’s accompanying Procedural Handbook?

Analysis: In considering this question, the Academy Team reviewed NOAA’s Scientific Integrity Policy and the accompanying Procedural Handbook, GAO guidance and guidelines followed by other Federal agencies, and conversations with NOAA’s SIO and representatives from the Office of General Counsel on the Scientific Integrity Policy. The Academy Team concluded that the allegations were filed in accordance with the provisions in the NOAA Procedural Handbook. The allegations provided sufficient information for adjudication and were filed within the stipulated time frame. See Sections 3.02 and 3.04 of the Procedural Handbook for additional guidance.

2.2 Methodological Approach to Review and Assess the Allegations

The Academy Team’s methodological approach to review and assess the allegations comprised seven key tasks:

Task One: Review allegations of scientific misconduct or loss of scientific integrity related to the development and release of September 6 Statement.

For the purposes of this evaluation, NOAA requested the Panel to consider the following four allegations:

Complainant and Filing Date	Allegation Number
Craig McLean; September 10, 2019	Allegation 2019-007
Jane Lubchenko, Andrew Rosenberg, and Richard Spinrad; September 9, 2019	Allegation 2019-008
Carl Childs; September 11, 2019	Allegation 2019-009
Rep. Paul Tonko; September 10, 2019	Allegation 2019-0010

Task Two: Review the applicable NOAA and Commerce policies that relate to scientific integrity and communication activities.

For the purposes of this evaluation, the Panel considered the following applicable NOAA and Commerce policies and procedures:⁶

- NOM's Scientific Integrity Policy and related Procedural Handbook
- NOAA Framework for Internal Review and Approval of Fundamental Research Communications (FRC)
- Department of Commerce's Public Communication Policy
- Department of Commerce's Social Media Guidebook January 2013
- Memorandum for the Heads of Executive Departments and Agencies: March 9, 2009
- Memorandum for the Heads of Executive Departments and Agencies: December 17, 2010 (from the Director of the OSTP)
- Memorandum for all Chief Counsels and General Counsels, on the implementation of administration policy of scientific integrity: December 16, 2011 (from the General Counsel of the Department of Commerce)
- Federal Register, Volume 65, Number 235, Notice from the Science and Technology Policy Office on the Federal Policy on Research Misconduct: Wednesday, December 6, 2000¹⁷

Task Three: Select and define criteria to be used to assess a possible violation of NOAA's Scientific Integrity Policy and Commerce's Public Communication Policy. For the purposes of this evaluation, the Panel considered assessment criteria drawn from the applicable documents listed above in Task Two. Criteria include broad standards and specific procedural guidance.

Task Four: Develop a fact-based chronology of activities and individuals involved in the events leading up to and the development and release of the September 6 Statement and determine in what context the September 6 Statement was produced.

To develop the chronology, the Panel conducted semi-structured interviews and reviewed prior testimonial evidence and related documents.

Task Five: Develop a concise understanding of the adjudication standards, criteria, and process.

Task Six: Determine whether the NOAA personnel involved in events leading up to, and in the issuance of, the September 6 Statement violated the Scientific Integrity Policy.

For the purpose of this evaluation, the Panel took the following steps:

- Map the prescribed procedures and activities related to the September 6 Statement according to NOAA's policies. This creates a baseline as to what procedures and steps should have been followed to comply with NOAA and Commerce policies.
- Compare the fact-based chronology of the events, activities, and individuals determined in Task Four with NOAA policies and procedures. Identify departures from the baseline policies and procedures.
- Determine whether the departures or variance from the baseline procedures significantly departed from accepted practices and rises to the level of a violation of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management set forth in NOAA's Scientific Integrity Policy.
- Determine whether the individuals engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NOAA's Scientific Integrity Policy.

Task Seven: In the event that scientific misconduct or misconduct resulting in a loss of scientific integrity has occurred, determine what steps are necessary to restore the loss of integrity.

Separately, formulate recommendations for NOAA to help safeguard against future violations of scientific integrity related to political interference.

For the purpose of this evaluation, the Panel considered the analysis included in Tasks One through Seven as well as their professional expertise and experience to develop recommendations intended to support more effective adherence to the Scientific Integrity Policy in the future.

¹⁶ NOAA's SIO and representatives from the Office of General Counsel confirmed that these documents encompass all scientific integrity and communication policies applicable to NOAA.

¹⁷ The Federal definition of research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

CHAPTER 3: SUMMARY OF NOAA'S SCIENTIFIC INTEGRITY POLICY AND ADJUDICATION PROCEDURES

The National Oceanic and Atmospheric Administration's (NOAA) Scientific Integrity Policy (NOAA Administrative Order 202-735D: Scientific Integrity) outlines the agency's scientific integrity principles, code of conduct, code of ethics, and criteria to determine scientific and research misconduct. Section 3 of the policy defines scientific integrity as follows:

The condition resulting from adherence to professional values and practices when conducting and applying the results of science that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, interference, censorship, and inadequate procedural and information security.

NOAA's Scientific Integrity Policy and accompanying Procedural Handbook provide criteria for determining scientific misconduct and five core procedures for adjudicating alleged violations.

3.1 Criteria for Determining Scientific Misconduct

Section 2.01 of the Procedural Handbook for NOAA's Scientific Integrity Policy states that:

A finding of scientific misconduct or misconduct resulting in the loss of scientific integrity requires a determination by the NOAA Scientific Integrity Officer (SIO) and/or Determining Officer (DO) by a preponderance of the evidence on the record before him or her that the person or entity has:

- Significantly departed from accepted practices of the relevant research community and violated the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management set forth in NOM's Scientific Integrity Policy; and
- Engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NOM's Scientific Integrity Policy.

3.2 Core Procedures for Adjudicating Alleged Violations of Scientific Integrity

The accompanying Procedural Handbook to NOM's Scientific Integrity Policy articulates a precise process for NOM to use in responding to allegations of scientific misconduct or a loss of scientific integrity by a NOM employee, contractor, or recipient of NOM financial assistance. The Procedural Handbook provides the following core procedures for identifying and adjudicating alleged violations of scientific integrity.

Reporting the Allegation

Allegations are to be submitted in writing to NOAA's SIO within 90 calendar days of the discovery of the alleged misconduct.¹⁸ If applicable, an allegation should contain all of the following information to evaluate the complaint:

- a. The name of the person or organization alleged to have committed the misconduct;
- b. A statement of facts (including dates, locations, and actions) that support the allegation, including when and how the Complainant first learned of such facts;
- c. A list of documents supporting the allegation;
- d. A list of witnesses who may corroborate the allegation;
- e. An explanation of how the criteria for scientific misconduct or loss of scientific integrity are met, including for loss of scientific integrity: citations or other information identifying the accepted practices of the relevant scientific community; an explanation of how the alleged misconduct constitutes a significant departure from those practices and violates the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management set forth in NOAA's Scientific Integrity Policy
- f. An explanation of any conflicts of interest, as defined in section 4.04(b)(i), the Complainant has with the subject of the allegation;

¹⁸National Oceanic and Atmospheric Administration, "Procedural Handbook for NAO 202-735 D: Scientific Integrity," December, 2011: Section 3.02.

- g. A statement indicating whether the allegation has been submitted elsewhere, such as the NOAA Employee and Labor Relations Division, Office of Special Counsel, or Office of the Inspector General.¹⁹

Screening the Allegation

NOAA's Scientific Integrity Policy's Procedural Handbook provides that the SIO is to screen the allegation to decide whether it should be dismissed or should proceed to an inquiry and possible investigation. The official may also form a committee for assistance with that assessment. Pursuant to this requirement, the NOAA SIO, Dr. Cynthia Decker, concluded that the allegations of misconduct were credible and consulted with NOAA General Counsel on appropriate procedures to move the adjudication forward.²⁰ Detailed descriptions of the allegations can be found in tables 4-1; 4-2, 4-3, and 4-4, all found in Chapter 4.

Investigating the Allegation

The purpose of this procedure is to determine whether scientific misconduct and/or loss of scientific integrity occurred and to recommend corrective action. NOAA's procedures include a step for the SIO or other designated body to investigate the allegation and to decide whether it should be dismissed or, if a violation occurred, assess whether an allegation sufficiently specifies scientific misconduct or the loss of scientific integrity and whether that misconduct or loss can be resolved with evidence and expertise that can be collected by the Inquiry Team, or if a more extensive investigation is warranted.²¹

If the Inquiry Team determines by a preponderance of evidence that a more extensive investigation is warranted, an Integrity Review Panel (IRP) is formed, tasked to determine whether scientific misconduct or loss of scientific integrity occurred, and recommends corrective action.²²

In considering the posture of the Complainants and Respondents to allegations 2019-007, -008, -009, and -0010, the SIO with consultation from NOAA General Counsel determined that NOAA was not suited to adjudicate this matter internally and required an external independent expert to investigate and make findings and recommendations. In a Memorandum for The Record explaining this discussion, the NOAA SIO, Pr. Cynthia Decker, explains, "Due to the posture of the complainant and respondent in the proceeding, no one at NOAA "is suited to adjudicate this matter internally, and NOAA requires a neutral expert to investigate and make findings and recommendations in order for a NOAA Determining Official to resolve the complaints."²³ To ensure an unbiased proceeding, the Academy was contracted to serve as a combined Inquiry/Investigation Team, carry out all functions the Procedural Handbook bestows to an Inquiry Team and IRP, and submit a report with findings and recommendations to the DO for review and further action, as appropriate.

Responding to the Violation

If the DO finds that scientific misconduct or loss of scientific integrity has occurred, the DO or Deputy Under Secretary for Operations will refer the matter to an appropriate manager in the Respondent's reporting structure for corrective administrative action.

Opportunity for Input from the Complainant and Respondent

During the investigation process, the Complainant and Respondent may provide written exceptions to the findings of the final investigation report within 10 calendar days.

CHAPTER 4: DESCRIPTION OF THE ALLEGATIONS

Following the release of the September 6 Statement, NOAA's Scientific Integrity Officer (SIO), Dr. Cynthia Decker, received four complaints alleging a violation of NOAA's Scientific Integrity Policy (NOAA Administrative Order (NAO) 202-735D: Scientific Integrity). These complaints were then cataloged by the SIO and numbered as Scientific Integrity Allegations 2019-007 through 2019-0010.

¹⁹ NOAA, Section 3.04.

²⁰ Cynthia J. Decker, "Memorandum from Cynthia J. Decker for The Record; Subject: Scientific Integrity Allegations 2019-007/8/9/10 Inquiry and Investigation Process," 2019; National Oceanic and Atmospheric Administration, "Procedural Handbook for NAO 202-735D: Scientific Integrity," December, 2011: Section 4.03(d).

²¹ National Oceanic and Atmospheric Administration, "Procedural Handbook for NAO 202-735D: Scientific Integrity," December, 2011: Section 4.04.

²² NOAA, Section 4.05.

²³ Cynthia J. Decker, "Memorandum from Cynthia J. Decker for The Record; Subject: Scientific Integrity Allegations 2019-007/8/9/10 Inquiry and Investigation Process," 2019.

The following tables summarize the four allegations submitted to NOAA's SIO. The allegations can be found in Appendix E.

Table 4-1. Allegation 2019-007

<i>Complainant:</i> Craig McLean ²⁴	<i>Date Submitted:</i> September 10, 2019
<i>Allegation Summary:</i> The complaint alleges that, “intervention to contradict the forecasters was not based in science but on external factors including reputation and appearance, or simply put, political. Our NOAA Scientific Integrity Policy and Code of Scientific Conduct found in NAO 202–735D make clear that all NOAA employees shall approach all scientific activities with honesty, objectively, and completely, without allegiance to individuals, organizations, or ideology. The content of this press release is very concerning as it compromises the ability of NOAA to convey life-saving information necessary to avoid substantial and specific danger to public health and safety. If the public cannot trust our information, or we debase our forecaster’s warnings and products, that specific danger arises.”	<i>Policies Allegedly Violated:</i> NAO 202-735D: Scientific Integrity Section 5.02(d): <i>Guidance for Scientists to Speak with the Media</i> Section 5.02(k): <i>Sharing of Best Administrative and Management Practices</i> Section 6.01: <i>NOAA Employee and Contractors Code of Scientific Conduct</i> Section 7.01: <i>Code of Ethics for Science Managers</i> Section 7.02: <i>Code of Ethics for All Science Supervisors and Management</i> Section 7.03: <i>Fundamental Research Communication Approval</i> Section 8.01: <i>Definitions of Scientific and Research Misconduct</i> Procedural Handbook Section 2.03: <i>Coercive manipulation, intimidation, misrepresentation, etc.</i> Department of Commerce Administrative Order (DAO) 219–1: Public Communications Section 4.01 (a)(b) Section 5.03 (a) (b) 18 U.S. Code§ 2074. <i>False Weather Reports</i>

Table 4-2. Allegation 2019–008

<i>Complainant</i> Dr. Jane Lubchenco, ²⁵ Dr. Richard Spinrad, ²⁶ Dr. Andrew Rosenberg ²⁷	<i>Date Submitted:</i> September 9, 2019
<i>Allegation Summary:</i> The complaint alleges that, “recent actions to censor NWS scientists put the public safety at risk, are inconsistent with NOAA’s scientific integrity principles, violate the public trust, and compromise the independence and reliability of the National Weather Service.”	<i>Policies Allegedly Violated:</i> NAO 202-735D: <i>Scientific Integrity</i> Section 4.05: <i>NOAA Scientists May Freely Speak to the Media</i> Section 7.01: <i>Code of Ethics for Science Managers</i>

²⁴ Craig McLean is the NOAA Assistant Administrator for Oceanic and Atmospheric Research. He also serves NOAA in the acting role of Chief Scientist.

²⁵ Dr. Jane Lubchenco is the University Distinguished Professor and Marine Studies Advisor to the President at Oregon State University. She previously served as Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator from 2009–2013.

²⁶ Dr. Richard Spinrad is the president of the Marine Technology Society. He previously served as the Chief Scientist of NOAA from 2014–2017 and as director for various NOAA offices from 2003–2010.

²⁷ Dr. Andrew Rosenberg is director of the Center for Science and Democracy at the Union of Concerned Scientists. He previously served as the Deputy Director of NOAA’s National Marine Fisheries Service from 1998–2000.

Table 4-3. Allegation 2019-009

<i>Complainant:</i> Dr. Carl Childs ²⁸	<i>Date Submitted:</i> September 11, 2019
<i>Allegation Summary:</i> The complaint alleges that, “no attempt was apparently made to contact the NOAA staff who generated the original (unmodified) hurricane forecast before the statement release. The September 6 statement was an intentional misrepresentation of scientific findings that damages the scientific standing of the NWS and the entire agency. It casts unwarranted doubt on the performance of NWS forecasters and jeopardized public faith in NOAA as an impartial communicator of vital public safety information. It is clear that the statement from NOAA management serves only to deflect criticism of the source of the misleading information at the expense of NWS employees who safeguard the public in a manner consistent with the best scientific information available.”	<i>Policies Allegedly Violated:</i> NAO 202-735D: <i>Scientific Integrity</i> Sections 7.01: <i>Code of Ethics for Science Managers</i> Section 8.01: <i>Definitions of Scientific and Research Misconduct</i> 18 U.S. Code §2074. <i>False Weather Reports</i>

Table 4-4. Allegation 2019-0010

<i>Complainant:</i> Congressman Paul Tonko ²⁹	<i>Date Submitted:</i> September 11, 2019
<i>Allegation Summary:</i> The complaint alleges that recent reports published by media outlets, “indicate that political leadership responsible for overseeing NOAA may have communicated threats and applied political pressure in an effort to suppress the release of vital, current forecasting information critical to emergency preparedness,” and, “an agency-wide directive sent on September 1, 2019 restricting National Weather Service from releasing information that could be seen as contradicting President Trump.” These “reported abuses by high ranking political appointees in contravention of agency convention and best practices, appear to violate the NOAA Administrative Order on Scientific Integrity.”	<i>Policies Allegedly Violated:</i> NAO 202-735D: <i>Scientific Integrity</i> <i>No specific sections mentioned.</i> Although Congressman Tonko does not explicitly mention a section, his allegation does directly quote Section 7.02: <i>Code of Ethics for All Science Supervisors and Management of NOAA’s Scientific Integrity Policy.</i>

CHAPTER 5: CHRONOLOGY OF KEY EVENTS

The following is a chronology of key events that occurred leading up to the formulation and release of the September 1 Birmingham Tweet by the National Weather Service (NWS) Birmingham Weather Forecast Office (WFO) and the subsequent September 6 Statement by the National Oceanic and Atmospheric Administration (NOAA). All of the times in the chronology below are in Eastern Time Zone. The events and accuracy of the descriptions were validated using several different sources of information including interviews conducted by the Academy Team and NOAA General Counsel, text and e-mail communications, and other documentation. Appendix B provides a more comprehensive overview including the events, dates, parties involved; and supporting documentation.

²⁸ Dr. Carl Childs is a scientist on NOAA’s Scientific Support Team, located within the Emergency Response Division (ERD) of the NOAA Office of Response & Restoration. Dr. Childs is the president of the bargaining unit representing the scientists in NOAA’s Emergency Response Division (IFPTE Local 8A).

²⁹ Congressman Paul Tonko represents New York’s 20th Congressional District. Tonko serves on the House Committee on Energy and Commerce; House Committee on Science, Space, and Technology; and the House Committee on Natural Resources. He chairs the Subcommittee on Environment and Climate Change.

Wednesday, August 28, 2019

- 5:02 p.m.: Susan Buchanan (NWS Communications Director) releases NOAA Communications media plan for Hurricane Dorian.

Thursday, August 29, 2019

- Dr. Neil Jacobs (NOAA Acting Administrator) leads a briefing on Hurricane Dorian at the White House. A NOAA graphic (the one that later appears altered with a black marker) is used in the briefing.

Saturday, August 31, 2019

- 4:00 p.m.: President Trump receives a briefing on Hurricane Dorian via video teleconference while he is at Camp David.

Sunday, September 1, 2019

- 8:00 a.m.–11:00 a.m.: NWS Birmingham WFO receives multiple phone calls from the public. Two of the calls come in directly after the President's tweet at 10:51 a.m.
- 10:51 a.m.: President Trump tweets that Alabama, "will most likely be hit (much) harder than anticipated."
- 11:11 a.m.: NWS Birmingham WFO tweets that, "Alabama will NOT see any impacts from #Dorian." ("the September 1 Birmingham Tweet").
- 12:31 p.m.: President Trump is briefed on Hurricane Dorian at Federal Emergency Management Administration (FEMA) Headquarters. Ken Graham (Director of the National Hurricane Center (NHC)) leads the briefing.
- 3:00 p.m.: Chris Vaccaro (Senior Media Relations Specialist at NOAA) sent an e-mail to the NWS Public Affairs team directing that all media inquiries be sent to him and Julie Roberts (Deputy Chief of Staff and Director of Communications at NOAA).
- 3:06 p.m.: Julie Roberts sends an e-mail asking all NWS offices to consult with NOAA Office of Communications before responding to any social media inquiries.
- 4:49 p.m.: Andrew Stern (Manager of NWS Operations Center) sends an e-mail to the NWS Operations Center staff to inform all Regional Operation Centers (ROC) and WFOs to "only stick with official NHC forecasts if questions arise from some national level social media posts this afternoon. Staff should not provide any opinion about the national level post and should direct any questions that cannot be satisfied to NOAA Public Affairs."
- 9:41 p.m.: Chris Darden (Meteorologist-in-Charge, NWS Birmingham WFO) sends an e-mail out to all NWS Birmingham WFO staff updating them on the day's events and to forward any calls or questions to him.

Wednesday, September 4, 2019

- 12:57 p.m.: President Trump is briefed on Hurricane Dorian at the Oval Office in front of the press. A NOAA graphic appears to be altered with black marker. This becomes national news.
- 2:42 p.m.: Julie Roberts e-mails George Jungbluth (NWS Chief of Staff) and tells him that NOAA Communications is handling "the situation" and "there should be no action taken by anyone within the National Weather Service or the National Hurricane Center."
- 3:37 p.m.: NWS Operations Center sends out a media guidance to all ROCs and National Centers asking that they do not respond via social media or other modes to any questions related the tweets.
- 4:45 p.m.: Chris Darden sends an e-mail out to all NWS Birmingham WFO staff updating them that NOAA Headquarters called Darden and asked all further media inquiries to be forwarded to Chris Vaccaro at NOAA Communications.

Thursday, September 5, 2019

- 5:36 p.m.: Chris Vaccaro sends an e-mail asking NWS to resend the September 4 media guidance. Vaccaro states in the e-mail that forecasters should not communicate with media via their personal Twitter accounts.
- 7:48 p.m.: George Jungbluth resends September 4 media guidance to NWS personnel.
- Approximately 7:00 p.m.: Secretary Wilbur Ross (Commerce) calls Dr. Neil Jacobs and asks him to prepare a timeline of events and communications surrounding Dorian.

- 10:53 p.m.: Dr. Neil Jacobs calls Julie Roberts and informs Roberts of Jacobs' phone call with Secretary Ross.

Friday, September 6, 2019

- 2:30 a.m.: Julie Roberts receives a phone call from Secretary Wilbur Ross' personal assistant and Mike Walsh (Department of Commerce Chief of Staff, who had also been delegated the duties of General Counsel).
- 2:30–3:48 a.m.: Julie Roberts compiles a summary document of all events and communications that have happened surrounding Dorian [REDACTED] and sends the summary to Mike Walsh and other Commerce and NOAA employees.
- 7:00 a.m.: Julie Roberts calls Dr. Neil Jacobs and fills him in on the calls she received from the Secretary earlier that morning.
- 8:30 a.m.: Julie Roberts and Dr. Neil Jacobs arrive at the Commerce office and meet in the Deputy Secretary's conference room.³⁰ Commerce Officials who participated in all or a portion of this meeting include: David Dewhirst (Deputy General Counsel), Kevin Manning (Press Secretary and Deputy Director of Public Affairs), Deputy Secretary Karen Dunn Kelley, Joe Semsar (Chief of Staff for Deputy Secretary Karen Dunn Kelley), and Cordell Hull (Deputy General Counsel and also performing the duties of Assistant Secretary for Legislative and Intergovernmental Affairs).
- Deputy Secretary Karen Dunn Kelley goes to [REDACTED] a meeting. [REDACTED]
- A statement is drafted on David Dewhirst's tablet.
- 10:30 a.m.: Julie Roberts goes upstairs and asks Scott Smullen (NOAA Deputy Director of Communications) and Chris Vaccaro to look at the statement.
- Roberts, Jacobs, Vaccaro, and Smullen edit the September 6 Statement. Jacobs and Roberts work to ensure that the statement is technically accurate. There was a debate about Birmingham. Specifically, Jacobs, Roberts, Vaccaro, and Smullen wanted to remove the Birmingham part of the statement but were told no by Commerce officials.
- Secretary Ross and his staff call to discuss the statement.
- Jacobs and Roberts raise their concern about the Birmingham part of the statement but are told they cannot take out the reference to the Birmingham office.
- 3:00 p.m.: Dr. Neil Jacobs calls Stuart Levenbach (NOAA Chief of Staff) and tells him about the statement.
- 3:11 p.m.: David Dewhirst e-mails Mike Walsh a copy of the statement for approval.
- Between 3:30 and 4:00 p.m.: Dr. Neil Jacobs calls Stuart Levenbach, Dr. Louis Uccellini (NOAA Assistant Administrator, Director of NWS), and Taylor Jordan (NOAA Senior Policy Advisor) to tell them about the statement before it goes out.
- 3:43 p.m.: David Dewhirst e-mails Julie Roberts a copy of the statement after it has been approved by senior political leaders at Commerce.
- 4:00 p.m.: Julie Roberts and Dr. Neil Jacobs reach out to Benjamin Friedman (NOAA Deputy Under Secretary for Operations) to let him know about the statement before it goes out.
- 4:40 p.m.: Dr. Louis Uccellini and other NOAA officials speak over the phone with Chris Darden to give him a heads up before the statement goes out.
- 4:45 p.m.: NOAA Communications releases September 6 Statement that says Hurricane Dorian could have impacted Alabama and that the September 1 Birmingham Tweet was "inconsistent with probabilities from the best forecast products available at the time."
- 4:52 p.m.: Chris Vaccaro sends out an e-mail to NOAA personnel informing them that the statement has been distributed and that inquiries "should solely be directed to" the NOAA Office of Communications line. E-mail gets forwarded to other NOAA staff.
- 5:31 p.m.: NOAA Communications posts the statement on Twitter.

³⁰ According to Julie Roberts, the meeting was never officially convened, "it was just everyone sitting around the table working on whatever we were working on at the time." Julie Kay Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 91, Line 18–21; According to Dr. Neil Jacobs, "when Julie [Roberts] and I showed up there was already a couple drafts versions of the statement going back and forth floating around." Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 105, Line 19–21.

- 6:00 p.m.: Chris Darden sends out an e-mail to the NWS Birmingham WFO staff informing them of the statement and commending them on the work they do to support Alabama. Darden asks the staff to “please be cautious about commenting publicly” on the statement.
- 8:22 p.m.: Stuart Levenbach e-mails Dr. Louis Uccellini and tells Uccellini that he (Levenbach) was not involved in any part of drafting the statement. To Levenbach’s knowledge, Roberts and Jacobs were the only people from NOAA involved in writing the statement.

Saturday, September 7, 2019

- 2:26 a.m.: Stuart Levenbach e-mails Kevin Wheeler (NOAA Deputy Chief of Staff for Policy) with a summary of how the statement was developed as Levenbach understood it from a call with Dr. Jacobs.
- 3:11 p.m.: All hands e-mail sent out to NWS staff thanking them for their work on Hurricane Dorian.

Monday, September 9, 2019

- Dr. Jane Lubchenco, Dr. Richard Spinrad, and Dr. Andrew Rosenberg file an allegation of violation of NOAA’s Scientific Integrity Policy.

Tuesday, September 10, 2019

- Representative Paul Tonko files an allegation of violation of NOAA’s Scientific Integrity Policy.
- Craig McLean files an allegation of violation of NOAA’s Scientific Integrity Policy.

Wednesday, September 11, 2019

- Dr. Carl Childs files an allegation of violation of NOAA’s Scientific Integrity Policy.
- Craig McLean provides more alleged violations of NOAA’s Scientific Integrity Policy to expand upon his allegation filed on September 10.

CHAPTER 6: FINDINGS AND RECOMMENDATIONS

6.1 Criteria to Assess Allegations of Scientific Misconduct

Based on its review of applicable policies and rules, the Panel identifies five criteria to guide the assessment of allegations of scientific misconduct filed under NOAA’s Scientific Integrity Policy.

*Criteria One: Scientific research should be independent from political interference. Political officials and agency employees should not suppress or alter scientific findings and conclusions.*³¹

NOAA is a scientific agency, and its ability to advance its mission relies on the “transparency, traceability, and scientific integrity at all levels.”³² The intent of NOAA’s Scientific Integrity Policy (NOAA Administrative Order 202-735D: Scientific Integrity) is to protect the independence of the agency’s scientific research and strengthen public confidence in the quality and reliability of NOAA scientific activities. Scientists should feel that they can focus on their research free of political concerns. For example, the policy states:

Section 7.02. All individuals [NOAA employees and contractors] identified in Section 2.02 must not:

- Suppress, alter, or otherwise impede the timely release of scientific or technological findings or conclusions, unless explicitly required by a Department or government-wide statute, regulation, Executive Order, Presidential Memorandum, or other legal authority.
- Intimidate or coerce employees, contractors, recipients of financial assistance awards, or others to alter or censor scientific findings.
- Implement institutional barriers to cooperation and the timely communication of scientific findings or technology.

In addition, the Department of Commerce Public Communication Policy (Department Administrative Order 219-1: Public Communications) clarifies that the role of

³¹ Barack Obama, “Memorandum to the Heads of Executive Departments and Agencies, Subject: Scientific Integrity,” March 9, 2009.

³² National Oceanic and Atmospheric Administration, “NOAA Administrative Order 202-735D: Scientific Integrity,” December 7, 2011: Section 4.01

the Office of Communications is to provide media expertise and assist with the communication of scientific information.

Section 5.03. All public affairs employees shall adhere to the following best practices:

- Assist with presentation, style, and logistics of scientific and engineering information, but not alter its substance in anyway.

Criteria Two: Scientists have the right to communicate with media and the public about scientific research findings based on their official work.

NOAA has adopted policies and procedures to ensure a culture of transparency and openness and facilitate the free flow of scientific information. NOAA's Scientific Integrity Policy includes provisions that provide scientists the right to speak publicly about their scientific research:

Section 4.05. To be open and transparent about their work, and consistent with DAO 219-1 on (Public Communications) and their official duties, NOAA scientists may freely speak to the media and the public about scientific and technical matters based on their official work, including scientific and technical ideas, approaches, findings, and conclusions based on their official work. Additional guidance for employees is available in DAO 219-1. Communication by e-mail or other electronic means in response to inquiries from the media, and concerning scientific or technical matters based on an employee's official work, are considered to be the same as oral communication and not subject to approval, but are still subject to the restrictions on protected non-public information set forth in DAO 219-1. Social media communications are governed by the Department of Commerce Policy on the Approval and Use of Social Media and Web 2.0, as well as DAO 219-1.

Section 4.06. NOAA scientists are free to present viewpoints, for example about policy or management matters, that extend beyond their scientific findings to incorporate their expert or personal opinions, but in doing so they just make clear that they are presenting their individual opinions—not the views of the Department of Commerce or NOAA. In such cases, NOAA personnel may also note their NOAA affiliation as part of their biographical information, provided that their NOAA affiliation is noted as one of several biographical details, or, if the information is being published in a scientific or technical journal, their NOAA affiliation may be listed with an appropriate disclaimer. Appropriate disclaimers for use by NOAA scientists when expressing such opinions will be posted to the Scientific Integrity Commons website.

Section 5.02. NOAA will:

- (a) Ensure the free flow of scientific information online and in other formats, consistent with privacy and classification standards, and in keeping with the Department of Commerce and NOAA data sharing and management policies. Whenever appropriate, this information will include data and models underlying regulatory proposals and other policy decisions.
- (d) Ensure that NOAA and Department of Commerce public communications guidance provides procedures by which scientists may speak to the media and the public about scientific and technical matters based on their official work and areas of expertise. In no circumstances may any NOAA official ask or direct Federal scientists or other NOAA employees to suppress or alter scientific findings.
- (k) Ensure the sharing of best administrative and management practices that promote the integrity of NOAA's scientific activities.

Similarly, Commerce's Public Communication Policy explicitly allows scientists to engage with the media to discuss their scientific research.

Section 4.01(d). In support of a culture of openness, and consistent with this Order and their official duties, Department employees may speak to the media and the public about their official work and freely and openly discuss scientific and technical ideas, approaches, findings, and conclusions based on their official work.

Criteria Three: Scientists have the right to review and correct any official document that cites or references their scientific work to ensure the accuracy of the information.

NOAA's Scientific Integrity Policy requires that NOAA official documents, including press releases, be reviewed by scientists who conduct the research to ensure the integrity of its scientific process and products:

Section 7.01. Science managers and supervisors will ensure:³³

- Appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process.

Criteria Four: NOAA employees and supervisors should report suspected cases of scientific or research misconduct.

NOAA's Scientific Integrity Policy requires that NOAA employees and supervisors report suspected scientific misconduct:

Section 6.01(d). All NOAA employees and contractors should:

- Immediately report any observed, suspected, or apparent Scientific and Research Misconduct through means established in Section 8 and the Procedural Handbook for this Order.

Section 7.05. NOAA science managers and supervisors will immediately report suspected cases of scientific or research misconduct through means established under Section 8 and the Procedural Handbook for this Order.

Criteria Five: Any Official Communication intended for the media must be submitted in a timely manner before the communication occurs to the head of the operating unit or Secretarial office, or their designee(s), and to the Appropriate Public Affairs Office (as defined in Section 8.05) for approval.

Commerce's Public Communication Policy clearly lays out the Department's approval process for Official Communication materials intended for the media. The head of the operating unit and the Public Affairs Office must sign off on Official Communication materials prior to their public release.

Section 8.01. Approval. For any Official Communication intended for the media (e.g., news releases, interviews/news conferences), all written and audiovisual materials that are, or are prepared or received in connection with, the Official Communication must be submitted in a timely manner before the communication occurs to the head of the operating unit or Secretarial office, or their designee(s), and to the Appropriate Public Affairs Office (as defined in Section 8.05) for approval in a timely manner. The Appropriate Public Affairs Office will be responsible for coordinating the finalization of the communication with the originating offices, including pertinent staff. Unless otherwise authorized by the Appropriate Public Affairs Office, all Official Communications with the media will be on-the-record (i.e., attributable to the person making the remarks or providing information or materials).

6.2 Adjudication Standards

The Panel followed the procedures and processes provided by the Scientific Integrity Policy's accompanying Procedural Handbook to conduct this assessment. The Procedural Handbook identifies two categories of potential violation of the Scientific Integrity Policy: (1) scientific misconduct and (2) loss of scientific integrity.

Section 8.01 of NOAA's Scientific Integrity Policy defines scientific misconduct:

Section 8.01. Scientific and Research Misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the products or reporting of these activities. Scientific and Research Misconduct specifically includes:

- intentional circumvention of the integrity of the science and research process by violation of NOAA's Code of Ethics for Science Supervision and Management; and

³³ National Oceanic and Atmospheric Administration, "NOAA Administrative Order 202-735D: Scientific Integrity," December 7, 2011: Section 2.02.

- actions that compromise the scientific process by violating NOAA's Code of Scientific Conduct.
- Scientific and Research Misconduct does not include honest error or differences of opinion.

The adjudication standards for scientific misconduct are set forth in Section 2.01 of the Procedural Handbook. The evidence required to support findings of scientific misconduct are:

- Significant departure from accepted practices of the relevant research community and violated the NOAA Code of Scientific Conduct or Code of Ethics for Science Supervision and Management set forth in NAO 202-735D;
- Commit misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NAO 202-735D;
- The allegation is supported by a preponderance of evidence.

The Procedural Handbook does not include explicit criteria to determine a loss of scientific integrity and only provides limited guidance:

Section 2.03. Coercive manipulation, intimidation, misrepresentation, censorship, or other misconduct that affects the quality or reliability of scientific information may involve the loss of scientific integrity,

Section 2.04. In the event the NOAA SIO and/or DO determines by a preponderance of the evidence that a loss of scientific integrity has taken place, but no misconduct is evident, the NOAA SIO and/or DO will propose and ensure appropriate action is taken to restore NOAA's scientific integrity.

6.3. Findings and Recommendations

Having conducted its analysis, the Panel selected three key allegations for deliberation. The Panel notes that certain allegations submitted for review were either subsumed by one of the three selected or did not rise to the level of an actual violation. The table following the copies of allegations in Appendix E provides a summary of the rationale for selection of the allegations under review. For each, the report provides the supporting facts, analysis, findings, and recommendations. The attendant facts were drawn from the team's review of prior testimonies, supplemental interviews, and a review of documents listed in Appendix H.

In considering the allegations, the Panel recognizes that the September 6 Statement and the September 1 Birmingham Tweet discussed herein are inextricably linked. The September 6 Statement directly addressed the September 1 Birmingham Tweet and the underlying science. Second, the Panel considered both the content and process by which the September 6 Statement was developed and released. The Panel acknowledges the unique nature of the circumstances surrounding the September 6 Statement, including the extensive involvement of the media. Finally, it is the reasoned opinion of the Panel, that in the aggregate, the evidence gathered in this inquiry is appropriate and sufficient to provide a reasonable basis for the findings and conclusions contained herein.

Allegation One: NOAA Media Guidance limited the ability of scientists to communicate with the media and the public about their research findings.

Media guidance issued by NOAA leadership between September 1 and 6, 2019, limited the ability of scientists to communicate with the media and the public about their research findings. Policies allegedly violated include Section 4.05, Section 4.06, Section 5.02 (a), (d), and (k) of NOAA's Scientific Integrity Policy; and Section 4.01 of Commerce's Public Communication Policy.

Conditions Observed

Between September 1 and 6, 2019, NOAA Office of Communications sent out various e-mails to National Weather Service (NWS) leadership, the NWS Public Affairs team, and Communications staff directing NWS offices and staff to route any media request to NOAA Office of Communications and not to respond to any questions via media and social media either officially or through personal Twitter accounts. NWS issued several media guidance communications instructing staff to stick with official forecasts and direct media inquiries to NOAA Office of Communications. Table 6-1 below summarizes the media instructions from NOAA Communications and NWS.

Table 6-1 Media Guidance (September 1, 2019–September 6, 2019)

Times Shown in Eastern Time Zone (ET)

E-mails from NOAA Communications	September 1, 2019, 3:00 p.m. Chris Vaccaro, Senior Media Relations Specialist, sent an e-mail to the NWS Public Affairs team and communication staff—“all media inquiries about the President’s tweet and the Birmingham tweet should be directed to me and Julie Roberts.”
	September 1, 2019, 3:06 p.m. Julie Roberts, Deputy Chief of Staff, sends an e-mail to the NWS Public Affairs team and communication staff—“please ask all NWS offices to consult with us before responding to any social media inquiries.”
	September 4, 2019, 2:42 p.m. Julie Roberts e-mails George Jungbluth (NWS Chief of Staff)—“we are handling the situation there should be no action taken by anyone within the National Weather Service or the National Hurricane Center.”
	September 4, 2019, 2:44 p.m. Julie Roberts e-mails George Jungbluth, Jeremy Andrucyk (NWS Director of Communications), Mary Erickson (NWS Deputy Director), and Dr. Louis Uccellini (NWS Director)—“Please ask NWS Social Media not to respond to the messages going out. Any media inquiries to NWS should be directed to Chris to handle.”
	September 5, 2019, 5:36 p.m. Chris Vaccaro sends an e-mail to George Jungbluth; Susan Buchanan (NWS Public Affairs Officer); and Jeremy Andrucyk, asking NSW to resend the September 4 media guidance. Vaccaro also states in the e-mail that forecasters should not communicate with media via their personal Twitter accounts.
	September 6, 2019, 4:52 p.m. Chris Vaccaro sends out an e-mail to NOAA personnel informing them that the statement has been distributed and that inquiries “should solely be directed to” the NOAA Office of Communications line. E-mail gets forwarded around between NOAA staff.
E-mails from NWS Operations Center	September 1, 2019, 4:49 p.m. Andrew Stern (Operations Center Manager, NWS) sends out an e-mail to the NWS Operations Center to inform all Regional Operation Centers (ROC) and Weather Forecast Offices to “only stick with official NHC forecasts if questions arise from some national level social media posts this afternoon. Staff should not provide any opinion about the national level post and should direct any questions that cannot be satisfied to NOAA Public Affairs.”
	September 4, 2019, 9:41 p.m. NWS Operations Center sends out a media guidance to all ROCs and National Centers asking that they do not respond via social media, or other, to any questions related to the tweets.
	September 5, 2019, 7:48 p.m. George Jungbluth sent an e-mail asking all media questions to be forwarded to NOAA Communications.

Criteria

The NOAA Scientific Integrity Policy and Commerce Public Communication Policy affords scientists the right to freely communicate their scientific opinions with the media in Section 4.05, Section 4.06, and Section 5.02 (a), (d), and (k) of NOAA’s Scientific Integrity Policy and Section 4.01 of Commerce’s Public Communication Policy.

Analysis

As presented above, NOAA and NWS leadership issued multiple media instructions between September 1 and 6, 2019. Some Complainants perceived the media guidance as restricting the ability of WFO meteorologists to communicate with the media and the public about their research findings.³⁴ They allege that the media guidance violated Section 4.05, Section 4.06, and Section 5.02 (a), (d), and (k) of NOAA’s Scientific Integrity Policy; Supporting this position, Chris Darden noted in

³⁴ Jane Lubchenco, Richard Spinrad, and Andrew Rosenberg, “Allegation 2019-008,” September 9, 2019; Craig N. McLean, “Allegation 2019-007,” September 10, 2019.

the interview that he felt he was not at liberty to speak to the press—"we certainly felt pressure not to say anything."³⁵

In contrast, staff from NOAA's Office of Communications explained that the purpose of the media instructions was to shield NOAA forecast offices and forecasters from aggressive media reporters—not to prevent scientists from discussing their research with the media.³⁶ Further, as Hurricane Dorian was still active during this period, NOAA senior management felt it was critical for the affected scientists to focus on their work and avoid the press.

For example, an e-mail from Chris Vaccaro (Senior Media Relations Specialist, NOAA Office of Communications) to NWS leadership instructed forecasters not to engage with the media on their personal Twitter accounts.³⁷ In light of today's additional tweets, can this message be resent as a reminder? Additionally, I hear that reporters may be contacting forecasters on their personal Twitter accounts and they should not engage.³⁸

In separate interviews, Roberts and Vaccaro from NOAA's Office of Communications explained that, similar to prior media instructions, Vaccaro's e-mail was not intended to limit scientists' ability to communicate their views on their personal social media accounts but rather to protect NOAA employees from the social media from surrounding the September 1 Birmingham Tweet.

In addition, several NOAA officials stated in their interviews that it is the agency's standard operating procedure to issue this type of media guidance in controversial situations or if there is a high level of media inquiries.³⁹ Moreover, the officials stated that it is the responsibility of NOAA's Office of Communications to develop a coordinated, agency-wide communication strategy in such circumstances.

While NOAA and NWS Communication officials maintain that issuing media guidance is standard operating procedure, the agency does not have formal processes in place, and it is not clear who has the final authority to review and approve media guidance. As Vaccaro noted, the decision to issue media guidance is typically made in consultation with the leaders within the Office of Communications and the impacted line office/operating branch.⁴⁰

Findings

The Panel determined by a preponderance of the evidence on record that the allegation that the media guidance issued by NOAA leadership between September 1 and 6, 2019, did not constitute scientific misconduct or a loss of scientific integrity.

The Panel recognizes that a key component of the Scientific Integrity Policy is to ensure the free flow of scientific information and for scientists to communicate with the media and the public about their research findings. Conversely, in times of an emergency, it is important to develop a coordinated, effective communication approach with the press and public at large.

Recommendations

The Panel proposes the following recommendations for the Determining Officer to consider to safeguard against future violations of scientific integrity:

- Develop formal policy guidelines for the issuance of media guidance to NOAA staff. Specifically, these guidelines should clarify roles and responsibilities, institutionalize the process, and identify the circumstances under which the agency should issue media guidance.
- Develop an interagency framework (that includes other Federal agencies and the White House) for the sharing of scientific data and materials concerning severe weather related events. The framework would include protocols for the timely update of information to reflect changing weather conditions and the release of the information to the general public.

³⁵ Chris Darden; "Interview of Chris Darden," interview by NOAA General Counsel, October 21, 2019: Page 157, Line 13.

³⁶ Julie Kay Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019; Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020.

³⁷ Julie Kay Robert, "Interview of Julie Kay Roberts," interview by NOAA General Counsel, October 11, 2019: Exhibit 17.

³⁸ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 158, Lines 13–14.; Julie Kay Roberts; "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 46, Line 11; Louis Uccellini, "Interview of Louis Uccellini," interview by NOAA General Counsel, November 26, 2019: Page 41–43.

³⁹ Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020: Page 31, Lines 19–22.

Allegation Two: Contrary to the NOAA Scientific Integrity Policy, forecasters in the Birmingham office were not permitted to review the draft September 6 Statement prior to its release.

NWS Birmingham WFO forecasters were not provided the opportunity to review and opine on the September 6 Statement that referenced the September 1 Birmingham Tweet and underlying scientific activity. The policy allegedly violated is Section 7.01 of NOAA's Scientific Integrity Policy.

Conditions Observed

As discussed below in Allegation 3, senior Commerce officials largely directed the drafting of the September 6 Statement. In addition, two senior NOAA political appointees were involved in the development of September 6 Statement: Dr. Neil Jacobs (NOAA Acting Administrator) and Julie Roberts (Deputy Chief of Staff and Director of Communications). Two NOAA senior career officials, Chris Vaccaro (Senior Communication Specialist) and Scott Smullen (Deputy Director of Communications), reviewed an early draft of the statement and offered their comments. However, they left the meeting before the statement was finalized.⁴⁰

Shortly before the release of the statement, Jacobs and Roberts contacted other NOAA officials, including Benjamin Friedman (NOAA Deputy Under Secretary for Operations), Dr. Louis Uccellini, Stuart Levenbach (NOAA Chief of Staff), and Taylor Jordan (Senior Policy Advisor) to inform them of the statement. These officials were not provided the opportunity to provide substantive input in the drafting of the draft statement.⁴¹

Dr. Louis Uccellini and several other NWS officials contacted Chris Darden (Meteorologist-in-Charge, NWS Birmingham Office) to advise him that the statement would be released. However, according to Darden, by the time he actually read the statement, it had already been released.⁴² As such, the forecasters in the Birmingham office were not afforded an opportunity to review the September 6 Statement before it went out.

Criteria

The NOAA Scientific Integrity Policy provides scientists the right to review and correct any official document that cites or references their scientific work to ensure the accuracy of the information. Section 7.01 of NOAA's Scientific Integrity Policy states:

Appropriate rules and procedures are in place and implemented to preserve the integrity of the scientific process and the dissemination of its scientific products and information, including providing scientists the right to review and correct any official document (such as a press release or report) that cites or references their scientific work, to ensure that accuracy has been maintained after the clearance and editing process.⁴³

Analysis

NOAA's Scientific Integrity Policy defines a "scientific product" as the "presentation of the results of scientific activities including the analysis, synthesis, compilation, or translation of scientific information and data into formats for the use of NOAA, the Department of Commerce, or the Nation."⁴⁴ According to this definition, the September 1 Birmingham Tweet is a scientific product, as it reflects the forecasters' professional judgment and is based on the results of the forecasters' scientific activities. Further, as discussed above, Section 7.01 of NOAA's Scientific Integrity Policy provides scientists the right to review and correct any official document that cites or references their scientific work to ensure the accuracy of the information.

As the September 6 Statement references and criticizes the September 1 Birmingham Tweet, a draft of the statement should have been provided to the Birmingham office for review and comment prior to its release.

⁴⁰ Julie Kay Roberts, "Interview of Julie Roberts," interview by NOM General Counsel, October 11, 2019: Page 98, Line 1–17; Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020: Page 58–64.

⁴¹ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 160, Line 12–15; Julie Kay Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 109, Line 4–7.

⁴² Chris Darden, "Interview of Chris Darden," interview by NOAA General Counsel, October 21, 2019: Page 162, Line 21–23.

⁴³ National Oceanic and Atmospheric Administration, "NOAA Administrative Order 202-735D: Scientific Integrity," December 7, 2011: Section 7.01.

⁴⁴ NOAA, Section 3, Definition of Scientific Product.

In contrast with this requirement, the Birmingham office was not afforded the opportunity to review the draft September 6 Statement. By the time Jacobs and Roberts communicated with other NOAA and NWS senior officials and Uccellini had been in contact with Darden, the draft statement was already in its finished form. According to Uccellini, the purpose of the phone call with Chris Darden was not to solicit his feedback, but rather to give him notice that the statement would be released shortly.⁴⁵

Certain interviewees explained that while the September 6 Statement was released by NOAA Communications, it was not a true NOAA Official Communication as the drafting of the statement did not follow NOAA's standard press release development process and protocols.⁴⁶ Further, senior Commerce officials took the lead in the development and release of the statement. Roberts stated in her first interview that, under the circumstances, there was no practical opportunity to engage the Birmingham office in the development of the statement and Roberts felt that even if she had raised the issue with Commerce officials, it would not have made any difference.⁴⁷ Jacobs also stated in his interview that "feedback probably wasn't going to make a whole lot of difference."⁴⁸

The September 6 Statement was issued as a NOAA Official Communication and distributed through NOAA's system and as a result, NOAA's relevant policies and procedural requirements are applicable. According to Section 8.01 of Commerce's Public Communication Policy, the head of the operating unit and the Public Affairs office have the authority to approve and issue Official Communication materials and therefore are responsible for ensuring compliance with NOAA's procedural requirements.

The Panel recognizes that the September 6 Statement is different from a normal NOAA press release but nonetheless concludes that it is an Official Communication. Consequently, as the NOAA Acting Administrator and the Director of NOAA Communications,⁴⁹ Jacobs and Roberts had a responsibility to ensure that NOAA's Scientific Integrity Policy and other procedural requirements were followed. This did not happen during the meeting with Commerce officials or at other critical points on September 6.

Additionally, Jacobs stated in his interview with NOAA General Counsel that his interpretation of the Scientific Integrity Policy is that a NOAA press release should be reviewed by scientists, but not necessarily the scientist who was involved in the original research. Jacobs said he reviewed the draft statement and that in his opinion as a trained scientist, the September 6 Statement was technically accurate.⁵⁰ However, section 7.01 of the Scientific Integrity Policy requires that the scientists who actually produced the scientific work have the opportunity to offer comments.

Moreover, Section 7.01 of the Scientific Integrity Policy requires that NOAA science managers and supervisors ensure appropriate rules and procedures are in place to provide scientists the opportunity to review and comment on the agency's official documents. Some interviewees stated that NOAA scientists are normally involved in the development of the agency's communication materials.⁵¹ However, the Panel learned that NOAA lacks formal procedures to ensure compliance with Section 7.01 of the Scientific Integrity Policy.

Findings

The Panel determined by a preponderance of the evidence on the record that Dr. Neil Jacobs and Julie Roberts violated the Code of Ethics for Science Supervision and Management, set forth in Section 7.01 of NOAA's Scientific Integrity Policy, when they failed to engage the Birmingham office in the development of the September 6 Statement. Further, the Panel finds that they engaged in the misconduct

⁴⁵ Louis Uccellini, "Interview of Louis Uccellini," interview by NOAA General Counsel, November 26, 2019: Page 108, Line 3–12.

⁴⁶ Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019; Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020.

⁴⁷ Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019.

⁴⁸ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 162, Line 13.

⁴⁹ NOAA does not have an Office of Public Affairs. NOAA Communications serves as the agency's Office of Public Affairs. Julie Roberts' title was Deputy Chief of Staff, but she also served as the Director of Communications.

⁵⁰ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 162.

⁵¹ Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019; Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020.

intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NOAA's Scientific Integrity Policy.

Recommendations

The Panel proposes the following recommendations for the Determining Officer to consider to safeguard against future violations of scientific integrity:

- Develop a written policy statement on the right of NOAA scientists to review, comment, and amend any Official Communication that relies on their scientific analysis. This statement will complement NOAA's Scientific Integrity Policy.
- Revise NOAA's Scientific Integrity Policy's accompanying Procedural Handbook to include criteria and supporting examples to assist with the determination of scientific misconduct and a loss of scientific integrity. For example, NOAA could cite this case as an example of a violation of NOAA's Scientific Integrity Policy and scientific misconduct with regards to several criteria.

Allegation Three: The drafting and release of the September 6 Statement was driven by external political pressure.

The drafting and release of the September 6 Statement was driven by external political pressure from Commerce senior leaders. Further, the September 6 Statement inappropriately criticized Birmingham's September 1 Tweet and underlying scientific activity and compromised NOAA's reputation as an independent scientific agency. These actions violated Section 7.02 of NOAA's Scientific Integrity Policy.

Conditions Observed

The drafting and release of the September 6 Statement did not follow standard NOAA policies and procedures. Although NOAA policies call for NOAA scientists and Communications officials to work collaboratively on an Official Communication, senior Commerce officials largely directed the drafting of the September 6 Statement.⁵²

On the morning of September 6, senior Commerce officials convened a meeting to develop the public statement. The meeting took place in a conference room of the Commerce office building. Commerce officials (and their titles at the time of the events in question) who participated in all or a portion of this meeting include:

- David Dewhirst, Deputy General Counsel;
- Kevin Manning, Press Secretary and Deputy Director of Public Affairs;
- Joe Semsar, Chief of Staff for Deputy Secretary Karen Dunn Kelley;
- Deputy Secretary Karen Dunn Kelley; and
- Cordell Hull, Deputy General Counsel and also performing the duties of Assistant Secretary for Legislative and Intergovernmental Affairs.

Four NOAA officials, including Dr. Neil Jacobs, Julie Roberts, Chris Vaccaro, and Scott Smullen, were involved in the preparation of the September 6 Statement. Vaccaro and Smullen reviewed an early draft version of the statement and offered comments but did not participate in other parts of the discussion.

Jacobs and Roberts joined the meeting around 8:30 a.m. Eastern Time Zone. At that point, the draft statement had already been drafted on Dewhirst's tablet and was subsequently read to everyone in the room. Jacobs and Roberts said in their interviews that they participated in the discussion on the technical aspect of the statement to ensure it was scientifically accurate.⁵³

According to several interviews,⁵⁴ there was a discussion about the draft statement's criticism of the Birmingham WFO. NOAA officials (Jacobs, Roberts, Vaccaro, and Smullen) proposed to remove the reference to the Birmingham office from the statement, but this suggestion was rejected by Commerce officials. At some point,

⁵² Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 104, Lines 17–22; Julie Roberts, "Interview of Julie Roberts," interview by Academy Team, January 23, 2020: Page 36, Lines 10–12; Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020: Page 76, Lines 12–18.

⁵³ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 122; Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 99.

⁵⁴ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 106, Line 7; Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 98, Line 10; Chris Vaccaro, "Interview of Chris Vaccaro," interview by Academy Team, January 17, 2020: Page 46, Lines 10–15.

other Commerce officials joined the discussion by phone.⁵⁵ Jacobs and Roberts raised the concern about the Birmingham reference again, but were told that the Birmingham reference needed to stay in.

Dewhirst sent the draft statement to Mike Walsh at 3:11 p.m. Eastern Time Zone and forwarded the statement to Julie Roberts at 3:43 p.m. Eastern Time Zone.⁵⁶

Roberts, Smullen, and Vaccaro discussed how to release the statement.⁵⁷ Roberts noted that there was a request from Commerce to not only distribute the statement through the NOAA media distribution system, Meltwater, but also post it on NOAA website.⁵⁸ NOAA Communications released the statement at 4:52 p.m. Eastern Time Zone:

From Wednesday, August 28, through Monday, September 2, the information provided by NOAA and the National Hurricane Center to President Trump and the wider public demonstrated that tropical-storm-force winds from Hurricane Dorian could impact Alabama. This is clearly demonstrated in Hurricane Advisories #15 through #41, which can be viewed at the following link.

The Birmingham National Weather Service's Sunday morning tweet spoke in absolute terms that were inconsistent with probabilities from the best forecast products available at the time.

NOAA Communications posted the statement to the agency's website and through Twitter.

The second paragraph of the above statement is widely viewed by NOAA officials and scientific staff as a criticism of the September 1 Birmingham Tweet and underlying scientific activity. For example, Dr. Louis Uccellini stated that the September 6 Statement criticizes the Birmingham office publicly when forecasters had done their job according to all scientific and operational standards.⁵⁹ Chris Darden, Meteorologist-in-Charge, Birmingham office, said that the impact of the September 6 Statement on his staff was harsh—"when they feel like they're basically being told they don't know how to do their job or they can't do a job, and that's how they perceive this, then it was a real kick in the gut."⁶⁰

Criteria

The principal intent of the Scientific Integrity Policy is to remove politics from, scientific research and prevent the intentional or unintentional suppression of scientific findings and conclusions: Section 7.02 of NOAA's Scientific Integrity Policy states:

All individuals identified in Section 2.02 of this Order must not:

- Suppress, alter, or otherwise impede the timely release of scientific or technological findings or conclusions, unless explicitly required by a Department or government-wide statute, regulation, Executive Order, Presidential Memorandum, or other legal authority.
- Intimidate or coerce employees contractors, recipients of financial assistance awards, or others to alter or censor scientific findings.
- Implement institutional barriers to cooperation and the timely communication of scientific findings or technology.

Further, the Office of Science and Technology Policy (OSTP) Memo enquires that agencies develop policies to:

Ensure a culture of scientific integrity. Scientific progress depends upon honest investigation, open discussion, refined understanding, and a firm commitment to evidence. Science, and public trust in science, thrives in an environment that

⁵⁵ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019; Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019.

⁵⁶ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 180; Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 104.

⁵⁷ Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 104, Lines 12–19.

⁵⁸ Roberts, Page 111, Lines 7–11.

⁵⁹ Louis Uccellini, "Interview of Louis Uccellini," interview by NOAA General Counsel, November 26, 2019: Page 108–109.

⁶⁰ Chris Darden, "Interview of Chris Darden," interview by NOAA General Counsel, October 21, 2019: Page 166, Lines 19–23.

shields scientific data and analyses from inappropriate political influence; political officials should not suppress or alter scientific or technological findings.⁶¹

Analysis

Section 7.02 of the NOAA's Scientific Integrity Policy prohibits NOAA employees, including political officials, from suppressing or altering scientific findings. As discussed below, the development and release of the September 6 Statement violated NOM's scientific integrity and reputation as an independent scientific agency in several respects.

First, the development and release of the September 6 Statement did not follow NOAA's normal process and appear to be the result of strong external pressure. Second, the criticism of the Birmingham office in the September 6 Statement is not consistent with the intent and requirements of the NOAA Scientific Integrity Policy. This could result in a chilling effect on other NOAA staff who might be reluctant to share their scientific opinions in the future to avoid similar criticism.

The development of the September 6 Statement did not follow NOAA's normal process.

Under normal conditions, a weather-related statement would be drafted by NWS. The head of NWS and his/her senior staff would be involved in reviewing the statement. If there were a contentious issue, all of the discussions would take place at the line office level first. NWS would then send the draft statement to NOAA Communications and NOAA leadership for review.⁶² In this case, four NOAA officials reviewed the draft September 6 Statement and offered comments before its release, but none of the NOAA/NWS senior career officials or forecasters played a meaningful role in the development of the September 6 Statement.

The September 6 Statement appears to be the result of strong external pressure.

The direction to develop and release the September 6 Statement came from Commerce officials. Jacobs said in his first interview that "I think Dewhirst and other DOC folks had probably also spoken to him [Walsh] earlier in the morning . . . it was pretty clear that, you know, they were given instructions to not just fix the problems, but do it with some type of statement."⁶³ During the meeting on September 6, Commerce officials took the lead in developing the statement. The draft statement was reviewed and approved by Commerce officials before its release. The September 6 Statement was issued as a NOAA public statement and attributed to a NOAA spokesperson. As Jacobs said, NOAA officials thought it was not a good idea to put out this statement, and "no one wanted to own it for obvious reasons."⁶⁴

Jacobs said that, during the process, no one told him directly, "do this or you will get fired."⁶⁵ However, as Jacobs noted in the interview, given "the amount of panic and concern, and getting called at 3 in the morning, it was pretty well implied that this was something that was a fireable offense if you disobeyed."⁶⁶ Indeed, Jacobs' perception was that all the political staff at the meeting thought their jobs were in jeopardy.⁶⁷

Several NOAA officials, such as Benjamin Friedman and Craig McLean, mentioned that they talked to Jacobs subsequent to the release of the September 6 Statement, and Jacobs sounded very depressed and appeared to be under great stress.⁶⁸ Roberts spoke with Mike Walsh, Commerce Chief of Staff, on the phone on September 6 around 2:30 a.m. Walsh told Roberts, "There are jobs on the line. It could be the forecast office or it could be somebody higher than that and that's less palatable to me."⁶⁹ Roberts said she did not think her job was on the line and

⁶¹ John P. Holden, "Memorandum to the Heads of Executive Departments and Agencies, Subject: Scientific Integrity," December 17, 2019.

⁶² Craig McLean, "Interview of Craig McLean," interview by Academy Team, January 23, 2020: Page 16; Julie Kay Roberts, "Interview of Julie Roberts," interview by Academy Team, January 23, 2020: Page 22.

⁶³ Neil Jacobs, "Interview of Neil Jacobs," interview by NOAA General Counsel, November 6, 2019: Page 104, Lines 17–22.

⁶⁴ Jacobs, Page 124.

⁶⁵ Jacobs, Page 100.

⁶⁶ Jacobs, Page 100–101.

⁶⁷ Jacobs, Page 168, Lines 4–6.

⁶⁸ Friedman, Benjamin, "Interview of Benjamin Friedman," interview by NOAA General Counsel, October 24, 2019: Page 58; Craig McLean, "Interview of Craig McLean," interview by Academy Team, January 23, 2020: Page 61.

⁶⁹ Julie Roberts, "Interview of Julie Roberts," interview by NOAA General Counsel, October 11, 2019: Page 70.

felt that the forecasters in the Birmingham office or Dr. Neil Jacobs could lose their jobs.

The criticism of the Birmingham office in the September 6 Statement is not consistent with the intent and requirements of the NOAA Scientific Integrity Policy.

The September 6 Statement's criticism of the September 1 Birmingham Tweet's use of absolute terms was inappropriate and inconsistent with the NOAA Scientific Integrity Policy for several reasons. First, the use of absolute terms in communicating weather-related risks to the general public is commonly used by meteorologists across the country. A review of various WFOs' tweets show that it is common to incorporate absolute terms in messages to the public. Appendix G shows examples of these messages.

Second, the use of absolute terms is viewed as an effective tool to communicate weather related risk—or the lack thereof—on social media. As NOAA meteorologists posit, a key challenge for forecasters during a severe weather event is to convert the public's perception of safety (optimism bias) to a perception of risk and to induce them to take appropriate measures.⁷⁰ Conversely, a scientifically accurate weather forecast using risk probabilities and scenario analysis may not be very useful to the general public who do not understand probabilities.⁷¹ Indeed, a 2016 study on how forecast and warning messages are perceived by the general public highlights the importance of separating the technical details from the actions that must be taken to protect as individual citizens are not concerned about hurricanes in a scientific sense.⁷²

The National Weather Service states that its primary mission is to protect lives and property through the timely issuance of watches and warnings when there are hazardous weather conditions.⁷³ Accordingly, the purpose of the September 1 Birmingham Tweet was to communicate the risks related to the hurricane to the public so the message should be phrased in ways that allow the general public to quickly understand it.⁷⁴ An analysis of public hurricane evacuation decisions and responses to forecast and warning messages conducted by scientists from the National Center for Atmospheric Research in 2016 also found that when issuing safety messages, NWS uses strong, personalized language in order to get people to follow the instructions of the message.⁷⁵

In a prior interview, Dr. Neil Jacobs commented that NWS is still in the learning stage and has engaged social scientists to figure out the most effective approach to communicating risk probability to the general public.⁷⁶ Supporting the benefit of engaging social scientists to assist with risk communication, the American Meteorological Society (AMS) posits that there is a “clear and compelling need to enhance the utility of weather and climate research and the dissemination of atmospheric information using knowledge from the social sciences about how individuals and society interact with weather and climate.”⁷⁷

Third, if a forecast office were to issue an inappropriate or inaccurate forecast, it would not be the agency's typical correction process to issue a public statement. Jacobs stated that when the wording of a forecast is not appropriate, NWS leaders or someone from the regional headquarters will send out an e-mail to forecasters.⁷⁸ McLean said that a forecast office will immediately issue a correction if there is an inaccurate forecast or a local misunderstanding. NOAA and NWS would not issue an agency-level public statement to correct an inappropriate weather forecast and criticize a forecast office.⁷⁹

⁷⁰ National Oceanic and Atmospheric Administration, National Weather Service Office of the Chief Learning Officer. “Radar & Applications Course, Storm-Based Warning Fundamentals, Lesson 12: Impact Based Warnings: Overview,” 2017.

⁷¹ World Meteorological Organization, “Guidelines on Communicating Forecast Uncertainty,” WMO/TD No. 1422, 2008.

⁷² Julie L. Demuth *et al.*, “Creation and Communication of Hurricane Risk Information,” *Bulletin of the American Meteorological Society* 93, no. 8 (2012): 1133–1145.

⁷³ National Oceanic and Atmospheric Administration, National Weather Service, “2019–2022 Strategic Plan,” 2018.

⁷⁴ Chris Darden, “Interview of Chris Darden,” interview by NOAA General Counsel October 21, 2019: Page 144–145.

⁷⁵ Rebecca E. Morss *et al.*, “Understanding public hurricane evacuation decisions and responses to forecast and warning messages,” *Weather and Forecasting* 31, no. 2 (2016): 395–417.

⁷⁶ Neil Jacobs, “Interview of Neil Jacobs,” interview by NOAA General Counsel, November 6, 2019: Page 129, Line 10.

⁷⁷ American Meteorological Society, “Strengthening Social Sciences in Weather—Climate Enterprise: Professional Guidance Statement,” February 2, 2014.

⁷⁸ Neil Jacobs, “Interview of Neil Jacobs,” interview by NOAA General Counsel, November 6, 2019: Page 114, Lines 21–22; Page 115, Lines 1–3; Page 129, Lines 21–22.

⁷⁹ Jacobs, Page 115, Lines 5–7.

Finally, the criticism of the Birmingham office could potentially have a chilling effect on other NOAA staff who might be reluctant to share their scientific opinions in the future to avoid similar criticism. Several NOAA officials expressed their concerns about the possible chilling effects of the September 6 Statement. For example, Darden said that scientists in other forecast offices felt “there is a little bit of a fear of ‘this could happen to us’ kind of thing.”⁸⁰ McLean said that NOAA is a resilient agency, but many people worry that this kind of issue might happen again.⁸¹ Several NOAA officials reported that they received hate e-mails from the public that included threatening language.⁸² McLean noted, the September 6 Statement “stirred a lot of people and stirred a lot of emotion.”⁸³

Findings

The Panel determined by a preponderance of the evidence on the record that the actions of Dr. Neil Jacobs and Julie Roberts involving the development and issuance of the September 6 Statement violated the Code of Ethics for Science Supervision and Management set forth in Section 7 of NOAA’s Scientific Integrity Policy. Further, the Panel finds that they engaged in the misconduct intentionally, knowingly, or in reckless disregard of the Code of Scientific Conduct or Code of Ethics for Science Supervision and Management in NOAA’s Scientific Integrity Policy.

The Panel concludes that the development and issuance of the September 6 Statement is not consistent with the intent and requirements of NOAA Scientific Integrity Policy.⁸⁴ The September 6 Statement is viewed by many NOAA/NWS scientists as an inappropriate criticism of the Birmingham office, and the development of the statement was not based on science but appears to be largely driven by external influences from senior Commerce officials who drafted the September 6 Statement. As a result, while there was no direct suppression or alteration of scientific findings, the September 6 Statement might suppress the willingness and ability of NOAA scientific staff to express their scientific opinions without reservation in the future.

According to the Commerce Public Communication Policy, the head of the operating unit and the public affairs office have the ultimate responsibility to approve and issue press releases. For the purpose of this analysis, the September 6 Statement was issued as an official NOAA statement, and as the head of the agency and the Director of Communications, Dr. Neil Jacobs and Julie Roberts should take responsibility for the September 6 Statement.

While Jacobs and Roberts violated NOAA’s Scientific Integrity Policy, there is a contextual factor for the Determining Official to consider. NOAA officials—Dr. Neil Jacobs and Julie Roberts—followed the direction from Commerce officials to issue the September 6 Statement. While they expressed their objections to criticizing the Birmingham WFO in the statement, they were overridden by Commerce officials. While it was Jacobs’ and Roberts’ choice to issue the September 6 Statement as the pertinent leaders of the agency, they purported to believe that it was out of their hands. It is important for the Determining Official to take into account the circumstances under which the September 6 Statement was developed and released when making final determinations.

Recommendations

The Panel proposes the following recommendations for the Determining Officer to consider to safeguard against future violations of scientific integrity:

- Establish a formal intra-agency agreement to guide the interactions between Commerce and NOAA officials in the drafting of NOAA communications.
- Establish an intra-agency policy to articulate the role of Commerce political appointees in the communication of scientific findings. Develop supporting procedures and identify examples of political interference.
- Incorporate key principles of scientific integrity, including NOAA’s Codes of Ethics for Science Supervision and Management, in the agency’s annual ethics training.
- Require NOAA staff and NOAA political officials to take scientific integrity training that includes the Code of Ethics for Science Supervision and Manage-

⁸⁰ Chris Darden, “Interview of Chris Darden,” interview by NOAA General Counsel, October 21, 2019: Page 168, Line 5.

⁸¹ Craig McLean, “Interview of Craig McLean,” interview by Academy Team, January 23, 2020: Page 106, Lines 2–13.

⁸² Craig McLean, “Interview of Craig McLean,” interview by Academy Team January 23, 2020: Page 92, Lines 1–6. Page 92, Lines 1–6.

⁸³ McLean, Page 92.

⁸⁴ National Oceanic and Atmospheric Administration, “NOAA Administrative Order 202-735D: Scientific Integrity,” December 7, 2011: Section 7.02.

ment. Once a staff member has completed the training, he/she will sign a statement confirming they will abide by these principles.

- Establish protocols with the Commerce OIG and/or other agencies to investigate alleged violations of scientific integrity involving senior NOAA and Commerce political leadership.⁸⁵

Concluding Thoughts

Scientific integrity is the cornerstone of the public's trust in the Nation's scientific institutions, which the Nation relies on for accurate and honest scientific and technical information. In the ever-changing dynamic of social media, people frequently turn to social media platforms for life-saving information, especially in the event of a severe weather event. The advent of social media and its ubiquity create an immediate interactive context for all actions taken by government that affect the public.

In this dynamic environment, public officials must gauge the potential effects of actions and communications, including on social media, on the public's perception and behavior. It was the concern for public perception and public safety that motivated the September 1 Birmingham Tweet. Public servants on the frontline of communicating the risks of storms must be able to continue to act quickly and responsibly when warranted by the situation at hand. Future policy guidance must reflect this dynamic and the need for local officials to act quickly and responsibly when the need arises. Moving ahead, there needs to be a directed effort to inform policy development through the use of the social sciences so that public servants and government officials can effectively convey the risk to the public so they can act accordingly.

APPENDICES

APPENDIX A: PANEL BIOGRAPHIES AND STUDY TEAM MEMBERS

Panel of Academy Fellows

Admiral (Ret.) Thad Allen, Panel Chair. 23rd Commandant, U.S. Coast Guard; James S. Tyler Chair, Institute for Leadership, U.S. Coast Guard Academy; Member and Board Director, Council on Foreign Relations; Chair, Space Based Positioning, Navigation, and Timing Advisory Board (NASA); Member, Homeland Security Advisory Committee; Senior Executive Advisor at Booz Allen Hamilton, HudsonAnalytix and Fortinet; Former Board Director, Partnership for Public Service. Former Senior Fellow, RAND Corporation; Principal Federal Official in the responses to Hurricanes Katrina and Rita (2005); National Incident Commander, Deepwater Horizon Oil Spill (2010).

Dr. Kaye Husbands Fealing. Full Professor and Chair, School of Public Policy, Georgia Institute of Technology; Senior Study Director, Center for National Statistics, National Academy of Sciences; Professor, Humphrey School of Public Affairs, University of Minnesota; Program Director, Social, Behavioral and Economic Sciences, National Science Foundation; William Brough Professor (also tenured full, associate, assistant professor), Economics Department, Williams College.

Dr. Shantanu Agrawal. President and CEO, National Quality Forum. Former Deputy Administrator and Center Director, Centers for Medicare & Medicaid Services; Managing Director, Clinical Analytics and Efficiency, ChenMedical, LLC; Former Positions with Center for Program Integrity (CPI), Centers for Medicare & Medicaid Services: Director, Data Sharing and Partnership, Chief Medical Officer; Former Positions with McKinsey & Company, Inc.: Engagement Manager, Senior Associate, Associate.

Dr. Elizabeth Robinson. Chief Financial Officer, Air Line Pilots Association. Former Chief Financial Officer, National Aeronautics and Space Administration; Assistant Director for Budget, Budget Review Division, U.S. Office of Management and Budget; Deputy Director, Congressional Budget Office; Deputy Assistant Director for Budget Review and Concepts, and Program Examiner for Energy Issues, U.S. Office of Management and Budget; Staff Member, House Committee on Science, Space and Technology, U.S. House of Representatives; Project Director and Expert, Office of

⁸⁵In some Federal agencies, such as the Department of the Interior (DOI), the Scientific Integrity Officer has an informal agreement with the DOI OIG that the OIG would handle a case that involves a senior official in DOI or one of the bureaus. The Academy Team's interview with GAO suggests that a formal agreement between an agency and its OIG to address scientific integrity issues would be helpful. Some agencies, such as the Federal Aviation Administration (FAA), have contingencies built into their policies to handle the allegations that involve high level political officials.

Technology Assessment, U.S. Congress; Congressional Science Fellow, Geological Society of America; Assistant Professor of Geophysics, Stanford University.

Study Team

Brenna Isman, Director of Academy Studies
Mark Thorum, Project Director
Chloe Yang, Senior Research Analyst
mise Johnson, Research Associate
Gillian Townsend, Research Associate

Appendix B: Chronology of Key Events

All times are in Eastern Time Zone.

DATE	EVENT	WHO WAS INVOLVED	WHERE IS IT REFERENCED
Wednesday, August 28, 2019, 5:02 p.m.	Susan Buchanan (NWS Director) releases NOAA Communications media plan for Hurricane Dorian	- Susan Buchanan - Maureen O'Leary - Lauren Gaches - Jasmine Blackwell - Dennis Feltgen - Jeremy Andrucyk - NWS Executive Council	Copies of Dr. Louis Uccellini's e-mails relevant to the investigation were provided to the Academy by NOAA. This e-mail is page 60 of that document.
Thursday, August 29, 2019	Dr. Neil Jacobs leads a briefing on Hurricane Dorian at the White House. A NOAA graphic (the one that later appears altered with a black marker) is used in the briefing.	- Dr. Neil Jacobs - President Trump - Vice President Pence - Admiral Pete Brown - Pete Gaynor - Julie Roberts (not in the Oval Office for the briefing)	Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 11, Line 2</i> . Julie Roberts' interview with NOAA General Counsel: <i>Page 24, Line 19</i> . The official White House press release and photos from the briefing can be found online.
Saturday, August 31, 2019, 4:00 p.m.	The President receives a briefing on Hurricane Dorian via video teleconference while he is at Camp David.	- Dr. Neil Jacobs - Julie Roberts - Secretary McAleenan - Pete Gaynor - Other FEMA leadership - Gov. DeSantis (FL) - Gov. Kemp (GA) - Gov. Cooper (NC) - Gov. McMaster (SC) - President Trump - Jeff Bayard - Dan Kaniewski - Members of National Security Council - Senator Rick Scott	Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 13, Line 7</i> . Julie Roberts' interview with NOAA General Counsel: <i>Page 31, Line 6</i> .
Sunday, September 1, 2019, 8:00 a.m.–11:00 a.m.	National Weather Service Birmingham Weather Forecast Office (WFO) receives multiple phone calls from the public. Two of the calls are directly after the President's tweet.	Birmingham Weather Forecast Office	Phone log of the Birmingham Weather Forecast Office was provided to the Academy Team by NOAA.
Sunday, September 1, 2019, 10:51 a.m.	President Trump tweets that Alabama, "will most likely be hit (much) harder than anticipated."	President Trump	Tweet is on the President's personal Twitter account (@realDonaldTrump).
Sunday, September 1, 2019, 11:11 a.m.	National Weather Service Birmingham WFO tweets that "Alabama will NOT see any impacts from #Dorian."	Birmingham Weather Forecast Office	Tweet is on NWS Birmingham WFO's Twitter account.
Sunday, September 1, 2019, 12:31 p.m.	The President is briefed on Hurricane Dorian at FEMA Headquarters. Ken Graham from the Hurricane Center leads the briefing.	- Ken Graham (over VTC) - Members of the Press - Dr. Neil Jacobs - Julie Roberts - President Trump - Gov. DeSantis (FL) - Gov. Kemp (GA) - Gov. Cooper (NC) - Gov. McMaster (SC)	Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 16, Line 1; Page 25, Line 17</i> . Julie Roberts' interview with NOAA General Counsel: <i>Page 36, Line 2</i> . The briefing was also open to the press.
Sunday, September 1, 2019, 3:00 p.m.	Chris Vaccaro sent an e-mail to the Weather Service Public Affairs team—all media inquiries about the President's tweet and the Birmingham tweet should be directed to Julie Roberts and Vaccaro.	- Julie Roberts - Chris Vaccaro - NWS Public Affairs - Dennis Feltgen - David Miller - Jeremy Andrucyk - Corey Pieper - Scott Smullen - Kate Brogan	Vaccaro's e-mail is Exhibit 9 of Julie Roberts' interview with NOAA General Counsel.

Appendix B: Chronology of Key Events—Continued

All times are in Eastern Time Zone.

DATE	EVENT	WHO WAS INVOLVED	WHERE IS IT REFERENCED
Sunday, September 1, 2019, 3:06 p.m.	Julie Roberts sends e-mails asking all NWS offices to consult with NOAA Office of Communications before responding to any social media inquiries.	- Julie Roberts - Chris Vaccaro - NWS Public Affairs - Dennis Feltgen - David Miller - Jeremy Andrucyk - Corey Pieper - Scott Smullen - Kate Brogan	Copies of Julie Roberts' e-mails relevant to the investigation were provided to the Academy Team by NOAA. This e-mail is page 190 of that document.
Sunday, September 1, 2019, 4:49 p.m.	Andrew Stern (Operations Center Manager, NWS) sends out an e-mail to the National Weather Service Operations Center to inform all Regional Operation Centers (ROC) and Weather Forecast Offices to "only stick with official NHC forecasts if questions arise from some national level social media posts this afternoon. Staff should not provide any opinion about the national level post and should direct any questions that cannot be satisfied to NOAA Public Affairs."	- Andrew Stern - National Weather Service Operations Center - John Murphy - Mary Erickson - Susan Buchanan - Lauren Gaches	The e-mail is page 1 of Exhibit 5 of Julie Roberts' interview with NOAA General Counsel.
Sunday, September 1, 2019, 9:41 p.m.	Chris Darden sends an e-mail out to all NWS Birmingham WFO staff updating them on the day's events and to forward any calls or questions to forward them to him.	- Chris Darden - NWS Birmingham WFO Staff - Mike Coyne - Jose Garcia - Susan Buchanan	Copies of Chris Darden's e-mails relevant to the investigation were provided to the Academy Team by NOAA. This e-mail is page 63 of the document.
Wednesday, September 4, 2019, 12:57 p.m.	The President is briefed on Hurricane Dorian at the Oval Office in front of the press. A NOAA graphic appears to be altered with black marker. This becomes national news.	- President Trump - Kevin McAleenan - Karl Schultz - Adm. Peter Brown - Pete Gaynor - Press	The briefing was covered by the press and coverage is available online.
Wednesday, September 4, 2019, 2:42 p.m.	Julie Roberts e-mails George Jungbluth and tells him that NOAA Communications is handling "the situation" and "there should be no action taken by anyone within the National Weather Service or the National Hurricane Center."	- Julie Roberts - George Jungbluth	The e-mail is page 3 of Exhibit 5 of Julie Roberts' interview with NOAA General Counsel.
Wednesday, September 4, 2019, 3:37 p.m.	NWS Operations Center sends out a media guidance to all ROCs and National Centers asking that they do not respond via social media or other to any questions related the tweets.	NWS Operations Center	Exhibit 17 of Julie Roberts' interview with NOAA General Counsel
Wednesday, September 4, 2019, 4:45 p.m.	Chris Darden sends an e-mail out to all NWS Birmingham WFO staff updating them that NOAA Headquarters called Darden and asked all further media inquiries to be forwarded to Chris Vaccaro at NOAA Communications.	- Chris Darden - NWS Birmingham WFO Staff - Chris Vaccaro	Copies of Chris Darden's e-mails relevant to the investigation were provided to the Academy Team by NOAA. This e-mail is page 19 of the document.
Thursday, September 5, 2019, 5:36 p.m.	Chris Vaccaro sends an e-mail asking NWS to resend the September 4 media guidance. Vaccaro states in the e-mail that forecasters should not communicate with media via their personal Twitter accounts.	- Chris Vaccaro - George Jungbluth - Susan Buchanan - Jeremy Andrucyk - Julie Roberts	Exhibit 17 of Julie Roberts' interview with NOAA General Counsel.
Thursday, September 5, 2019, 6:7:00 p.m.	Secretary Wilbur Ross calls Dr. Neil Jacobs and asks him to prepare a timeline of events and communications surrounding Dorian. ⁸⁶	- Wilbur Ross - Dr. Neil Jacobs	Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 27 line 9, Page 28 line 11.</i> Julie Roberts' interview with NOAA General Counsel: <i>Page 64, line 21.</i>

⁸⁶Dr. Neil Jacobs is the only one with firsthand knowledge that we have access to Julie Roberts has secondhand knowledge of this call.

Appendix B: Chronology of Key Events—Continued

All times are in Eastern Time Zone.

DATE	EVENT	WHO WAS INVOLVED	WHERE IS IT REFERENCED
Thursday, September 5, 2019, 10:53 p.m.	Dr. Neil Jacobs calls Julie Roberts and informs Roberts of Jacobs' phone call with Secretary Ross.	• Dr. Neil Jacobs • Julie Roberts	Screenshots of Julie Roberts' phone calls are Exhibit 6 of Roberts' interview with NOAA General Counsel. Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 27, line 9</i> . Julie Roberts' interview with NOAA General Counsel: <i>Page 63, line 16</i> .
Friday, September 6, 2019, 2:30 a.m.	Julie Roberts receives a phone call from Secretary Wilbur Ross's personal assistant and Chief of Staff.	• Julie Roberts • Steven Barranca • Mike Walsh	Julie Roberts' interview with NOAA General Counsel: Pages 68–71. Screenshots of Roberts' phone calls are Exhibit 6 of Roberts' interview with NOAA General Counsel.
Friday, September 6, 2019, 2:30–3:48 a.m.	Julie Roberts compiles a summary document of all events and communications that have happened surrounding Dorian [REDACTED] and sends the summary to Mike Walsh and other Commerce and NOAA employees.	• Julie Roberts • Mike Walsh • Joe Semsar • Rebecca Glover • Kevin Manning	Copies of Julie Roberts e-mails relevant to the investigation were provided to the Academy Team by NOAA. The e-mail is page 12 of that document. The summary is Exhibit 7 of Julie Roberts' interview with NOAA General Counsel.
Friday, September 6, 2019, 7:00 a.m.	Julie Roberts calls Dr. Neil Jacobs and fills him in on the calls she received from the Secretary earlier that morning.	• Julie Roberts • Dr. Neil Jacobs	Julie Roberts' interview with NOAA General Counsel: <i>Page 83, Line 20</i> . Neil Jacobs' interview with NOAA General Counsel: <i>Page 29, Line 12</i> .
Friday, September 6, 2019, 8:30 a.m.	Julie Roberts and Dr. Neil Jacobs arrive at the Commerce office and meet in the Deputy Secretary's conference room.	In room prior to their arrival: • David Dewhirst • Kevin Manning • Joe Semsar Dr. Neil Jacobs and Julie Roberts arrive next.	Julie Roberts' interview with NOAA General Counsel: <i>Page 84, Line 9</i> . Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 102, Line 13</i> .
		Present in the meeting room sporadically throughout the day: • Deputy Secretary Karen Dunn Kelley • Cordell Hull • Chris Vaccaro • Scott Mullen	
Friday, September 6, 2019, 8:30 a.m.	According to Julie Roberts, the meeting was never officially convened, "it was just everyone sitting around the table working on whatever we were working on at the time." ⁸⁷	• Julie Roberts • Dr. Neil Jacobs • David Dewhirst • Kevin Manning • Joe Semsar	Julie Roberts' interview with NOAA General Counsel: <i>Page 91, Line 15</i> .
Friday, September 6, 2019, 8:30 a.m.	According to Dr. Neil Jacobs, "when Julie [Roberts] and I showed up there was already a couple draft versions of the statement going back and forth floating around." ⁸⁸	• Dr. Neil Jacobs • Julie Roberts • David Dewhirst • Kevin Manning • Joe Semsar	Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 105, Line 19</i> .
Friday, September 6, 2019	Deputy Secretary Karen Dunn Kelley goes to a [REDACTED] meeting. Kelley asks that all advisories and communications [REDACTED] about Dorian be compiled. ⁸⁹	• Karen Dunn Kelley • Commerce Staff	Julie Roberts' interview with NOAA General Counsel: <i>Page 88, Line 16</i> .
Friday, September 6, 2019	A statement is drafted on David Dewhirst's tablet.	• David Dewhirst • Julie Roberts • Dr. Neil Jacobs • Kevin Manning • Joe Semsar	Julie Roberts' interview with NOAA General Counsel: <i>Page 96, Line 22</i> . Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 109, Line 6</i> .

⁸⁷ Julie Roberts' initial perspective when she arrived at the meeting is not echoed in Dr. Neil Jacobs' interview.

⁸⁸ Dr. Neil Jacobs' initial perspective when he arrived at the meeting is not echoed in Julie Roberts' interview.

⁸⁹ The only account of this event comes from Julie Roberts' interview with NOAA General Counsel.

Appendix B: Chronology of Key Events—Continued

All times are in Eastern Time Zone.

DATE	EVENT	WHO WAS INVOLVED	WHERE IS IT REFERENCED
Friday, September 6, 2019, 10:30 a.m.	Julie Roberts goes upstairs and asks Scott Smullen and Chris Vaccaro to help look at the statement. ⁹⁰	- Julie Roberts - Scott Smullen - Chris Vaccaro	Julie Roberts' interview with NOAA General Counsel: <i>Page 97, Line 22.</i>
Friday, September 6, 2019	Roberts, Jacobs, Vaccaro, and Smullen edit the statement. Jacobs and Roberts work to ensure that the statement is, technically accurate. There was a debate about Birmingham specifically. Jacobs, Roberts, and Vaccaro wanted to remove the Birmingham part of the statement but were told no.	- Julie Roberts - Chris Vaccaro - Dr. Neil Jacobs - Scott Smullen	Julie Roberts' interview with NOAA General Counsel: <i>Page 98, Line 7.</i> Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 108, Line 9.</i>
Friday, September 6, 2019	Secretary Ross and his staff call to discuss the statement.	- Secretary Wilbur Ross - Mike Walsh - Earl Comstock - Julie Roberts	Julie Roberts' interview with NOAA General Counsel: <i>Page 100, Line 4.</i>
	Jacobs and Roberts raised their concern about the Birmingham part of the statement but were told they cannot take Birmingham out.	- Dr. Neil Jacobs - David Dewhirst - Joe Semsar - Cordell Hull	Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 109, Lines 7–20.</i>
Friday, September 6, 2019, 3:00 p.m.	Dr. Neil Jacobs calls Stuart Levenbach and tells him about the statement. ⁹¹	- Dr. Neil Jacobs - Stuart Levenbach	Stuart Levenbach's interview with NOAA General Counsel: <i>Page 13, Line 4.</i>
Friday, September 6, 2019, 3:11 p.m.	David Dewhirst e-mails Mike Walsh a copy of the statement for approval.	- David Dewhirst - Mike Walsh	Copies of Julie Roberts' e-mails relevant to the investigation were provided to the Academy Team by NOAA. The e-mail is page 23 of that document.
Friday, September 6, 2019, 3:30–4:00 p.m.	Dr. Neil Jacobs calls Stuart Levenbach, Dr. Dr. Louis Uccellini, and Taylor Jordan to tell them about the statement before it goes out.	- Dr. Neil Jacobs - Dr. Louis Uccellini - Stuart Levenbach - Taylor Jordan	Stuart Levenbach's interview with NOAA General Counsel: <i>Page 13, Line 4; Page 36, Line 6.</i> Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 138, Line 10.</i> Dr. Louis Uccellini's interview with NOAA General Counsel: <i>Page 69, Line 11.</i>
Friday, September 6, 2019, 3:43 p.m.	David Dewhirst e-mails Julie Roberts a copy of the statement after it has been approved by higher ups at Commerce.	- David Dewhirst - Julie Roberts	Copies of Julie Roberts' e-mails relevant to the investigation were provided to the Academy Team by NOAA. The e-mail is page 23 of that document.
Friday, September 6, 2019, 4:00 p.m.	Julie Roberts and Dr. Neil Jacobs reach out to Benjamin Friedman to let him bow about the statement before it goes out.	- Benjamin Friedman - Julie Roberts - Dr. Neil Jacobs - Stuart Levenbach	Benjamin Friedman's interview with NOAA General Counsel: <i>Page 38, Line 9; Page 41, Line 6.</i> Julie Roberts' interview With NOAA General Counsel: <i>Page 106, Line 13.</i> Dr. Neil Jacobs' interview with NOAA General Counsel: <i>Page 149, Line 13.</i>
Friday, September 6, 2019, 4:40 p.m.	Dr. Louis Uccellini and other NOAA officials get in touch with Chris Darden to give him a heads up before the statement goes out.	- Dr. Louis Uccellini - George Jungbluth - Mary Erickson - Chris Darden - John Murphy - Steven Cooper	Dr. Louis Uccellini's interview with NOAA's General Counsel: <i>Page 73, Line 1.</i> Chris Darden's interview with NOAA General Counsel: <i>Page 56, Line 22.</i>
Friday, September 6, 2019 4:45 p.m.	NOAA Communications releases statement that says Hurricane Dorian could have impacted Alabama and that the Birmingham National Weather Service's tweet was "inconsistent with probabilities from the best forecast products available at the time."	NOAA Communications	Statement is available on the NOAA website.

⁹⁰The only account of this event comes from Julie Roberts' interview with NOAA General Counsel.

⁹¹The only account of this phone call comes from Stuart Levenbach's interview.

Appendix B: Chronology of Key Events—Continued

All times are in Eastern Time Zone.

DATE	EVENT	WHO WAS INVOLVED	WHERE IS IT REFERENCED
Friday, September 6, 2019, 4:52 p.m.	Chris Vaccaro sends out an e-mail to NOAA personnel informing them that the statement has been distributed and that inquiries “should solely be directed to” the NOAA Office of Communications line. E-mail gets forwarded around between NOAA staff.	- Chris Vaccaro - National Weather Service Office of Public Affairs - Dennis Feltgen - Julie Roberts - Scott Smullen	Copies of Chris Darden’s e-mails relevant to the investigation were provided to the Academy Team from NOAA. This e-mail is page 10 of the document.
Friday, September 6, 2019, 5:31 p.m.	NOAA Communications posts the statement on Twitter.	NOAA Communications	Tweet with statement is on NOAA Communications’ Twitter (@NOAACOMMS).
Friday, September 6, 2019, 6:00 p.m.	Chris Darden sends out an e-mail to the National Weather Service Birmingham Weather Forecast Office staff informing of the statement and commending them on the work they do to support Alabama. Darden asks the staff to “please be cautious about commenting publicly” on the statement.	- Chris Darden - NWS Birmingham WFO Staff	Copies of Chris Darden’s e-mails relevant to the investigation were provided to the Academy by NOAA. This e-mail is page 106 of the document.
Friday, September 6, 2019, 8:22 p.m.	Stuart Levenbach e-mails Dr. Louis Uccellini and tells Uccellini that he (Levenbach) was not involved in any part of drafting the statement. To Levenbach’s knowledge Roberts and Jacobs were the only people from NOAA involved in writing the statement.” ⁹²	- Stuart Levenbach - KDr. Louis Uccellini	Exhibit 3 of Stuart Levenbach’s interview conducted by NOAA General Counsel.
Saturday, September 7, 2019, 2:26 a.m.	Stuart Levenbach e-mails Kevin Wheeler with a summary of how the statement was developed as Levenbach understood it from a call with Dr. Jacobs. ⁹³	- Stuart Levenbach - Kevin Wheeler - Dr. Neil Jacobs	Exhibit 7 of Stuart Levenbach’s interview conducted by NOAA’s General Counsel.
Saturday, September 7, 2019, 3:11 p.m.	All hands e-mail sent out to National Weather Service Staff thanking them for their work on Hurricane Dorian.	- Dr. Louis Uccellini - Mary Erickson - John Potts - John Murphy - Kevin Cooley - Peyton Robertson - All NWS Personnel	Exhibit 5 of Dr. Louis Uccellini’s interview conducted by NOAA’s General Counsel.
Monday, September 9, 2019	Dr. Jane Lubchenco, Dr. Richard Spinrad, and Dr. Andrew Rosenberg file a complaint of violation of NOAA’s Scientific Integrity Policy	- Dr. Jane Lubchenco - Dr. Richard Spinrad - Dr. Andrew Rosenberg	Copy of allegation provided
Tuesday, September 10, 2019	Representative Paul Tonko files a complaint of violation of NOAA’s Scientific Integrity Policy	Representative Paul Tonko	Copy of allegation provided
Tuesday, September 10, 2019	Craig McLean files a complaint of violation of NOAA’s Scientific Integrity Policy	Craig McLean	Copy of allegation provided
Wednesday, September 11, 2019	Dr. Carl Childs files a complaint of violation of NOAA’s Scientific Integrity Policy	Dr. Carl Childs	Copy of allegation provided

APPENDIX C: POLICIES

Copies of Department of Commerce and National Oceanic and Atmospheric Administration policies relevant to the inquiry are linked below.

- National Oceanic and Atmospheric Administration Scientific Integrity Policy (NOAA Administrative Order 202-735D: Scientific Integrity)
https://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/202-735-D.pdf
- Procedural Handbook to NOAA’s Scientific Integrity Policy

⁹²Secondhand knowledge—Stuart Levenbach was not in the room when the statement was drafted.

⁹³Secondhand knowledge—Stuart Levenbach was not in the room when the statement was drafted; his understanding of the process comes from a phonecall with Dr. Neil Jacobs.

https://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/Procedural_Handbook_NAO_202-735D_%20FINAL_Aug2017%20Amendment.pdf

- Department of Commerce Public Communication Policy (Department Administrative Order 219-1)
http://www.ossec.doc.gov/opog/dmp/daos/dao219_1.html
- Department of Commerce Social Media Guidebook.
http://ossec.doc.gov/webresources/socialmedia/DOC_Social_Media_Guidebook%20_2013-01-31.pdf
- NOAA Framework for Internal Review and Approval of Fundamental Research Communications.
https://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_202/FRC%20Guidance%20Nov%208%202016.pdf

APPENDIX D: SUMMARIES OF INTERVIEWS CONDUCTED AND INTERVIEW QUESTIONS

Summaries of interviews conducted, and the associated interview questions appear in the following order in Appendix D:

- Chris Darden, Meteorologist-in-Charge, National Weather Service Birmingham Weather Field Office
- Dr. Neil Jacobs, Acting Administrator, National Oceanic and Atmospheric Administration
- Craig McLean, Acting Chief Scientist, National Oceanic and Atmospheric Administration
- Julie Roberts, Deputy Chief of Staff, Director of Communications, National Oceanic and Atmospheric Administration⁹⁴
- Chris Vaccaro, Media Relations Specialist, National Oceanic and Atmospheric Administration

Interview questions for the Subject Matter Expert interviews conducted appear in the following order in Appendix D:

- U.S. Government Accountability Office, Authors of Scientific Integrity Policies: Additional Actions Could Strengthen Integrity of Federal Research Report.
 - Wyatt R. Hundrup, Analyst in Charge
 - Douglas Hunker, Staff Contributor
 - Robert Marek, Assistant Director of Science, Technology Assessment, and
 - John Neumann, Managing Director
- Dr. Leysia Palen, Professor and Founding Chair of Information Science; Professor of Computer Science
- Dr. Rebecca Morss, Deputy Director, Mesoscale & Microscale Meteorology Lab

CHRIS DARDEN INTERVIEW SUMMARY

METEOROLOGIST-IN-CHARGE, NWS BIRMINGHAM WEATHER FORECAST OFFICE

JANUARY 21, 2020, AT 3:09 P.M. CENTRAL TIME ZONE

NWS BIRMINGHAM WEATHER FORECAST OFFICE, CALERA, AL

Reason for Selection

The Academy Team selected Chris Darden to be interviewed for a second time because as the Meteorologist-in-Charge of the NWS Birmingham WF0,⁹⁵ he oversees the office that sent out the September 1 tweet affirming that Alabama will not see any impacts from Hurricane Dorian. Through a second interview with Chris Darden, the Academy Team hoped to learn about the policies and procedures of the Birmingham WFO, and the involvement of Chris Darden and Birmingham WFO staff

⁹⁴ Julie Roberts left NOAA in December 2019 to join the Economic Development Administration within the Department of Commerce.

⁹⁵ NOAA General Counsel first interviewed Chris Darden on October 21, 2019.

in the development and release of both the September 1 Birmingham Tweet and September 6 Statement.

Interview Objectives

The interview sought to learn more about how a WFO fits into the larger NWS and NOAA organizational structure and how a WFO collaborates with other branches of NOAA, such as the National Hurricane Center and other WFOs. A prominent theme of this interview was policies and procedures, particularly as they relate to communications and typical WFO operating procedures. To gain a better understanding of how this WFO operates, the Academy Team asked about this office's social media practices, corrective processes, and how NOAA's Office of Communications works with WFOs like Birmingham. Chris Darden was asked to expand on answers previously given in the first interview. Additionally, the Academy Team asked Chris Darden about NOAA's Scientific Integrity Policy as it relates to his office's involvement in the events that transpired.

Summary of Interview

Chris Darden informed the Academy Team that not only is his office responsible for covering 39 counties in Alabama, but also the WFO is the state liaison officer meaning that the state of Alabama will request a Birmingham WFO meteorologist to come to the State Emergency Operations Center to provide 24/7 support to the state in the event of a major weather-related event. Darden spoke of common communication channels maintained during a hurricane between the WFO, the National Hurricane Center (NHC), the Weather Prediction Center, and Regional Operations Centers.

As Darden explained, the Birmingham WFO has a dedicated decision support service (DSS) meteorologist on most of their shifts whose responsibilities include coordinating communication with FEMA and posting on the office's social media. On September 1, the DSS communicated with other meteorologists on shift—who looked at forecasts, probabilistic models, and the latest morning guidance—to determine the correct response to the influx of phone calls and Facebook messages from people in Alabama asking if Alabama was going to be affected by Hurricane Dorian. Based on the meteorologists' determination, the DSS issued the September 1 Birmingham Tweet and a Facebook post about how Alabama will see no impacts from the hurricane.

In the event of issuing an inadvertently wrong warning, the Birmingham WFO's typical process of correcting a mistake, while not a formal written policy, would involve immediately cancelling the warning, posting on social media explaining that the warning was issued in error, and sending the correction on NWSChat. NWSChat is the communication group between NWS, FEMA, core media partners, and some private sector entities such as the Weather Channel, for example. No corrective action was taken by the Birmingham WFO because the September 1 Birmingham Tweet was consistent with the scientific information reviewed by the WFO meteorologists. In the event of a discrepancy with another WFO's forecast, the Birmingham WFO will communicate with the other WFO to determine the correct forecast or warning to issue.

As for using absolute terms, Chris Darden provided the reasoning that as a WFO, they try to communicate with the public in a way that will solicit a desired response to a weather event or lack thereof. He stressed that their mission is to save lives and their communications need to reflect the action people need to take to remain safe.

Chris Darden confirmed that on September 1, the Birmingham WFO forecasters conducted scientific activities, such as looking at model data and forecast information from NHC, and made a scientific assessment based off of the best available information to inform the development of the September 1 tweet from the Birmingham WFO. Chris Darden characterized the September 1 Birmingham Tweet as a scientific product.

Chris Darden received several e-mails between September 1 and 6 directing all NWS offices and staff to forward media inquiries to the NOAA Office of Communications and to not respond to any questions either officially or through personal social media accounts. Darden explained that it is common to receive guidance from NOAA Communications requesting that all media inquiries be directed to that office during situations that require a coordinated media effort.

In regard to the September 6 Statement, Chris Darden explained that neither he nor anyone in his office was given the opportunity to review the statement prior to its release. Chris Darden was not made aware of the statement until approximately 4:00 p.m. on September 6, when he was called by Dr. Louis Uccellini, who is the NWS Director, and other NWS officials. Chris Darden was not afforded the oppor-

tunity to make revisions to the statement as he was told that there was nothing he could do. By the time he finished the phone call, the September 6 Statement had already been released.

INTERVIEW QUESTIONS FOR CHRIS DARDEN

Current Position and Responsibilities

- Current position, duties and reporting line.

Birmingham Weather Forecast Office Policies and Procedures

- Role of the Birmingham Weather Forecast Office within NOAA.
- In the event of a serious weather-related event such as Hurricane Dorian, how does your office typically interact with the National Hurricane Center and other NOAA offices?

Activities Related to the Development and Release of the September 1 Tweet

- How would you characterize the September 1 Tweet including the underlying science used to inform the tweet?
- What is the typical internal process to draft and release a social media communication such as the September 1 Tweet? Are there any formal policies and procedures in place?

Activities Related to the Development and Release of the September 6 Statement

- Describe your involvement with the activities leading up to the September 6 Statement including your interaction with other NOAA offices and any external entities.
- Describe your involvement with the development and release of the September 6 Statement.
- Is there anything else you would like to share with the Academy Team for the record?

DR. NEIL JACOBS INTERVIEW SUMMARY

ACTING ADMINISTRATOR, NOAA

FEBRUARY 3, 2020, AT 3:12 P.M. EASTERN TIME ZONE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, DC

Reason for Selection

The Academy Team selected Dr. Neil Jacobs for a second interview because he is the Acting Administrator of NOAA and was involved with the development and release of the September 6 Statement.⁹⁶ Through a second interview, the Panel hoped to learn more about the policies and procedures of NOAA as they relate to scientific integrity, how he interacts with the Department of Commerce leadership, and Dr. Neil Jacobs' involvement in the development and release of the September 6 Statement.

Interview Objectives

The purpose of this interview was to understand relevant NOAA policies and procedures and inquire further about Dr. Neil Jacobs' involvement in the development and release of the NOAA September 6 Statement. The Academy Team aimed to learn how Dr. Jacobs interacts with Commerce leadership and what Commerce's typical role in the development and release of NOAA communications is. Additionally, the Academy Team requested that Dr. Jacobs explain how he ensures compliance with NOAA's Scientific Integrity Policy and Commerce's Public Communication Policy. The Academy Team also sought to learn from Dr. Jacobs what the agency's standard process for issuing media guidance is. As Dr. Jacobs was involved in the development and release of the September 6 Statement, a prominent component of this interview was inquiring about his involvement in the development and release of the September 6 Statement.

⁹⁶ NOAA General Counsel first interviewed Dr. Neil Jacobs on November 6, 2019.

Summary of Interview

Dr. Neil Jacobs explained that he is only involved in the communications process when there is a need to elevate the matter to his level—particularly when there is a quote from him involved. Usually, no agency-level communications are released without someone in his office reviewing them first.

As for Commerce's involvement in the drafting of NOAA communications, Dr. Jacobs explained that Commerce will often review NOAA agency-level communications as part of the clearance process. Dr. Jacobs explained that NOAA communications typically originate with a NOAA line office before Dr. Jacobs reviews it and then sends it to Commerce before Dr. Jacobs performs the final review. Another typical chain of approval is that the communication originates within NOAA, is then sent to a line office for review, is then sent to Commerce, and finally is sent to Dr. Jacobs for final review. Dr. Jacobs expressed that to his knowledge, the process of NOAA working with Commerce staff on communications is not formally written in a policy but he has never looked to determine if such a policy exists.

As for communicating risk, Dr. Jacobs offered his perspective that there is no consensus within the National Weather Service on how to best communicate probabilities and the associated risks with the public in the messages. Generally speaking, Dr. Jacobs elaborated that people do not necessarily understand probabilities, however, probabilities are more objective than other choices of phrasing. The purpose of communications about weather forecasts is to communicate the risk to the public. State and local emergency managers play an important role in translating the probability and risk to their audiences, according to Dr. Jacobs.

All forecasts eventually become inaccurate, so NWS constantly updates the forecasts with every shift of forecasters, as Dr. Jacobs explained. Typically, NWS WFOs will communicate with each other and other NOAA centers because forecasts are constantly evolving. NOAA headquarters does not typically comment on the public communications of a WFO, and there is no formal policy in place that determines the process of publishing a statement on a WFO's work, according to Dr. Jacobs.

The media guidance, Dr. Jacobs explained, came from an internal NWS decision, not NOAA, and media guidance such as the guidance sent between September 1 and 6 are not uncommon. Forecasters may receive similar guidance several times a year. The purpose of the media guidance was for continuity of operations. NOAA does not have a standard process for issuing media guidance to staff.

Dr. Jacobs explained that he became involved in the development of the September 6 Statement fairly late because his phone was off during the early morning hours of September 6 and arrived at the office after there may have been earlier versions of the statement already drafted. He missed several calls in the early morning hours of September 6 but did not speak to Secretary Ross or anyone on his staff about developing a statement until he arrived in the office on the morning of September 6. Commerce officials were involved from the start of the statement development process because they were present before Dr. Jacobs arrived. Dr. Jacobs also stated that the Commerce officials who had been drafting the statement likely did not understand probabilistic forecasting. During the drafting of the statement, Commerce officials called in, but Dr. Jacobs did not know everyone was on the line.

Dr. Jacobs characterized the September 6 Statement as a NOAA product because everything coming out of the agency is a NOAA product. As he understands it, Dr. Jacobs stated that the intent of the statement was to reconcile the Birmingham WFO's tweet with the National Hurricane Center's forecast products. Dr. Jacobs was not thrilled by the September 6 Statement because the statement singled out the Birmingham WFO for its tweet, despite other WFOs and the National Hurricane Center tweeting variations of the same idea. For that reason, Dr. Jacobs explained that he objected to the statement during the development, but no action was taken by Commerce officials in the room in respect to considering his objection. Dr. Jacobs stated that the people in the room may have felt pressure to release the statement because Commerce wanted the statement released.

Dr. Jacobs also offered his perspective on the correctness of the September 1 tweet from the Birmingham WFO by explaining that in a technical sense, while relatively small, the probability of Hurricane Dorian impacting a portion of southeast Alabama existed. However, in terms of communicating the risk to the people of Alabama, the Birmingham WFO was correct, according to Dr. Jacobs.

In regard to the September 6 Statement complying with the NOAA Scientific Integrity Policy, Dr. Jacobs expressed that the September 6 Statement did not necessarily meet the standards of the Scientific Integrity Policy. Additionally, Dr. Jacobs explained that his understanding is that the Scientific Integrity Policy was written for science and research and not necessarily press releases. Dr. Jacobs often reviews communications originally written by non-scientists, including people from

Commerce and other parts of NOAA, when the science is incorrect. The correction process typically requires scientists to check the validity of the communication and ensure that in a technical sense, the communication is accurate before it is published.

INTERVIEW QUESTIONS FOR DR. NEIL JACOBS

Position and Responsibilities

- Position, duties and responsibilities.

NOAA Policies and Processes

- As the Acting Administrator, how do you typically interact with the Department of Commerce leadership?
- Is Commerce typically involved in the development and release of official NOAA communications? If yes, how?
- If a severe weather event occurs, what is the most effective way/vehicle to communicate probabilistic forecasts to the general public?
- In performing your responsibilities as the Acting Administrator, how do you ensure compliance with NOAA's Communication and Scientific Integrity Policy?
- What is NOAA's standard process for issuing media guidance? Are there any formal policies in place?

Activities Related to the Development and Release of the September 6 Statement

- Describe your involvement with the development and release of the September 6 Statement.
- Is there anything else you would like to share with the Academy team for the record?

CRAIG McLEAN INTERVIEW SUMMARY

ASSISTANT ADMINISTRATOR FOR OCEANIC AND ATMOSPHERIC RESEARCH AND ACTING CHIEF SCIENTIST, NOAA

JANUARY 23, 2020, 8:30 A.M. EASTERN TIME ZONE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON D.C.

Reason for Selection

The Academy Team selected Craig McLean to be interviewed because of McLean's position as NOAA's Acting Chief Scientist and because of McLean's role in this specific inquiry as one of the four Complainants. As the Acting Chief Scientist of NOAA, McLean serves as the senior scientist for the agency, providing direction for science and technology priorities. McLean also serves NOAA as the Assistant Administrator for Oceanic and Atmospheric Research and is responsible for overseeing, directing, and implementing NOAA's research enterprise. McLean has served over 25 years with NOAA and during his tenure McLean has been heavily involved in the development of NOAA's Scientific Integrity Policy. The Academy Team hoped to learn more about NOAA's standard operating procedures specifically regarding communications and how the Scientific Integrity Policy operates within the agency, as well as learning the specific reasoning behind Craig McLean filing an allegation.

Interview Objectives

The Academy Team had two main objectives for the interview of Craig McLean. First, the interview sought to learn more about how communication and collaboration occurs across NOAA, specifically looking at how the Office of Communications interacts with the different NOAA line offices and scientists, and how the Department of Commerce typically interacts with NOAA. Prominent themes for this section of the interview were policies and procedures, particularly as they relate to NOAA communications and interactions with Commerce. The second objective of the interview was to learn about the rationale McLean had for filing his allegations of violations of NOAA's Scientific Integrity Policy. The Academy Team asked McLean to walk through his allegation and how he perceived actions surrounding the September 6 Statement violating specific sections of the Scientific Integrity Policy.

Summary of Interview

Craig McLean informed the Academy Team that NOAA relies on Weather Forecast Offices (WFO) and local expertise to carry out the mission of NOAA. The public often looks to their local resources for news and local offices have expertise on the location that they cover. The forecasters in the WFOs are given specific training related to communicating with the press and social media and it is unusual for the Office of Communications to direct forecasters not to speak with the media. It is imperative to the core mission of NOAA that forecasters have free access to communicate with the media.⁹⁷ However, McLean did understand that the purpose of the Office of Communications asking forecasters not to comment on the events of September 1 through 6 was to protect them from being pulled into a political debate.

According to Craig McLean, it was completely within the responsibilities of the Birmingham WFO to send out the September 1 tweet. The forecasts and related messages produced by NOAA WFOs are based in science and produced by trained scientists who have the skills to produce conclusions and messages to the public based on technical scientific inputs. The forecasters in Birmingham acted swiftly and accurately to convey a message to the public that addressed their concerns and kept them safe from any unwarranted panic. The absolute terms of the tweet were not only accurate as the perceived threat to Alabama had passed, but also a necessary step to quell the fears of the public.

Regarding NOAA communication policies, McLean explained that NOAA's Communications Office has the responsibility of issuing press releases and in many cases, producing the original drafts of those press releases. The Communications Office has representatives from each NOAA line office who liaise between the line offices, scientists, and communications officials.

When discussing NOAA communications policies and standard operating procedures related to those policies, McLean brought up the typical interactions between NOAA and the Department of Commerce. According to McLean, there is a political pervasiveness from the Department of Commerce throughout the daily life of NOAA's senior leaders. The influence has such a far reach that even the NOAA Administrator cannot send an all hands message to NOAA staff without having it first reviewed by the Department of Commerce. The NOAA Office of Communications often needs to go to Commerce for approval before NOAA issues the communication. McLean sees this pervasiveness as an underlying issue for NOAA that hinders the agency's ability to carry out its core mission.

In regard to the September 6 Statement from NOAA, Craig McLean explained that the statement was unprecedented and anomalous in many ways. McLean elaborated that it was unusual for a statement to be attributed to NOAA with no point of contact for further information. The anonymity of the September 6 Statement harms NOAA's reputation because there is a need for the agency to be transparent and open to the public.⁹⁸ From McLean's understanding, no line offices or career NOAA staff were consulted on the statement, which is a violation of the Scientific Integrity Policy.⁹⁹ If a WFO were to put out an incorrect statement or forecast, a correction would have been made soon after the original posting and have been done by a competent authority close to the original source such as the National Weather Service or the National Hurricane Center.

McLean perceived numerous violations of the NOAA Scientific Integrity Policy. The section of the policy that upholds the need for public access to information was violated because the September 6 Statement contradicted science that was known to be factually correct and put out untruthful information to the public.¹⁰⁰

The Scientific Integrity Policy also upholds that in no circumstance may any NOAA official ask or direct a Federal scientist to suppress or alter scientific findings.¹⁰¹ In the events surrounding the September 6 Statement, NOAA parties were directed to say that the WFO was wrong. These actions also violated the section of the Scientific Integrity Policy that directs scientists to approach scientific activity objectively, without allegiance to individuals, organizations, or ideology.¹⁰² The way in which the September 6 Statement was constructed and the message that it contained had an allegiance to entities outside of NOAA. According to McLean, the actions taken by NOAA officials regarding the creation and release of the September

⁹⁷ National Oceanic and Atmospheric Administration, "NOAA Administrative Order 202-735D: Scientific Integrity," December 7, 2019: Section 5.02(d).

⁹⁸ NOAA, Section 4.01.

⁹⁹ NOAA, Section 7.01.

¹⁰⁰ National Oceanic and Atmospheric Administration, "NOAA Administrative Order 202-735D: Scientific Integrity," December 7, 2011: Section 5.02(b).

¹⁰¹ NOAA, Section 5.02(d).

¹⁰² NOAA, Section 6.01(a).

1 statement were dishonest and attempted to convey fraudulent information using deceit and misrepresentation which is a violation of the Code of Scientific Conduct and Code of Ethics upheld by the fundamental Principles of Scientific Integrity.¹⁰³

The Scientific Integrity Policy covers all employees of NOAA.¹⁰⁴ McLean sees Dr. Neil Jacobs as responsible for the September 6 Statement as he is the Acting Administrator of NOAA. According to McLean, Dr. Neil Jacobs should have raised concerns about potential violations of scientific integrity and filed a complaint as soon as the statement was released. McLean also saw Julie Roberts as responsible for the September 6 Statement as she was the Director of Communications and had authority over the statement's release.

INTERVIEW QUESTIONS FOR CRAIG McLEAN

Current Position and Responsibilities

- Current position, duties and responsibilities.

NOAA Policies and Processes

- What is the typical internal process for NOAA to review and release an organization wide statement such as the September 6 Statement?
- What is the typical internal process to draft and release a social media communication such as the September 1 tweet? What are the leading practices for communicating scientific/forecast information via social media?
- What's NOAA's standard process for issuing media guidance? Are there any formal policies in place?

Activities Related to the Development and Release of the September 6 Statement

- Describe your involvement with the development and release of the September 6 Statement.

Allegation of Scientific Misconduct

- On September 10, 2019, you submitted a complaint alleging violations of NOAA's Scientific Integrity Policy (NAO 202-735D), the Department of Commerce Administrative Order (DAO)219-1, Public Communications, and 18 USC 2074. Please explain the rationale behind the allegations.
- Is there anything else you would like to share with the Academy Team for the record?

JULIE ROBERTS INTERVIEW SUMMARY

DEPUTY CHIEF OF STAFF AND DIRECTOR OF COMMUNICATIONS, NOAA

JANUARY 23, 2020, AT 2:36 P.M. EASTERN TIME ZONE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, DC

Reason for Selection

The Academy Team selected Julie Roberts for a second interview because as Deputy Chief of Staff and Director of Communications,¹⁰⁵ she was involved with the development and release of the NOAA September 6 Statement and the media guidance distributed between September 1 and 6.

Interview Objectives

In this interview, the Academy Team desired to understand standard NOAA communications procedures in order to determine if the media guidance and September 6 Statement deviated from standard procedures. Additionally, the Academy Team sought to better understand Julie Roberts' involvement in the development and release of the September 6 Statement, including her interactions with other NOAA offices and external entities.

Summary of Interview

Julie Roberts informed the Academy Team that in her former role at NOAA as Director of Communications she was responsible for overseeing the entire agency's

¹⁰³ NOAA, Section 6 and Section 7.

¹⁰⁴ NOAA, Section 2.02(a).

¹⁰⁵ NOAA General Counsel first interviewed Julie Roberts on October 11, 2019.

communication strategy. Roberts then went on to discuss the standard procedures that are followed by NOAA's Office of Communications. Roberts explained that staff from the Office of Communications are embedded within the different line offices of NOAA and the standard practice would be that scientist from the different line offices would work with the NOAA Office of Communications to create communications for the public on their work. Sending media guidance to NOAA scientists is also a standard practice of the Office of Communications, according to Roberts. When there is a large scale, high-profile situation, the office sends media guidance to NOAA staff to ensure that the same messaging given to the public and media is consistent across the agency. Roberts further elaborated that a many of press documents go to the Department of Commerce for review or approval [REDACTED]. Roberts explained to the Academy Team that while NOAA's Office of Communications follows these standard practices, there are no formal policies or procedures that guide how these practices are followed.

Julie Roberts explained that she was not really involved in the creation of the September 6 Statement. Roberts stated that she was tasked with creating a timeline of NOAA communications [REDACTED] while the statement was being crafted by Commerce officials in the room. Roberts explained that she had no substantive comments on the statement besides pushing back on the part that discussed the Birmingham office. Roberts did not see this part of the statement as being productive, as Roberts thought that the September 1 Birmingham Tweet was not political.

Roberts felt that there was external pressure regarding the September 6 Statement. Based on the call that Dr. Neil Jacobs received in the early morning hours of September 6 and the close of business deadline set by Secretary Ross, Roberts perceived the September 6 Statement as a Commerce statement that was given to NOAA to release. According to Roberts, there was pressure from Commerce officials for Roberts to be the attributed spokesperson for the September 6 Statement, but Roberts pushed back because she did not feel comfortable being attributed to a statement that she did not draft.

Julie Roberts explained to the Academy Team that she was so tired and overworked from monitoring Hurricane Dorian for the past 10 days that she did not consider how the September 6 Statement could potentially violate NOAA's Scientific Integrity Policy or Commerce's Public Communication Policy. She elaborated that while she and Dr. Jacobs could have resigned in an attempt to stop the statement from being released, they felt the need to stay and try to help fix the situation.

INTERVIEW QUESTIONS FOR JULIE ROBERTS

Position and Responsibilities

- Position, duties and involvement with the formulation and/or release of NOAA communications.

Office of Communications Policies and Procedures

- Role of the Office of Communications/Public Affairs within the agency?
- How does your office typically interact with the National Weather Service (NWS) and other offices? How does your office typically work with NOAA scientists to ensure compliance with NOAA's Scientific Integrity Policies?
- What is NOAA's standard process for issuing media guidance? Are there any formal policies and procedures in place?
- What is the typical internal process for NOAA to draft and release an organization wide statement such as the *September 6 Statement*?

Activities Related to the Development and Release of the September 6 Statement

- Describe your involvement with the activities leading up to the September 6 Statement including your interaction with NWS, other NOAA offices and any external entities.
- Describe your involvement with the development and release of the September 6 Statement.
- Is there anything else you would like to share with the Academy team for the record?

CHRIS VACCARO INTERVIEW SUMMARY

SENIOR MEDIA RELATIONS SPECIALIST, NOAA

JANUARY 20, 2020, AT 2:02 P.M. EASTERN TIME ZONE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, DC

Reason for Selection

The Academy Team chose to interview Chris Vaccaro, Senior Media Relations Specialist in the NOAA Office of Communications, because he was largely involved with the media guidance issued between September 1 and 6 and was present, although briefly, during the development of the September 6 NOAA statement. As Senior Media Relations Specialist, Chris Vaccaro is responsible for facilitating communications that originate at the NOAA headquarters level and coordinating press-related materials that originate in the line offices and field offices.

Interview Objectives

Through this interview, the Academy Team desired to understand NOAA Office of Communications policies and procedures as they relate to the media guidance and the September 6 Statement, how the office works with other offices inside and outside of NOAA, and the involvement of Chris Vaccaro and other NOAA officials in the development of the September 6 Statement. A prominent component of this interview was the standard process for issuing media guidance because the Panel is tasked with assessing the allegation that the media guidance violated the Scientific Integrity Policy. Similarly, because the Panel must assess whether the September 6 Statement violated the Scientific Integrity Policy, the interview aimed to understand the standard process for developing and releasing NOAA communications and determine whether the process on September 6 deviated from the standard process and constitutes a violation of scientific integrity.

Summary of Interview

The NOAA Office of Communication coordinates with the National Hurricane Center and other line offices during a large weather-related event, such as a hurricane, according to Chris Vaccaro. His role is coordinating with the media and NOAA leadership during such an event.

Chris Vaccaro explained that the Department of Commerce historically is not involved in most NOAA Communications, with the exception being that Commerce may become involved in a controversial issue or a matter requiring the secretary's involvement. There is no intra-agency agreement outlining when it is appropriate for the Department of Commerce to become involved in NOAA's communications.

Regarding the involvement of scientists in developing NOAA communications, Chris Vaccaro expressed that scientists are regularly involved in the communications process because all of their communications are derived from science. Often, scientists will write the communication for NOAA's Office of Communications or at a minimum, be involved in the drafting of the communication, according to Chris Vaccaro. The scientists would also see the cleared product before it goes out, which Vaccaro stated was the normal procedure.

Chris Vaccaro elaborated on the Office of Communication's approval procedures for communications and touched on the Department of Commerce's Public Communication Policy (DAO 219-1). Vaccaro explained that communications are signed off by the head of the operating unit and the appropriate public affairs officer for approval, per the DAO. also explained that any entity that has equities the communication, especially those directly referenced therein, also typically sign off on the communication before the communication's release.

Typically, as Chris Vaccaro mentioned, NOAA infrequently uses agency statements and when they do, the Statements are attributed to a NOAA spokesperson. Unattributed statements are exceptionally rare. The avenue used to communicate a NOAA message depends on the subject and the expediency of the matter. In regard to the September 6 Statement from NOAA, Chris Vaccaro explained that the statement qualifies as an Official Communication from NOAA because the statement is perceived to be from the agency.

Chris Vaccaro explained that media guidance is often issued by the NOAA Office of Communications in consultation with NOAA Communications leaders and the head of the impacted office. Per his explanation, media guidance commonly is used to protect an individual or office from getting involved into a difficult situation from a communications standpoint. The media guidance offered between September 1 and 6 requesting that NWS staff direct all inquiries to NOAA Communications was

issued by NWS in conjunction with NOAA Office of Communications leadership. In his interview, Vaccaro explained that the e-mail he sent on September 5 asking NWS to resend the September 4 media guidance that mentioned that forecasters should not communicate with the media via their personal Twitter accounts was not intended to stifle forecasters' ability to communicate with the media. As explained by Chris Vaccaro, the intent of the guidance was to tell NWS offices that they are free to send media inquiries to NOAA public affairs officers because the agency was the subject of national news. He explained the need for a coordinated media response from NOAA and to return normalcy from a chaotic situation.

As for Chris Vaccaro's involvement in the development of the September 6 Statement, he was minimally involved. A Commerce official, whose name was unknown to Vaccaro, read aloud from his iPad an earlier version of the statement during the time that Vaccaro was present in the Commerce Deputy Secretary's conference room at approximately 10:00 a.m. on September 6. After hearing the statement, he and Scott Smullen (Deputy Director of NOAA Communications) vocalized that it was not necessary to mention the Birmingham WFO in the statement, but there was no action taken then after he gave his input. A Commerce official in the conference room received a phone call and requested that the rest of the people in the room leave, which prompted Chris Vaccaro and Scott Smullen to return to their desks. Vaccaro did not see the statement again until it was e-mailed to him by Julie Roberts at approximately 4:00 p.m. that day. The final version of the statement that was sent to Vaccaro in the afternoon was different than the version he heard in the conference room in the morning. According to Vaccaro, his only official role in the development and release of the September 6 Statement was to get the statement to a colleague whose job was to distribute the statement through their press release channels and post the statement to NOAA's website and Twitter.

Chris Vaccaro stated that he did not think the statement was necessary as it was sent out five days after the events on September 1. From his perspective, he did not think that the September 6 Statement is a statement that would have originated from within the agency.

INTERVIEW QUESTIONS FOR CHRIS VACCARO

Current Position and Responsibilities

- Current position, duties and involvement with the formulation and/or release of NOAA communications

Office of Communications Policies and Procedures

- Role of the Office of Communications/Public Affairs within the agency
- How does your office typically interact with the National Weather Service and other offices? How does your office typically work with NOAA scientists to ensure compliance with NOAA's Scientific Integrity Policy?
- What is NOAA's standard process for issuing media guidance? Are there any formal policies and procedures in place?
- What is the typical internal process for NOAA to draft and release an organization wide statement such as the September 6 Statement?

Activities Related to the Development and Release of the September 6 Statement

- Describe your involvement with the activities leading up to the September 6 Statement including your interaction with NWS, other NOAA offices and any external entities.
- Describe your involvement with the development and release of the September 6 Statement.

GOVERNMENT ACCOUNTABILITY OFFICE (GAO) INTERVIEW QUESTIONS

FEBRUARY 11, 2020, AT 10:30 A.M. EASTERN TIME ZONE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, WASHINGTON, DC

- As your team assessed the scientific integrity policies of nine Federal agencies—including NOAA, can you comment on the relative strengths and weaknesses of those policies?
- Where would you rank NOAA's policies among the nine you analyzed?

- Do the nine Federal agencies you assessed have similar processes to adjudicate allegations of scientific misconduct?
- Your report and Congressional testimony allude to allegations of Federal officials adversely affecting the integrity of scientific information. Does GAO have recommendations for Federal agencies to avoid inappropriate political influence in the gathering, analysis and release of scientific data?
- How do Federal agencies differ in their definition of a loss of Scientific Integrity?
- How do Federal agencies differentiate between scientific misconduct and loss of scientific integrity?
- Do you have any suggestions as to Federal guidance on the “generally accepted practices of scientific research?”
- As discussed in the GAO report, one key component of scientific integrity policies is “facilitating the free flow of scientific and technological information.” On the other hand, many agencies issue media guidance (*e.g.*, instructing staff to forward all media inquiries to the communication office) when there is a major event or a high level of media inquiries. Does GAO have recommendations for Federal agencies to maintain balance between free flow of scientific information and the need for a coordinated communication approach?
- Does the initial Sept 1 tweet from the Birmingham Office and/or the Sept 6 statement fall under the purview of NOAA’s Scientific Integrity Policies?
- If one or both does, can they explain their reasoning for their inclusion? For example, for the Sept 1 tweet, was the tweet a “scientific assessment”?
- Regarding the tweet and statement, would all requirements from the policy apply? For example, for the Sept 6 statement, would the requirement to solicit a review of the statement by the authors of the tweet (to which the statement refers) apply?

DR. LEYSIA PALEN INTERVIEW QUESTIONS

PROFESSOR OF COMPUTER SCIENCE, AND PROFESSOR AND FOUNDING CHAIR OF THE
DEPARTMENT OF INFORMATION SCIENCE, UNIVERSITY OF COLORADO BOULDER

FEBRUARY 20, 2020, AT 11:00 A.M. EASTERN TIME ZONE

VIDEOCONFERENCE

The National Weather Service (NWS) states that its primary mission is to protect lives and property through the timely issuance of watches and warnings when there are hazardous weather conditions. We understand that the use of social media by NWS to communicate severe weather related risks is increasingly common.

- When is it appropriate/effective for NWS to use social media (Twitter, YouTube and Facebook) as a platform to communicate weather risks?
- How might this practice complement traditional approaches such as official NOAA communications on web sites?
- What is the possible downside of using social media to communicate severe weather-related risks? Is social media vulnerable to false and inaccurate reports?

We understand that a key challenge for forecasters during a severe weather event is to convert the public’s perception of safety (optimism bias) to a perception of risk and to induce them to take appropriate measures.

- In your view, what is the most effective way to communicate those risks to the general public to induce them to react appropriately to the risks? Please comment on the advantages/disadvantages of using clear and certain terms versus probabilistic forecasts? Should impact statements be conditional—what may occur if . . . ?
- In your view, what is the most effective way to communicate information when you face uncertain probabilities?
- Is there a related risk of losing credibility with the public by issuing false alarms?

In a 2014 Position Statement, The American Meteorological Society (AMS) posits that there is a “dear and compelling need” to enhance the utility of weather and

climate research and the dissemination of atmospheric information using knowledge from the social sciences about how individuals and society interact with weather and climate.

- Would you agree with this statement? If so, how can social science research improve the dissemination of severe weather events to the public.
- How do you bridge the gap between technical science and social science when disseminating information to the public?

DR. REBECCA MORSS INTERVIEW QUESTIONS

SENIOR SCIENTIST AND DEPUTY DIRECTOR OF THE MESOSCALE AND MICROSCALE
METEOROLOGY LABORATORY,

NATIONAL CENTER FOR ATMOSPHERIC RESEARCH

FEBRUARY 22, 2020, AT 12:00 P.M. EASTERN TIME ZONE

VIDEOCONFERENCE

The National Weather Service (NWS) states that its primary mission is to protect lives and property through the timely issuance of watches and warnings when there are hazardous weather conditions. We understand that the use of social media by NWS to communicate severe weather related risks is increasingly common.

- When is it appropriate/effective for NWS to use social media (Twitter, YouTube and Facebook) as a platform to communicate weather risks?
- Is the use of social media more effective with certain demographics than others?
- Is the use of social media more effective with certain information products? For example—text versus a graphic depiction of risk.
- How might this practice complement traditional approaches such as official NOAA communications on websites?
- What is the possible downside of using social media to communicate severe weather-related risks? Is social media vulnerable to false and inaccurate reports?

We understand that a key challenge for forecasters during a severe weather event is to convert the public's perception of safety (optimism bias) to a perception of risk and to induce them to take appropriate measures.

- In your view, what is the most effective way to communicate those risks to the general public to induce them to react appropriately to the risks?
- Please comment on the advantages/disadvantages of using clear and absolute terms versus probabilistic forecasts,
- In your view, what is the most effective way to communicate information when you face uncertain probabilities?
- Is there a related risk of losing credibility with the public by issuing false alarms?

In a 2014 Position Statement, The American Meteorological Society (AMS) posits that there is a "clear and compelling need" to enhance the utility of weather and climate research and the dissemination of atmospheric information using knowledge from the social sciences about how individuals and society interact with weather and climate.

- Would you agree with this statement? If so, how can social science research improve the dissemination of severe weather events to the public.

APPENDIX E: ALLEGATIONS OF SCIENTIFIC MISCONDUCT

Copies of the complaints submitted alleging violations of NOAA's Scientific Integrity Policy (NAO 202 735D: Scientific Integrity) appear in the following order in Appendix E.

- Allegation 2019-007; Craig McLean
- Allegation 2019-008; Dr. Lubchenco, Dr. Richard Spinrad, and Dr. Andrew Rosenberg
- Allegation 2019-009; Dr. Carl Childs

- Allegation 2019-0010; Representative Paul Tonko

The copies of the complaints are followed by a table that summarizes of the rationale for selection of the allegations under review.

Senator CANTWELL. I know the Department of Commerce Inspector General is currently also looking into this matter, so we will get the additions.

Mr. Walsh was apparently involved in efforts to obscure the origins of the ill-fated citizenship question on the 2020 Census from Secretary Ross and the White House, and so I look forward to asking questions about that.

Next, Mr. Chairman, we have Mary Toman, who was nominated to serve as Under Secretary of Commerce for Economic Affairs. This position oversees both the U.S. Census Bureau and the Bureau of Economic Analysis, which puts critical information like the Gross Domestic Product report.

And as you mentioned, Joel Szabat to serve as the Under Secretary of Policy for the Department of Transportation. If confirmed, he would have a key position in dealing with matters like ensuring the safety of our transportation networks in the wake of COVID-19 and working on the surface transportation reauthorization bill.

And finally, Mr. O'Rielly, to serve as Commissioner of the FCC. Welcome back. We have a lot to talk about, everything from the Ligado decision to your views on the 5.9 megahertz to media ownership and many, many other issues. So we will look forward to a chance to ask you questions.

Again, Mr. Chairman, thank you for the time. I look forward to hearing from the witnesses.

The CHAIRMAN. Thank you, Senator Cantwell.

To our witnesses, your full written statements will be admitted into the record, and we ask each of you to summarize your testimony at this point in 5 minutes or less. So we will begin down at this end of the table with Mr. Szabat. You are recognized, sir, for 5 minutes.

**STATEMENT OF JOEL SZABAT, NOMINEE TO BE UNDER
SECRETARY OF TRANSPORTATION FOR POLICY,
U.S. DEPARTMENT OF TRANSPORTATION**

Mr. SZABAT. Chairman Wicker, Ranking Member Cantwell, members of the Committee, thank you for the opportunity to appear before you today and thanks to President Trump and Secretary Chao for their continuing confidence in me. I am grateful that this committee and your Senate colleagues saw fit to confirm me in my current position as Assistant Secretary for Aviation and International Affairs. I look forward to continuing to work with each of you and your staff to strengthen our nation's transportation system.

Since June 2019, I have additionally been performing the duties and responsibilities of the Under Secretary of Transportation for Policy, for which position I have been nominated. If confirmed, I will be the seventh Under Secretary of Transportation for Policy since the post was created in 2002.

As a measure of my tenure in the Department of Transportation, specifically in the Policy Office, I have served under four of the six prior Under Secretaries. My experience runs across each of the last three administrations, including the first Under Secretary and the

most recent. At various times, I have run three of the four components that comprise the Office of the Under Secretary: the Office of Aviation and International Affairs; the Office of Policy; and the first multimodal discretionary grant program, TIGER, which has since morphed into the Build America Bureau.

Over the course of the last 12 months, I have tried leading the Office of the Under Secretary on a path consistent with Secretary Chao's vision and our statutory mandate. The Department of Transportation is, first and foremost, a transportation safety agency.

The release of the President's budget on February 10 previewed the administration's upcoming surface transportation reauthorization proposal. Longer authorizations provide more certainty to local governments and drive down construction costs. The President's budget announced a \$1 trillion 10-year plan. The primary theme will be improvements that benefit safety.

Since the coronavirus arrived in America earlier this year, the Department's major focus has been battling the disease and ensuring that our transportation systems support the ongoing economic rebound. That has also become my primary concern as one of the original members of the White House Coronavirus Task Force.

Following the advice of our nation's health professionals, the Department coordinated flight restrictions to slow the spread of the virus. We adjusted hazardous material regulations to allow the seamless delivery of testing kits and supplies.

As the Centers for Disease Control publishes guidelines for safely reopening the economy, we are securing tens of millions of face coverings for transportation passengers and workers, truck and bus drivers, transit and train operators, pilots and flight attendants, air traffic controllers, and many more. These critical transportation workers are unsung heroes in the front lines of fighting the disease. It is an ongoing honor to be able to support them.

Prior to the coronavirus, we were already grappling with the impact of the accelerating rate of technological change across all modes of transportation. As technology rapidly alters the face of transportation, it is our duty to keep pace as a transportation safety agency. A priority of mine, in support of Secretary Chao's vision, is to continue to work to safely integrate emerging technologies, including drones and other autonomous vehicles, into our existing and national aviation and surface transportation networks.

Nobody yet knows what the new normal will be when the immediate threat of the coronavirus recedes. Changes in how we live and work will also drive changes in transportation. The Office of the Under Secretary oversees or coordinates the work of hundreds of outstanding research scientists, engineers, statisticians, and economists. Some of them are already looking into what changes might emerge, so we are better prepared for them if they do.

Because of necessary social-distancing requirements, I cannot be joined today by family, mentors, or colleagues. Since she cannot join me, I would like to acknowledge my wife, Chiling Tong, in absentia. A prominent Asian Pacific American activist, she worked with a group of mostly Chinese American organizations that have collectively purchased and distributed over 10 million masks and other protective gear for hospitals and emergency services in the

greater New York City and Washington, D.C. areas. This kind of citizen activism makes Americans and America great.

Nearly 40 years ago, I began my public service as a United States Army cavalry scout and tanker, patrolling the East-West German border. All of us who have worn our country's uniform well remember the camaraderie of being in a close-knit group sharing a common mission. That spirit still animates us today. When I tried to thank our transportation coronavirus team in early March for working their twenty-first straight day, a senior career executive would have none of it. "Most of us chose public service because we wanted to help people," he said. "Now is our time." I try to live up to that ethos daily.

Thank you again for the opportunity to appear before you today. I am happy to take your questions.

[The prepared statement and biographical information of Mr. Szabat follow:]

PREPARED STATEMENT OF JOEL SZABAT, NOMINEE FOR UNDER SECRETARY OF
TRANSPORTATION FOR POLICY, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Wicker, Ranking Member Cantwell, members of the Committee . . .

Thank you for the opportunity to appear before you today. I am grateful that this Committee and your Senate colleagues saw fit to confirm me in my current position as Assistant Secretary for Aviation & International Affairs. I look forward to continuing to work with each of you and your staff to strengthen our Nation's transportation system.

Since June of 2019 I have additionally been performing the duties and responsibilities of the Under Secretary of Transportation for Policy, for which position I have been nominated. If confirmed, I will be the seventh Under Secretary of Transportation for Policy, since the post was created in 2002.

It is a measure of my tenure in the Department of Transportation, specifically in the policy office, that I have served under four of the six prior Under Secretaries. My experience runs across each of the last three administrations, including the first Under Secretary (Jeff Shane) and the most recent (Derek Kan). At various times I have run three of the four components that comprise the Office of the Under Secretary: the Office of Aviation and International Affairs; the Office of Policy; and the first multimodal discretionary grant program (TIGER), which has grown into the Build America Bureau.

Over the course of the last twelve months I have sought to perform duties of the Under Secretary consistent with Secretary Chao's vision and our statutory mandate. The Department of Transportation is, first and foremost, a transportation safety agency.

The release of the President's budget on February 10th previewed the Administration's upcoming Surface Transportation Reauthorization proposal. Longer authorizations provide more certainty to local governments, and drive down construction costs. The President's Budget announced a \$1 trillion, ten-year plan. The primary theme will be improvements that benefit safety.

Since the coronavirus arrived in America earlier this year, the Department's major focus has been on battling the disease, and ensuring that our transportation systems support the ongoing economic rebound. That has also become my primary concern, as one of the original members of the White House Coronavirus Task Force.

Following the advice of our Nation's health professionals, the DOT coordinated flight restrictions to slow the spread of the virus. We adjusted hazardous material regulations to allow the seamless delivery of testing kits and supplies.

Secretary Chao herself has been outspoken about the need for practices that protect our front-line transportation workers as the economy reopens. We have responded to her direction that ample face coverings be made available to the traveling public, both for their own health, and to protect those who serve them.

As the Centers for Disease Control publishes public health guidelines for safely reopening the economy, we are working through FEMA to secure tens of millions of face coverings for transportation workers—truck and bus drivers, transit and train operators, pilots and flight attendants, air traffic controllers, and many more.

These critical transportation workers are unsung heroes in the front lines of fighting the disease. It is an ongoing honor to be able to support them.

Prior to the coronavirus, we were already grappling with the impact of an accelerating rate of technological change across all modes of transportation. As technology rapidly alters the face of transportation it is our duty to keep pace, as a transportation safety agency. A priority of mine, in support of Secretary Chao's vision, is to continue to work to safely integrate emerging technologies, including drones and other autonomous vehicles, into our existing national aviation and surface transportation networks. We are in the process of endorsing a standardized list of advanced driver assistance systems terminologies this year through the *Clearing the Confusion* initiative. By the end of this year we will release the fourth iteration of our Autonomous Vehicle Federal guidance.

Nobody yet knows what the 'new normal' will be, when the threat of the coronavirus recedes. Changes in how we live and work will also drive changes in transportation. The Office of the Under Secretary oversees or coordinates the work of hundreds of outstanding research scientists, engineers, statisticians and economists. Some of them are already looking into what changes might emerge, so we are better prepared for them if they do.

Since my expanded role began in the Under Secretary's office a year ago, our important work has continued apace. Through the multimodal BUILD and INFRA programs, and related grant and loan programs within the office, we awarded about \$4 billion to over 100 projects nationwide, annually. In the past twelve months the Build America Bureau closed five loans in as many states, supporting \$8 billion of needed transportation infrastructure improvements, with the American taxpayers' \$2.2 billion share to be repaid. The Bureau also launched the Railroad Rehabilitation and Improvement Financing Express Program ("RRIF Express") aimed at removing barriers and expediting loans to small railroads.

In aviation, we have quickly implemented our CARES Act mandates to preserve the Essential Air Service program, and to continue scheduled flights to all points served by passenger air carriers receiving financial assistance from the Treasury department. We also provided technical assistance to the Treasury department, and validated which applicants were *bona fide* air carriers. We, in conjunction with the Federal Aviation Administration, coordinated within the Administration, with foreign partners, and with U.S. and foreign airlines to implement flight restrictions to slow the spread of the coronavirus. Today, we are working with the same counterparts to plan for the safe resumption of international air travel.

Our Office of Research and Technology has played a lead role in the past year in advancing the Department's responsibilities in spectrum, and as the civilian Federal government lead for the Global Positioning Satellite system. In that capacity, we recommended against the introduction of new broadband that would interfere with GPS, and tested eleven potential backup technologies. We have also advocated for the preservation of the 5.9 GHZ "Transportation Safety Band" to allow for the emergence of new technologies, with a plan to deploy connected vehicle technology in 5 million vehicles in five years.

I am especially proud of our role in coordinating and advancing Secretary Chao's signature initiative to fight human trafficking. We received over 200 new commitments from transportation stakeholders through our "One Hundred Pledges in One Hundred Days," outreach campaign. These organizations will train over 1.3 million transportation employees on how to spot trafficking, and help the victims.

Because of necessary social-distancing requirements I cannot be joined today by family, mentors or colleagues. Since she cannot join me, I would like to acknowledge my wife, Chiling Tong, *in absentia*. A prominent Asian Pacific American activist, she worked with a group of mostly Chinese-American organizations that have collectively purchased and distributed over ten million masks and other protective gear for hospitals and emergency services in the greater New York City and Washington D.C. areas. It is this kind of citizen activism that makes Americans, and America, great.

Nearly forty years ago I began my public service as a United States Army cavalry scout and tanker, patrolling the East-West German border. All of us who have worn our country's uniform well-remember the camaraderie of being in a close-knit group, sharing a common mission. That same spirit animates us today. When I tried to thank our DOT coronavirus team for working their 21st straight day, a senior career executive would have none of it. "Most of us chose public service because we wanted to help people," he said. "Now is our time."

I try to live up to that ethos, daily.

Thank you again for the opportunity to appear before you today. I am happy to take any questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Joel Matthew Szabat.
2. Position to which nominated: Under Secretary of Transportation Policy, U.S. Department of Transportation.
3. Date of Nomination: May 4, 2020.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.
 Office: 1200 New Jersey Ave, SE, Washington, D.C. 20590.

5. Date and Place of Birth: 25 January 1959; Fort Worth, TX.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Chiling Tong, Chief Executive Officer and President of the National Asian/Pacific Islander Chamber of Commerce and Entrepreneurship (National Ace), 1300 Pennsylvania Ave., NW, Suite 700, Washington, D.C. 20004.

7. List all college and graduate degrees. Provide year and school attended.
 Georgetown University, 1981 BA Economics & Public Administration.
 Harvard University, 1988 MBA.
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Captain, U.S. Army, 1981–86.
Management Consultant, Strategic Planning Associates, 1988–90.
Executive Officer, U.S. EPA, 1990–93.
Principal Consultant (Transportation), California State Assembly, 1993–2001.
Principal, White Dragon Group (self-employed) 2001–02.
Deputy Assistant Secretary for Transportation Policy, USDOT, 2002–03.
Deputy Assistant Secretary for Management & Budget, USDOT, 2003–05.
Transportation Counselor, U.S. Embassy, Baghdad, Iraq, 2005.
Senior Counselor to the Secretary, USDOT, 2005–06.
Chief of Staff, Small Business Administration, 2006–08.
Deputy Assistant Secretary for Transportation Policy, USDOT, 2008–11.
Executive Officer, Maritime Administration, USDOT, 2011–18.
Deputy Assistant Secretary for Aviation & International Affairs, USDOT, 2018–2019.
Assistant Secretary for Aviation & International Affairs, USDOT, January 2019 to present.
Acting Under Secretary of Transportation for Policy, USDOT (through January 2020); and Performing the Duties of the Under Secretary January 2020–Present.

9. Attach a copy of your résumé: See attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

Unpaid advisor to the International Leadership Foundation (ILF), an educational non-profit my wife and I founded in 2000.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or disability.

Unpaid advisor to the International Leadership Foundation (ILF), an educational non-profit my wife and I founded in 2000.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

Unsuccessful candidate for the Sacramento, CA Municipal Utility District (SMUD) in 1998. No debts.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities. None.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years.

Judy Chu for Congress—August 6, 2011—\$1,750.

McConnell Senate Committee—August 22, 2014—\$2,100.

McConnell Senate Committee—October 31, 2014—\$2,100.

16. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Army Commendation Medal.

Army Meritorious Service Medal.

Presidential Rank Award (Meritorious Service).

USDOT War on Terror Medal.

USDOT Inspirational Leader.

Ellis Island Foundation Medal of Honor.

Distinguished Visitor, Eisenhower School for National Security and Resource Strategy, National Defense University.

17. Please list each book, article, column, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

No books, articles, columns, or publications. Since becoming the Assistant Secretary for Aviation & International Affairs, and subsequently the Acting Under Secretary I have spoken to transportation stakeholder organizations and on panels at the Transportation Research Board (TRB).

18. List digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the name of an “alias” or “handle” you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

Facebook—Joel Szabat—dormant. I have no other social media accounts.

19. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

(House) Committee on Small Business, March 12, 2009, Ensuring Stimulus Contracts for Small and Veteran-Owned Businesses.

(House) Committee on Transportation & Infrastructure, March 26, 2009, DOT’s Disadvantaged Business Enterprise Program.

(House) Transportation & Infrastructure Committee, Subcommittee on Coast Guard & Marine Transportation, April 4, 2017, Authorization of Coast Guard & Maritime Transportation Programs.

(Senate) Committee on Appropriations, Subcommittee on Transportation, Housing & Urban Development and Related Agencies, April 5, 2017, Preventing Sexual Assault & Sexual Harassment at the U.S. Merchant Marine Academy.

(Senate) Committee on Science, Commerce & Transportation, May 9, 2017, Maritime Transportation.

(Senate) Committee on Science, Commerce & Transportation, August 23, 2018, Nominations Hearing.

(Senate) Committee on Science, Commerce & Transportation, June 19, 2019, Reauthorization of the Fixing America's Surface Transportation (FAST) Act of 2015.

(House) Transportation & Infrastructure Committee, Subcommittee on Aviation, September 26, 2019, 2018 FAA Reauthorization.

(Senate) Committee on Commerce, Science, and Transportation, November 20, 2019, Highly Automated Vehicles: Federal Perspectives on the Deployment of Safety Technology.

(Senate) Commerce Committee, Subcommittee on Transportation & Safety, January 28, 2020, Overview of the Build America Bureau and the U.S. Department of Transportation Rural Transportation Initiatives.

(Senate) Commerce Committee, Subcommittee on Aviation & Space, March 4, 2020, From SARS to Coronavirus: Examining the Role of Global Aviation in Containing the Spread of Infectious Disease.

20. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have been performing the duties of the position to which I have been nominated since June, 2019. Because of my work history, I had prior experience in most of the functions of my position before I assumed the responsibilities.

For a year-and-a-half before I became Acting Under Secretary, I ran the Office of Aviation & International Affairs (January 2018–June 2019), one of the four subordinate offices under the aegis of the Under Secretary.

I have had two stints (2002–2003; 2009–2011) as Deputy Assistant Secretary for Policy, a second office that reports to the Under Secretary. In 2009 I was the senior career official and performed the duties of the Under Secretary during the gap between the departure of the political appointees of one administration, and the confirmation of appointees for the incoming administration.

In 2009 I was also named the Federal official responsible for overseeing DOT's \$48 billion in Recovery Act funds. During this period I oversaw the establishment of staff to oversee the first major intermodal competitive grant program (TIGER) which has grown into a third office (Build America Bureau) that reports to the Under Secretary.

The Department of Transportation has a unique "modal" structure, with decentralized statutory and regulatory authorities given to organizations such as the Federal Aviation Administration and Federal Highway Administration. The Under Secretary has to coordinate their policy efforts with that of the rest of the Secretary's leadership. My time as the Executive Director of the Maritime Administration (2012–2018) gives me better understanding, experience, and credibility in performing that coordination.

I have the good fortune to be an American, and I appreciate that public service is a way to give back to the country. This particular job is important. I believe I can do it well, and I have the background to do it better than most.

21. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

I am already responsible for ensuring that the Office of the Under Secretary and its component offices have proper management controls. If confirmed, I would continue that responsibility, and continue to work closely with both the Chief Financial Officer of the Office of the Secretary and the management and procurement staff in the Office of the Under Secretary, who provide financial controls expertise for this office.

During the transition between Presidents Bush and Obama, I was the senior official managing the entire Office of the Under Secretary. During the transition between Presidents Obama and Trump, I was the senior official managing the Maritime Administration.

As Executive Director of the Maritime Administration, all the program and support offices reported to me, totaling over 700 Federal employees. As Chief of Staff of the Small Business Administration, I directly supervised numerous staff offices, including the CFO, procurement, human resources, administration, civil rights, and government affairs.

In the Army, I was a Tank Platoon leader, and then the Executive Officer and Acting Troop Commander of a Cavalry Troop of 200 officers and soldiers.

22. What do you believe to be the top three challenges facing the department/agency, and why?

Transportation in a Pandemic: Maintaining vital national transportation services, and the well-being of critical infrastructure workers, is essential to fighting COVID-19. Transportation will also lead the national rebound, and must be positioned to do so quickly, as the threat of the virus abates.

Safety: Safety is Secretary Chao's top priority. Safety is the primary statutory mission of most of the component administrations within the Department. Reducing accidents, injuries and deaths across transportation is far and away our most important mission.

Infrastructure & Innovation: Much of our existing infrastructure is aging-out, or is obsolete for emerging technologies. The administration has recognized the need to reinvest in infrastructure with a ten year, \$1 trillion plan. If confirmed, I would look forward to working with Congress on a new Surface Transportation Reauthorization. Our top innovation challenge is to safely integrate promising new technologies (*e.g.*, drones, autonomous vehicles, hyperloop) into our existing transportation system.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

My arrangement are fully described in Part 3 of my Public Financial Disclosure Report.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's (DOT) Designated Agency Ethics Official to identify potential conflicts of interest. Further any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's (DOT) Designated Agency Ethics Official to identify potential conflicts of interest. Further any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's (DOT) Designated Agency Ethics Official to identify potential conflicts of interest. Further any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with DOT's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

6. Describe any activity during the past ten years, including the names of clients represented, in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As a Federal government employee since 2002, I have only ever been involved in representing the administration's position on legislative matters.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, & county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so; please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority?

Yes, insofar as it is in my power to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF JOEL SZABAT

2002–2006, 2008–Present**US Department of Transportation (DOT)**

Washington, DC

Acting Under Secretary for Transportation Policy June 2019–present. Direct DOT's offices of Aviation & International Affairs, Policy, Research and the Build America Bureau. Manage 800 Federal employees and a \$1 billion annual budget. Advise the Secretary on policy and research initiatives; help shape DOT's annual budget requests. Represent DOT on the Amtrak Board of Directors; DOT's representative on the White House Coronavirus Task Force.

Assistant Secretary for Aviation & International Affairs: January 2018–present. Confirmed in position January 2019. As Deputy Assistant Secretary ran the office in the absence of a non-career appointee from January 2018 until confirmed. Oversee staff that: negotiates agreements for U.S. air carriers to operate internationally; licenses all foreign and domestic air carriers to operate in the United States; rules on airline merger and joint venture requests; manages the Essential Air Service and Small Community Air Service Development grant programs; and coordinates international activities and policy for the Secretary across DOT.

Executive Director of the Maritime Administration (MARAD) from 2011–2018. MARAD's senior career official and Chief Operating Officer, overseeing MARAD's career staff of nearly 800 Federal employees, and several hundred contractors, with

an annual budget of over \$700 million, and over \$1 billion of outstanding loans and grants. MARAD runs the Nation's only civilian Federal service academy (university), the United States Merchant Marine Academy at King's Point, New York. MARAD maintains a reserve fleet of cargo ships for military sealift and manages a commercial program including most of the US-flag international fleet. MARAD rose from the bottom third to the top half of agencies in the Federal Best Places to Work survey, during this period.

Deputy Assistant Secretary for Transportation Policy from 2002–2003, 2008–2011. Named DOT's Federal officer responsible for the Recovery Act in 2009. Stood up a dozen programs, which invested \$48 billion in over 15,000 road, transit and rail surface transportation projects nationwide. Oversaw the initial development and administration of the first three rounds of TIGER grants. Coordinated a seven-federal agency effort in 2002 under a Presidential executive order, to streamline project reviews of key transportation infrastructure. Co-chaired, along with the Department of Defense, the steering group of a multi-agency committee that developed and coordinated the Federal government's GPS policy. Managed budget, staff and contract resources for the Office of the Under Secretary, including Aviation & International Affairs.

Senior Counselor for Transportation Infrastructure from 2005–2006. Advised Secretary. Led special projects such as Pandemic Flu preparation, reviewing research and development across the department, and Hurricane Katrina Lessons Learned.

Deputy Assistant Secretary for Management & Budget from 2003–2005. Led DOT's participation in the President's Management Agenda. Tied for first Federal agency to meet all requirements in four measured areas (Human Capital, Budget and Performance Integration, Competitive Sourcing, E-Government).

2006–2008

Chief of Staff, Small Business Administration

Washington, DC

Spearheaded the creation of the Patriot Express loan program, to help veterans and their families. Helped to reform SBA's disaster-assistance program, and to establish a public scorecard to track the progress of Federal agencies in meeting their small business contracting goals. Supervised the Chief Financial Officer, Human Resources, and other administration. Inherited the lowest score among large agencies in the Best Places to Work survey. The very next survey gave SBA the largest increase (30 percent) of any large Federal agency.

February 2005–September 2005

Transportation Counselor to the Ambassador

Baghdad, Iraq

Directed the U.S. government's transportation reconstruction program in Iraq. Managed \$544m in Federal funds, and coordinated with foreign governments, to restore ports, airports and railroads in Iraq.

2001–2002

Principal, White Dragon Group

Sacramento, CA

Advised Asian Pacific American business leaders on how to increase their civic engagement and effectiveness.

1993–2001

Principal Consultant for Transportation, California State Assembly

Sacramento, CA

Served as the minority (Republican) party's sole transportation consultant. Analyzed bills, recommended how to vote, negotiated with stakeholders and with the majority. Developed a proposal for long-term infrastructure investment in California (the '20/20 vision'), adopted by the party.

1990–1993

Executive Officer, U.S. Environmental Protection Agency

Washington, DC—Sacramento, CA

Advised the Administrator and Deputy Administrator on management, budget and personnel issues. Piloted a program to embed Federal officials with state governments for better federal-state cooperation.

1988–1990

Associate, Strategic Planning Associates (now Mercer Management)
Washington, DC

As a management consultant, advised railroad and trucking firms. Helped develop an economic pricing model for long-haul trucking.

1981–1986

Captain, United States Army

Fulda Gap, Germany—Fort Devens, Massachusetts

Led a tank platoon and an Armored Cavalry Troop, as Executive Officer and Acting Commander, patrolling the East-West German border during the Cold War.

Education

Received a B.A. in Economics and Government from Georgetown University (1981) and an MBA from Harvard Business School (1988)

Personal

Born in Texas; grew up in Massachusetts. Co-founded the International Leadership Foundation (ILF), a non-profit organization promoting public service for Asian Pacific American college students. Married to Chiling Tong, a prominent APA activist, and co-founder of the ILF.

Received the Presidential Meritorious Rank Award for leading the Recovery Act and TIGER within DOT. Named an ‘inspirational leader’ in DOT in 2015. Earned the Meritorious Service Medal in the Army, and awarded the Ellis Island Foundation Medal of Honor for work with the Asian Pacific American community.

Career and Non-Career Positions

Appointed to a Schedule C (Administratively Determined) position at USEPA from 1990–1993. Appointed to a Schedule C Senior Executive Service position from 2002–2008. While at the Small Business Administration in 2008, applied to, and was accepted for, a vacant career Senior Executive Service position at USDOT. Career SES in USDOT from 2008–2019. Became Presidentially-appointed Senate-confirmed (PAS) Assistant Secretary in January, 2019.

The CHAIRMAN. Thank you, Mr. Szabat.
Commissioner O’Rielly.

**STATEMENT OF MICHAEL P. O’RIELLY, NOMINEE TO BE A
MEMBER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. O’RIELLY. Chairman Wicker, Ranking Member Cantwell, and members of the Committee, I sincerely appreciate the opportunity to appear before you to discuss my nomination for a new term at the Federal Communications Commission.

During my tenure, I have absolutely loved serving the American people and will be honored to continue in my position at the Commission, if you deem it appropriate. FCC work is both challenging and rewarding, and I believe that there is so much more that I can accomplish to improve the communication landscapes in the years to come.

Nearly 7 years ago during my original confirmation hearing, I promised the Committee that I would seek to work with my fellow colleagues, to the extent possible, to find common ground. I think my record since suggests that I have kept my word. In sum, my commitment has been to find and support good ideas and sound policy outcomes no matter where or from whom they originate.

Throughout, I have tried to stay true to my original commitments in approaching my role as a Commissioner. My principles are used as an important prism that guides me in my review of the issues, and I have focused on limiting the costs and burdens on the American people from new regulations and eliminating existing regulations that are no longer necessary. Regardless of my personal

views on a particular matter, however, I am always beholden to the will of Congress.

Substantively, one area on which I have spent considerable attention and energy is FCC process reform, which gets few headlines and little attention from practitioners. I firmly believe that transparency, accountability, and responsiveness of the Commission can be improved for the betterment of our decisionmaking and the American people.

On policy matters, there is much work ahead. The biggest issue facing the Commission is how to bring broadband to those Americans without service. I am painfully aware of this demographic despite our poor mapping and related data. It is indisputable that broadband brings many benefits to those who are able to obtain it. Having traveled the Nation and heard from American families and businesses that do not have access, I am committed as ever to shrinking this population as fast as possible in a thoughtful way.

Second and on a related note, since wireless broadband is a key part of solving this problem, the Commission must identify and reallocate additional spectrum bands for new wireless services, including 5G, 6G, and beyond. It is essential that the mid-band pipeline, which lies mostly empty, be replenished in the very near term. Absent this, we face the real risk that the U.S. will lose its preeminent position in global wireless leadership.

Finally, there has been considerable debate in Congress and elsewhere about the regulatory treatment of the U.S. high technology community. Recently, the conversation has focused on the legal liability protections provided to high-tech companies and others offering applications or platforms for third party content. If asked to intervene, I intend to fully explore all of the extremely complex and relevant issues involved. Like my practice of reading every item on which I am asked to vote, you can be assured that I will do my homework on this important subject as well.

I thank the Committee for its consideration of my nomination and stand ready to answer any questions you may have.

[The prepared statement and biographical information of Mr. O’Rielly follow:]

PREPARED STATEMENT OF MICHAEL P. O’RIELLY, COMMISSIONER,
FEDERAL COMMUNICATIONS COMMISSION

Chairman Wicker, Ranking Member Cantwell, and Members of the Committee: I sincerely appreciate the opportunity to appear before you to discuss my nomination for a new term at the Federal Communications Commission, especially in the midst of the current COVID-19 pandemic facing our Nation.

Many Members of the Committee may be familiar with me from my many years at the FCC or from just short of twenty years working on Capitol Hill. I have absolutely loved serving the American people and would be honored to continue in my position at the Commission, if you deem it appropriate. The work is both challenging and rewarding, and I believe that there is so much more that I can accomplish to improve the communications landscape in the years to come.

Nearly seven years ago, during my original confirmation hearing, I promised the Committee that I would seek to work with my fellow colleagues, to the extent possible, to find common ground. I think my record since then suggests that I kept my word. Former Chairman Tom Wheeler, with whom I strongly disagreed on many issues, collaborated with me on numerous important matters, including reforming legacy rate-of-return regulation to promote broadband buildout. Similarly, I have worked with Commissioner Rosenworcel and former Commissioner Clyburn on a fair number of projects and issues. I have also joined with—and occasionally opposed—my fellow Republican colleagues to advance communications policy. While most of

the time I have agreed with Chairman Pai's priorities, there have been some disagreements from time to time that may not have been necessarily visible to the public. You can be assured that I have worked behind the scenes to effectuate changes to those items, or portions thereof, that I couldn't support as presented. As is his reputation, Chairman Pai has been incredibly gracious in working with me to improve these items to mitigate my concerns. In sum, my commitment has been to find and support good ideas and sound policy outcomes, no matter where or from whom they originate.

Throughout, I have tried to stay true to my original commitments in approaching my role as commissioner. As a self-admitted conservative Republican and firm defender of freedom, my principles are used as an important prism that guide me in my review of the issues, and I have focused on limiting the costs and burdens on the American people from new regulations and eliminating existing regulations that are no longer necessary. Regardless of my personal views on a particular matter, however, I am always beholden to the will of Congress: if Congress has not provided authority to act, then I have respected those constraints on our authority and openly opposed moving forward. Alternatively, if the Commission has been directed to take specific action, I have always voted to approve corresponding Commission implementation efforts. My fidelity remains to the statutory provisions as written by Congress, along with the FCC public record on any given topic. That said, the record in any proceeding is not a counting exercise or polling matter. A thoughtful submission, well-grounded in the law and Commission precedent, can and does outweigh thousands of form e-mails containing little real substance.

One area that on which I have spent considerable attention and energy is improving the inner workings of the Commission. FCC process reform, which gets few headlines and little attention from practitioners, has been an important issue set for me—whether in the minority or majority. From making the text of items publicly available three weeks before a Commission Open Meeting, to my 60-plus procedural ideas, to my recent call for video conferencing to increase the accessibility of FCC meetings during COVID-19, I firmly believe that the transparency, accountability, and responsiveness of the Commission can be improved, for the betterment of our decision making and the American people. I appreciate that a number of my ideas have been incorporated into our procedures, but I believe there is more work to be done. Further, any improvements that have been made should be maintained and not erased at the whim of a new chair.

On policy matters, there is much work ahead. I believe the biggest issue facing the Commission is how to bring broadband to those Americans without service. While some want to focus on affordability, and others on ensuring multiple competitors within a market, I have focused my time and efforts on bringing service to those millions of Americans without any access to broadband at all. I am painfully aware of this demographic, despite our poor mapping and related data. It is indisputable that broadband brings many benefits to those who are able to obtain it, and this is especially true in circumstances like the pandemic we face today. Having travelled the Nation and heard from American families and businesses that don't have access, I am committed as ever to shrinking this population as fast as possible in a thoughtful way.

Secondly, and on a related note, since wireless broadband is a key part of solving this problem, the Commission must identify and reallocate additional spectrum bands for new wireless services, including 5G, 6G, and beyond. As a lead advocate for both 3.5 GHz and C-Band, I have worked extensively to make more mid-band spectrum available, but the progress we have made is not enough. The 350 megahertz of licensed spectrum in both the 3.5 GHz band, which has certain limitations, and C-Band will not meet the future spectrum needs of new technology and the mobility-demanding public. It is essential that the mid-band pipeline, which lies mostly empty, be replenished in the very near term. Absent this, we face the real risk that the U.S. will lose its preeminent position in global wireless leadership. Preventing such an outcome means that the Commission is likely headed for future clashes with those entities occupying the most ideal mid-band spectrum.

I have also been at the forefront of identifying additional bands for unlicensed use. Early on, I identified the 6 GHz band, which is located near the 5 GHz spectrum so prevalent in our existing Wi-Fi systems, as the best opportunity to expand unlicensed opportunities and provide the larger bandwidth channels needed for greater capacity, higher speed, and lower latency Wi-Fi, along with other unlicensed offerings. The Commission recently opened these frequencies for some unlicensed uses, and I hope to expand upon our technical rules to permit even more uses in the future, such as for very low power devices.

Finally, there has been considerable debate in Congress and elsewhere about the regulatory treatment of the U.S. high technology community. Generally, the FCC

does not have authority over many of the issues pertaining to these companies. Recently, the conversation has focused on the legal liability protections provided to high-tech companies and others offering applications or platforms for third party content. If asked to intervene, I intend to fully explore all of the extremely complex and relevant issues involved. Prior to getting to that point, I believe that the Commission would benefit from seeking public comment on any forthcoming petition to be filed by the National Telecommunications and Information Administration from a wide range of experts, including constitutional scholars, academics, and public policy leaders, on issues such as the Commission's jurisdiction and the First Amendment implications of any action under consideration. Like my practice of reading every item on which I am asked to vote, you can expect that I will do my homework on this important subject as well.

I thank the Committee for its consideration of my nomination and stand ready to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Michael Patrick O'Rielly.
2. Position to which nominated: Commissioner, Federal Communications Commission.

3. Date of Nomination: March 18, 2020.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: Federal Communications Commission, 445 12th Street, SW, Room 8-A302, Washington, DC 20554.

5. Date and Place of Birth: July 8, 1971; Lockport, NY.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Sarah Elizabeth Goss O'Rielly, Cash Forecasting and Modeling Advisor, Office of the Chief Financial Officer, Government of the District of Columbia.

7. List all college and graduate degrees. Provide year and school attended.

University of Rochester, 1993, Bachelor of Arts, Political Science.

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

- A. Federal Communications Commission, Commissioner, November 2013 to present, management.

- B. Office of the Senate Republican Whip, Senator John Cornyn, Policy Advisor, January 2013 to November 2013.

- C. Office of the Senate Republican Whip, former Senator Jon Kyl, Deputy Chief of Staff and Policy Director, April 2012 to January 2013, management.

- D. Office of the Senate Republican Whip, former Senator Jon Kyl, Policy Advisor, July 2010 to April 2012.

- E. Senate Republican Policy Committee, Senator John Thune and former Senator John Ensign, Policy Analyst, January 2009 to July 2010.

- F. Former Senator John E. Sununu, Legislative Director, January 2007 to January 2009, management.

- G. Former Senator John E. Sununu, Legislative Assistant, January 2003 to January 2007.

- H. House of Representatives' Committee on Energy & Commerce, former Chairman W.J. "Billy" Tauzin and former Chairman Tom Bliley, Professional Staff Member, January 1998 to January 2003.

- I. House of Representatives' Committee on Energy & Commerce, former Chairman Tom Bliley, Telecommunications Policy Analyst, January 1995 to January 1998.

- J. Former Representative Tom Bliley, Legislative Assistant, January 1994 to January 1995.

9. Attach a copy of your résumé.

Attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. Not Applicable.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years. Not Applicable.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or disability.

Member, Knights of Columbus, Arlington VA Chapter, (March 2017 to present); membership is based on a male holding the Catholic faith.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

Volunteer: Health, Education, & Crime Policy Staff, 2012 Republican Platform Committee.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. None.

16. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

- A. CTIA Wireless Foundation, Mobile Life Award, 2018.
- B. Phoenix Center for Advanced Legal & Economic Public Policy Studies, Jerry B. Duval Public Service Award, 2018.
- C. Wireless Connect, Spectrum Champion of the Year, 2019.
- D. Wi-Fi Alliance, Commitment to Wi-Fi Award, 2019.
- E. Women in Cable Telecommunications, Washington/Baltimore Chapter, Touchstones of Leadership Outstanding Public Service Award, 2019.
- F. New York State Broadcasters Association, Inc., New Yorker of the Year, 2019.

17. Please list each book, article, column, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Columns

- 1. The Hill, "FCC's grab for new regulatory power could go beyond broadband providers," May 6, 2014
- 2. National Review Online, "Net Neutrality & Cost Benefit Analysis" (with then Rep. Blackburn), July 10, 2014
- 3. Politico, "FCC's Lifeline Program Ripe for Fraud, Abuse" (with then Rep. Blackburn), July 12, 2015
- 4. WSJ, "The Consequences of a Washington Internet Power Grab," (with then FTC Commissioner Maureen Ohlhausen, August 8, 2015
- 5. The Hill, "Improving the 5.9 GHz band to enhance unlicensed and Wi-Fi networks" (with Rep. Latta), March 2, 2016
- 6. National Review Online, "The Path to protecting Americans Online," April 7, 2017
- 7. Roll Call, "Opinion: Stop the Next Internet Power Grab" (with Sen. Cruz), November 21, 2017

8. The Hill, "States are stealing funds from 9-1-1 emergency services now they'll be punished" (with FCC Commissioner Rosenworcel), February 9, 2018
9. WSJ, "A Smarter Approach to Saturday Morning Cartoons," June 20, 2018
10. National Review Online, "A Solid Process and Proposal to Update Kid Vid," July 5, 2018
11. The Hill, "Reining in UN's little known International Telecommunication Union," August 8, 2018
12. Morning Consult, "Empowering U.S. 5G by Fixing the CBRS Rules," October 2, 2018
13. The Hill, "'Kid Vid' TV rules are growing up," July 19, 2019

Official FCC Blog (available on FCC Website)

1. Blog Introduction and Views on E-Rate Reform, February 12, 2014
2. Thoughts on Broadcast Television JSAs and SSAs, February 9, 2014
3. Duplication Alert: Broadband Pilot Projects, March 5, 2014
4. TCPA: It is Time for Clarity, March 25, 2014
5. On the Rise: Regulating Through Pilot Programs, April 10, 2014
6. E-Labeling Deserves Serious Consideration, April 25, 2014
7. FCC Needs to Improve its 911 and IPv6 Compliance, June 2, 2014
8. With an Eye Towards WRC 2015, June 9, 2014
9. Introducing the Internet to the FCC's Contest Rules, June 16, 2014
10. Disturbing Trend in USF Funding, July 7, 2014
11. Most Definitely: Terminate Dormant Proceedings, July 8, 2014
12. Post Text of Meeting Items in Advance, August 7, 2014
13. Alaska: Lessons Learned, September 5, 2014
14. USF Contribution Factor Over Time, September 11, 2014
15. Harmful Consumer Wireless Behavior and Practices, October 14, 2014
16. More Pocket Dialing, October 30, 2014
17. Lessons of the 2014 Plenipot, November 17, 2014
18. Expanding FCC Use of Electronic Communications, January 14, 2015
19. Update on Advanced Posting of Commission Meeting Items, January 16, 2015
20. Municipal Broadband: A Snapshot, January 30, 2015
21. Delegated Authority: Serious Objections and Solutions, February 2, 2015
22. Sound Principles for Lifeline Reform, February 13, 2015
23. Embrace the Internet for EEO "Widely Disseminated Rule," February 20, 2015
24. Driving Wi-Fi Ahead: The Upper 5 GHz Band, February 23, 2015 (with Commissioner Rosenworcel)
25. Affirmatively Expand Permissible Foreign Ownership, March 3, 2015
26. Fixing Flawed and Non-Existent "Editorial Privileges," March 9, 2015
27. USF High-Cost Programs: Best and Realistic Timelines, March 24, 2015
28. AWS-3 Auction: Lessons Learned, March 27, 2015
29. FCC Pre-Adoption Process Also Needs Work, April 1, 2015
30. Consider a New Way to Combat Pirate Radio Stations, April 8, 2015
31. Guest Speakers & Questions at FCC Open Meetings, April 10, 2015
32. Problems with FCC Advisory Committees, May 1, 2015
33. Accountability for Enforcement Penalties & Fines, May 14, 2015
34. Setting Timelines for Revisiting Agency Decisions, July 10, 2015
35. Revamping predicative Judgments & Interim Rules, July 27, 2015
36. Enacting More "Sticks": Spectrum Fees for Government Users, September 8, 2015
37. Steering into the Future with More Wi-Fi by Sharing the Upper 5 GHz Band, September 16, 2015
38. Team Telecom Needs More Structure, September 18, 2015
39. A Draft Pirate Radio Policy and Enforcement Statement, September 24, 2015
40. Improving Broadcasters' Physical Security, September 29, 2015
41. Rethinking Outdated Voice Regulations, November 12, 2015

42. Fixing a Problem with the Hearing Aid Compatibility Mandate, November 30, 2015
43. A Starting Point for CAF Post-ROFR Auction, December 10, 2015
44. Regulation by Citation, January 5, 2016
45. 2015 World Radiocommunication Conference: A Troubling Direction, January 15, 2016
46. Defending Capitalism in Communications, February 12, 2016
47. Stop Unfairly Censoring Commissioners, February 24, 2016
48. Lifeline Reform: Add a Hard Budget, March 3, 2016
49. Improving the FCC Circulation Process, May 31, 2016
50. Principles for Media Ownership Reform, June 3, 2016
51. Defining Auto Safety of Life in 5.9 GHz, June 8, 2016
52. Debunking Anti-App Claims, June 27, 2016
53. Snapshot of Process Reform Ideas, July 8, 2016
54. A Path for Mobility Fund Phase II? July 25, 2016
55. Ending Cable Signal Leakage Rules for Fiber Builds, September 16, 2016
56. Preserving Consumer Privacy Trades, September 21, 2016
57. Set Top Box End Game, October 4, 2016
58. Federal Broadband Infrastructure Spending: Potential Pitfalls, February 1, 2017
59. Needed: A Universal FCC Deadline Policy, February 8, 2017
60. A Modified Delegated Authority Proposal, February 22, 2017
61. States Must Stop Raiding 9-1-1 Fees, March 1, 2017
62. Taking Stock of FCC Paperwork Burdens, March 3, 2017
63. New Tower Marking Provision Could Use Tweaks, March 10, 2017
64. Improved Staff Openness & New Priorities, March 22, 2017
65. International Efforts to Regulate the Internet Continue, April 21, 2017
66. Would Means-Testing Bring More Efficiencies to the High-Cost Program? May 31, 2017
67. A Mid-Band Spectrum Win in the Making, July 10, 2017
68. How to Free Up Government Held Spectrum in the Face of Increasing Budgetary Pressure, September 6, 2017
69. Thoughtfully Modernizing the Commission's Media Ownership Rules, October 20, 2017
70. Repairing the Must Vote Timing, January 9, 2018
71. Its Time to Reexamine the FCC's Kid Vid Requirements, January 26, 2018
72. Defining Recoverable Expenses for Rate-of-Return Providers, (with former Commissioner Mignon Clyburn), January 31, 2018
73. Paper FCC Record: Why in the World? February 2, 2018
74. Abusing Section 1, February 21, 2018
75. Experienced Advice for New Broadband Program, April 11, 2018
76. Debunking the Sinclair Agenda Myth, May 18, 2018
77. FCC Regulatory Free Arena, June 1, 2018
78. Status Update: Fixing the 9-1-1 Fee Diversion, June 8, 2018
79. Status Update: Fixing 9-1-1 Fee Diversion, November 29, 2018
80. Muni Broadband's Ominous Threat to the First Amendment, December 13, 2018
81. Further Improving the FCC's Procedures, December 20, 2018
82. A Needed USF Budgetary Cap, April 2, 2019
83. Substantive Objections to a Government 5G Wholesale Network, May 7, 2019
84. More Media Modernization: Program Carriage Process & Cable Operator Interests Recordkeeping, January 28, 2020
85. The 3.5 Auction is Finally a Go!, February 7, 2020

Speeches (available on FCC website)

1. Remarks before the Hudson Institute, January 27, 2014
2. Remarks before the Federal Communications Bar Association, April 1, 2014

3. Remarks before the Media Institute, June 19, 2014
4. Remarks before the LinkIDAHO 2014 Broadband Summit, September 2, 2014
5. Remarks before the NTCA Telecom Policy Summit, October 27, 2014
6. Remarks before the Free State Foundation, November 14, 2014
7. Remarks before the U.S. Chamber of Commerce, November 17, 2014
8. Remarks before American Enterprise Institute Luncheon, January 21, 2015
9. Remarks before NAB State Leadership Conference, February 24, 2015
10. Remarks before WISPAmerica2015, February 25, 2015
11. Remarks before Association of National Advertisers, April 1, 2015
12. Remarks before 2015 NAB Show, April 14, 2015
13. Remarks before the 2015 Wireless Infrastructure Show, April 28, 2015
14. Remarks before the WTA-Advocates for Rural Broadband, May 5, 2015
15. Remarks before the Federal Communications Bar Association Annual Meeting, June 11, 2015
16. Remarks before the NY State Broadcasters Association, June 23, 2015
17. Remarks before the Internet Innovation Alliance, June 25, 2015
18. Remarks before the Free State Foundation, July 28, 2015
19. Remarks before the Rural Wireless Association, September 11, 2015
20. Remarks before the Prosperity Caucus, September 22, 2015
21. Remarks before former Rep. Dave Brat's Spotsylvania, VA Town Hall, September 24, 2015
22. Remarks before PACE 2015 TCPA Washington Summit, September 28, 2015
23. Remarks before the 2015 NAB Radio Show, October 1, 2015
24. Remarks before the Competitive Carrier Association, October 7, 2015
25. Remarks before New America, January 12, 2016
26. Remarks before the Country Radio Seminar 2016, February 9, 2016
27. Remarks before the NAB State Leadership Conference, February 23, 2016
28. Remarks before Faegre Baker Daniels Insights Luncheon, March 8, 2016
29. Remarks before the FCC's Spectrum Frontiers Workshop, March 10, 2016
30. Remarks before American Action Forum, March 29, 2016
301. Remarks before 2016 NAB Show, April 18, 2016
32. Remarks before the FCC's DAS & Small Cell Solutions Workshop, May 3, 2016
33. Remarks before the Advanced Television Systems Committee, May 11, 2016
34. Remarks before Hogan Lovells' Technology Forum, May 25, 2016
35. Remarks before New Jersey Broadcasters Association 2016 Conference, June 23, 2016
36. Remarks before Broadband for All Seminar, June 27, 2016
37. Remarks before the Communications Consulting Engineers, September 16, 2016
38. Remarks before the International Bar Association Conference, September 20, 2016
39. Remarks before the TPRC Research Conference, September 30, 2016
40. Remarks before Hudson Institute, October 13, 2016
41. Remarks before the International Broadcasters Idea Bank Conference, October 19, 2016
42. Remarks before Catholic University School of Law, November 3, 2016
43. Remarks before the Free State Foundation, December 7, 2016
44. Remarks before the New England Ratepayers Association, December 7, 2016
45. Remarks before the Satellite Industry Association, March 7, 2017
46. Remarks before the Hispanic Radio Conference, March 28, 2017
47. Remarks before NG911 Institute Lunch and Learn: Challenges and Opportunities for Funding the Future 9-1-1, April 12, 2017
48. Remarks before the Broadband Deployment Advisory Committee, April 21, 2017

49. Remarks before 2017 NAB Show, April 25, 2017
50. Remarks before Freedomworks & SBE Council Event, April 26, 2017
51. Remarks before ACA International's Washington Insights Conference, May 4, 2017
52. Remarks before ALEC Task Force Summit, May 5, 2017
53. Remarks before the Media Institute Luncheon, May 11, 2017
54. Remarks before the Wireless Infrastructure Show, May 23, 2017
55. Remarks before CITEL PCC. II Delegation, June 26, 2017
56. Remarks before Free State Foundation, July 25, 2017
57. Remarks before the CBRS Alliance, August 1, 2017
58. Remarks before the Americans for Prosperity Summit, August 21, 2017
59. Remarks before the 7th Congreso Internacional de Espectro, September 6, 2017
60. Remarks before Latin America Spectrum Management Conference, September 7, 2017
61. Remarks before WTA's Fall Conference, September 19, 2017
62. Remarks before 5G Americas' Tech Briefing, October 5, 2017
63. Remarks before the IIC International Regulators Forum 2017, October 10, 2017
64. Remarks before the IIC Annual Conference 2017, October 11, 2017
65. Remarks before the Americas Spectrum Management Conference, October 13, 2017
66. Remarks before the New Jersey Wireless Association, October 18, 2017
67. Remarks before the Broadband Deployment Advisory Committee, November 9, 2017
68. Remarks before the Future of the Internet Freedom Event, November 28, 2017
69. Remarks before the Hudson Institute, February 6, 2018
70. Remarks before AT&T 3.5 GHz Future Innovation Showcase, February 13, 2018
71. Remarks before Rhode Island E911 Summit, March 20, 2018
72. Remarks before Diversity-Digital Entertainment Advisory Committee, March 27, 2018
73. Remarks before Garvey Schubert & Barer Communications Group, April 9, 2018
74. Remarks before 2018 NAB Show, April 10, 2018
75. Remarks before American Enterprise Institute, April 19, 2018
76. Remarks before Philadelphia Federalist Society, June 12, 2018
77. Remarks before Mackinac Center for Public Policy, June 20, 2018
78. Remarks before Cloud Comm Summit, June 27, 2018
79. Remarks before Free State Foundation, June 28, 2018
80. Remarks before Midwest Next-Gen TV Summit, June 28, 2018
81. Remarks before Mobile World Congress Americas, September 13, 2018
82. Remarks before 2018 NAB Radio Show, September 27, 2018
83. Remarks before Americas Spectrum Management Conference, October 2, 2018
84. Remarks before Kentucky Broadcasters Association Conference, October 10, 2018
85. Remarks before Media Institute Free Speech America Gala, October 25, 2018
86. Remarks before Build Smart Cities of Tomorrow Conference, October 30, 2018
87. Remarks before NAB State Leadership Conference, February 26, 2019
88. Remarks before ACA Annual Summit, March 20, 2019
89. Remarks before Wireless Connect 2019, April 4, 2019
90. Remarks before Disability Advisory Committee, April 10, 2019
91. Remarks before NTCA Legislative & Policy Conference, April 15, 2019
92. Remarks before Brooklyn 5G Summit 2019, April 25, 2019

93. Remarks before CBRS Alliance, April 30, 2019
 94. Remarks before Daniel Morgan Graduate School of National Security, May 16, 2019
 95. Remarks before ACA International Washington Insights Conference, May 16, 2019
 96. Remarks before Wi-Fi Alliance Annual Member Meeting, June 4, 2019
 97. Remarks before American Society of Civil Engineers Conference, June 10, 2019
 98. Remarks before Hudson Institute, June 25, 2019
 99. Remarks before Arkansas Broadcasters' Annual Conference, July 19, 2019
 100. Remarks before Pennsylvania NENA, September 12, 2019
 101. Remarks before OnGo Commercial Service Launch, September 18, 2019
 102. Remarks before Americas Spectrum Management Conference, September 24, 2019
 103. Remarks before FCBA Young Lawyers Committee USF Seminar, October 2, 2019
 104. Remarks before NY State Broadcasters' Broadcast Leadership & Hall of Fame Luncheon, October 18, 2019
 105. Remarks before Mobile World Congress Americas 2019 Everything Policy Track, October 24, 2019
 106. Remarks before Massachusetts Broadcasters' Sound Bites 2019 Event, November 15, 2019
 107. Remarks before Silicon Flatirons' Annual Flagship Conference, February 10, 2020
 108. Remarks before the America's Public Television Stations' 2020 Public Media Summit, February 25, 2020
18. List digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the name of an "alias" or "handle" you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.
- A. Twitter: mikeofcc, active, <https://twitter.com/mikeofcc>
 - B. Twitter: mpo44, dormant, <https://twitter.com/mpo44>
 - C. Facebook: Mike O'Rielly, active, <https://www.facebook.com/mike.orielly.50>
 - D. LinkedIn <https://www.linkedin.com/in/michael-o-1ielly-25a8257a/>
 - E. Next Door: Mike O'Rielly, Leeway Overlee, active
19. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.
- A. House Energy and Commerce's Subcommittee on Communications and Technology: December 12, 2013; March 19, 2015; April 30, 2015; November 17, 2015; March 22, 2016; July 12, 2016; July 25, 2017; October 25, 2017; July 25, 2018; May 15, 2019; December 5, 2019
 - B. Senate Committee on Commerce, Science, and Transportation: September 18, 2013 (nomination); March 18, 2015; March 02, 2016; September 15, 2016; March 8, 2017; August 16, 2018; June 12, 2019; January 15, 2020
 - C. Senate Appropriations Committee's Subcommittee on Financial Services and General Government: March 19, 2015, June 20, 2017
- The subject matter of all of these instances was my work on policy matters at the FCC.
20. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?
- As a current Commissioner, I believe my six-year record provides ample evidence that I take the enormous responsibilities seriously. I am interested in continuing to serve in order to continue my efforts to improve the availability of the communications services and sensible regulation of providers, when necessary, on behalf of the American people.

21. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

Individual FCC Commissioners influence over the management and accounting control processes is limited but important in a number of ways. For instance, Commissioners vote on those selected by the Chairperson for management positions within the appropriate bureaus. Moreover, I have been aggressive and outspoken in seeking changes and accountability within the Universal Service Administrative Company (USAC), which implements the bulk of our universal service programs.

22. What do you believe to be the top three challenges facing the department/agency, and why?

- A. Access to Broadband—By any measure, a portion of Americans are without access to broadband at home. These people tend to reside in more rural, less population dense locations, and/or economically challenged areas. Given our statutory responsibilities and recognizing the importance of having access to broadband, the Commission has an obligation to find ways to get broadband to these families. This has proven to be a monumental task as the Commission faces considerable pressure to switch attention and resources to address broadband speeds, rates and options for those that already have access.
- B. Midband Spectrum Supply for 5G U.S. wireless providers and potential new users, such as the so-called Internet of Things, need access to midband spectrum in order to offer advanced wireless services, including 5G, domestically and to compete globally. Unfortunately, the most likely midband frequencies are already occupied, meaning that existing users must cease operations, reduce their band use, or relocate to other frequencies. I have spent considerable time, with varying success, over the last three years to free midband spectrum in the 3 GHz range (*i.e.*, C-Band, CBRN, and 3.1 to 3.55 GHz). Given the current state of play, this issue will require considerable time and effort by the Commission to conclude.
- C. Modernizing Regulations—The dynamic communications industry is facing constant pressure to change and modernize its operations and offerings to meet consumer demand. Accordingly, the Commission's regulations must adapt and modernize at the same time so as to not prevent the development of consumer benefits. Continuing to impose obligations and requirements that are no longer necessary wastes precious time and raises costs, which are passed onto consumers in one form or another.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts. None.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

The U.S. Office of Government Ethics has deemed my spouse's employment as a fixed salary position for the District of Columbia to be a potential conflict of interest. I have stipulated, in writing, that for as long as my spouse continues to work for the District of Columbia Government, I will not participate personally and substantially in any particular matter involving specific parties in which I know the District of Columbia Government is a party or represents a party, unless I am first authorized to participate.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest. None.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

As applicable, I will continue to discuss any issues involving potential conflict of interest with the FCC's designated agency ethics officials.

6. Describe any activity during the past ten years, including the names of clients represented, in which you have been engaged for the purpose of directly or indi-

rectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

In various roles while a staff member in the U.S. Senate, I engaged directly and indirectly in influencing legislation and affecting the administration and execution of law or public policy on behalf of Members of the U.S. Senate. Moreover, in my current role at the FCC, I have lent support and/or registered concern with various legislative measures under discussion or active consideration in the U.S. Senate and/or U.S. House of Representatives.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

In May 2018, the Office of Special Counsel sent me a letter indicating that my comments made while attending and speaking at CPAC 2018 were in violation of the Hatch Act. The warning letter indicated that it declined to pursue disciplinary action. My comments were an inadvertent and unintentional effort to answer the question posed by the moderator.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority?

Yes, to the extent within my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

Yes, to the extent within my ability.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee?

Yes, to the extent within my ability.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF MICHAEL P. O'RIELLY

PROFESSIONAL EXPERIENCE

Federal Communications Commission*Commissioner—November 2013 to present*

- Review, negotiate, revise content, and vote on regulatory items before the full Commission.
- Serve as active lead on select substantive issues for Commission consideration and adoption, including:
 - CBRS spectrum rule reform and authorization
 - Children's Television Rules modernization and improvement
 - Internal Commission operations
 - Modernization and elimination of outdated and unnecessary Commission rules
- Provide active leadership for advancement of U.S. wireless licensed services, including SG, and unlicensed services through revisions to spectrum allocations.
- Give policy speeches, participate in public forums, maintain active blog, and write newspaper editorials regarding substantive Commission issues.
- Participate in international communications forums to extend U.S. influence and policy objectives, including WRC-15 & WRC-19.
- Participate in monthly Commission Open Meetings and testify before the Committees of jurisdiction in Congress.
- Host *ex parte* meetings and interact with parties that have an interest in communications policy or business before the Commission.
- Manage an office of five paid employees, including three legal advisors, and provide internship opportunities each semester for law school students.

Republican Whip Office—U.S. Senate*Policy Advisor—January 2013 to November 2013**Deputy Chief of Staff and Policy Director—April 2012 to January 2013**Advisor—July 2010 to April 2012*

- Managed and provided policy analysis on an expansive portfolio of issue areas to the Republican Senate Whip operations.
- Helped position Republican Senators on complex policy matters, maintained cohesion, and determined necessary changes in strategy and message.
- Advocated and negotiated on behalf of the Republican Whip's policy positions and goals.
 - Served as lead Senate Republican negotiator for Title VI-Public Safety Communications and Electromagnetic Spectrum Auctions of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96).
 - Established and led coalitions involving Senate leadership, congressional committees, diverse commercial interests, and consumer groups.

Republican Policy Committee—U.S. Senate*Banking, Technology, Transportation, Trade & Commerce Analyst—January 2009 to August 2010*

- Provided in-depth policy analysis and counsel to Republican Senators on a broad array of issues, including political and practical implications of pending legislation.
- Crafted policy alternatives, legislative substitutes, and strategic options for the Republican Conference.
- Prepared issue papers and background materials on high profile issues and key votes.
- Communicated the Republican message and positions to industry and press.

Former Senator John E. Sununu—U.S. Senate (R-NH)*Legislative Director—January 2007 to January 2009**Senior Legislative Assistant—January 2003 to January 2007*

- Supervised eleven person staff in preparing and executing legislative priorities.
- Responsible for office's Senate floor relations, procedure, and strategy.
- Served as the liaison to staffs of Senate leadership and Senate Commerce Committee.
- Led the Senator's aggressive technology-focused agenda, including:
 - Internet Tax Moratorium expansion and extension
 - Voice over Internet Protocol (VoIP) legislation
 - Internet video regulatory treatment legislation
 - Unlicensed spectrum in TV White Spaces
 - Wireless spectrum policy reform

Committee on Energy and Commerce—U.S. House of Representatives*Telecom and E-Commerce Professional Staff Member—August 1998 to January 2003**Telecom Legislative Analyst—January 1995 to August 1998*

- Managed agendas for telecommunications and electronic commerce issues.
- Played an active role on all technology bills and issues considered by the Committee during this period, including:
 - The Telecommunications Act of 1996
 - Electronic signatures and records legislation
 - International Satellite Reform
 - Electronic Commerce and Privacy
 - FCC & NTIA Reform and Reauthorization
- Drafted legislation, prepared for legislative hearings and committee mark-ups, and staffed conference committee meetings.

Former Congressman Tom Bliley (R-VA)—U.S. House of Representatives*Legislative Assistant—January 1994 to January 1995*

- Advised Congressman on a wide range of legislative issues important to the Congressional District of Virginia.
- Reviewed pending legislation and amendments for the House Floor and provided vote recommendations.

EDUCATION

*University of Rochester, Rochester N.Y.**Bachelor of Arts, magna cum laude in political science, May 1993*

The CHAIRMAN. Thank you, Commissioner O'Rielly.
And now, Ms. Beck, you are recognized.

**STATEMENT OF DR. NANCY B. BECK,
NOMINEE TO BE A COMMISSIONER AND CHAIRMAN,
CONSUMER PRODUCT SAFETY COMMISSION**

Dr. BECK. Good afternoon, Chairman Wicker, Ranking Member Cantwell, and members of the Committee. Thank you for the opportunity to appear before you today as you consider my nominations to the Consumer Product Safety Commission. I would also like to thank the President for nominating me. I am humbled by this opportunity, and if confirmed, I will look forward to working with all of you to advance public health and safety and engaging on any issue of particular interest to you.

While my family is not here with me today due to the COVID pandemic, I would like to acknowledge all the love and support

they have provided to me. They are watching from their homes in New York. I have six unique and wonderful nieces and nephews and they are with me in spirit as they always are.

Now more than ever, it is imperative that we ensure that the American public is protected from the myriad of consumer risks encountered on a daily basis. Our homes and our recreational environments must be safe spaces where we can relax and not have to worry about encountering harmful risks.

If confirmed to work at the CPSC, I would continue to pursue my lifelong commitment to promoting public safety through policies supported by objective and transparent science. My career, which has spanned State government, Federal Government, and the private sector, has been driven by my commitment to public health.

My career in public health started when I worked at a cosmetics company as a microbiologist, ensuring that cosmetics were safe for our daily use. While in graduate school at the University of Washington, I volunteered for a program run through the American Lung Association that helped the residents of Seattle identify and address contaminants such as lead, mold, and other indoor pollutants in the household. The satisfaction that came from working to keep consumers and homeowners safe inspired me to devote my career to furthering public protection.

My interest in public health was solidified while I was working for the Washington State Department of Health. There, I conducted the risk evaluation that led to the closure of a paint shop in a low-income residential community. The growth of this facility had put the community at risk. This experience demonstrated to me the important role that data and analysis can play in improving communities throughout our country. Additionally, engaging at the community level, protecting children and the elderly, was highly motivating.

I moved to Washington, D.C. to pursue opportunities that advanced my interests, knowledge, and experience. I participated in a respected science policy fellowship program, and through this fellowship program working at the EPA, I advanced my knowledge regarding how science informs policy and focused on health issues related to protecting those most at risk.

My fellowship was followed by almost a decade at the OMB, working under both President Bush and President Obama. As a career civil servant, I worked to establish science as a pillar of good regulation. At OMB, I honed my experience in risk assessment and regulatory policy, and I advanced public health by ensuring that regulations were grounded in objective science.

I have also had the privilege of serving in a leadership role at EPA in the Office of Chemical Safety and Pollution Prevention overseeing the pesticides and chemicals program. While there, I worked to implement the bipartisan Frank R. Lautenberg Chemical Safety Act as EPA put in place a framework to ensure that future chemical assessments are grounded in science, accountability, and transparency.

The mission of the CPSC is to protect the public against unreasonable risks of injury and death associated with consumer products. This mission continues to be of utmost importance. Having

dedicated my career to protecting and improving public health, I am well equipped to help the CPSC advance its essential mission.

If confirmed, my priorities will include ensuring three things.

One, we must ensure that the CPSC takes appropriate and timely action to protect the public from risks, consistent with the CPSC statutory mandates.

Two, we must ensure that CPSC has effective communication and outreach tools. In particular, we must address the changing ways through which consumers purchase products and receive important information.

And three, it is important that we ensure that the CPSC has the full confidence of the American public. This means that the CPSC programs must be run as effectively as possible to provide the highest level of protection to consumers and families. This includes hiring a chief technologist, as recommended by this committee, to make certain that CPSC decisions are informed by the best available data and information.

If confirmed, I will look forward to working with each of you, as well as CPSC's dedicated staff, to fulfill the Commission's essential mission.

I will be happy to answer any questions you have for me today. Thank you.

[The prepared statement and biographical information of Dr. Beck follow:]

PREPARED STATEMENT OF NANCY B. BECK, NOMINEE,
U.S. CONSUMER PRODUCT SAFETY COMMISSION

Good Afternoon Chairman Wicker, Ranking Member Cantwell, and Members of the Committee. Thank you for the opportunity to appear before you here today as you consider my nominations to the Consumer Product Safety Commission. I would like to thank the President for nominating me. I am humbled by this opportunity and, if confirmed, I look forward to working with all of you to advance public health and safety and engaging on any issues of particular interest to you as members of this Committee.

While my family is not here with me today due to the COVID pandemic, I would like to acknowledge all the love and support they have provided to me. They are watching from their homes in New York. I have six unique and wonderful nieces and nephews and they are with me in spirit.

Now more than ever, it is imperative that we ensure that the American public is protected from the myriad of consumer risks encountered on a daily basis. Our homes and recreational environments must be safe spaces where we can relax and not have to worry about encountering harmful risks.

If confirmed to work at the CPSC, I would continue to pursue my life-long commitment to promoting public safety through policies supported by objective and transparent science. My career, which has spanned state government, Federal government, and the private sector, has been driven by my commitment to public health.

My career in public health started when I worked at a cosmetics company as a microbiologist, ensuring that cosmetics were safe for daily use. While in graduate school at the University of Washington, I volunteered for a program run through the American Lung Association that helped residents of Seattle identify and address contaminants such as lead, mold, and other indoor pollutants in the household. The satisfaction that came from working to keep consumers and homeowners safe inspired me to devote my career to furthering public protection.

My interest in public health was solidified while I was working for the Washington State Department of Health. There, I conducted the risk evaluation that led to the closure of a paint shop located in a low-income residential community. The growth of this facility had put the community at risk. This experience demonstrated to me the important role data and analysis can play in improving communities throughout our country. Additionally, engaging at the community level, and protecting children and the elderly, was highly motivating.

I moved to Washington D.C. to pursue opportunities that advanced my interests, knowledge, and management experience. I participated in the respected American Association for the Advancement of Science (AAAS) Science and Technology Policy Fellowship program. Through this fellowship, at the Environmental Protection Agency (EPA), I advanced my knowledge regarding how science informs policy, and focused on health issues related to protecting those most at risk.

My fellowship was followed by almost a decade at the Office of Management and Budget (OMB), working under both President Bush and President Obama. As a career civil servant, I worked to establish science as an integral pillar of good regulation. At OMB, I honed my expertise in risk assessment and regulatory policy, and advanced public health by ensuring regulations were grounded in objective science.

I have also had the privilege of serving in a leadership role at EPA in the Office of Chemical Safety and Pollution Prevention (OCSPP), to help oversee the pesticides and chemicals programs. While there, I worked to implement the bipartisan Frank R. Lautenberg Chemical Safety for the 21st Century Act, as EPA put in place the framework to ensure that future chemical assessments are grounded in science, accountability, and transparency.

The mission of the CPSC is to protect the public against unreasonable risks of injury and death associated with consumer products. This mission continues to be of utmost importance. Having dedicated my career to protecting and improving public health, I am well equipped to help the CPSC advance its essential mission.

If confirmed, my priorities will include ensuring:

- (1) That CPSC takes appropriate and timely action to protect the public from risks, consistent with the CPSC statutory mandates.
- (2) That CPSC has effective communication and outreach tools. In particular, to address the changing ways through which consumers purchase products and receive important information.
- (3) The full confidence of the American public. CPSC programs must be run as effectively as possible to provide the highest level of protection to consumers and families. This includes hiring a Chief Technologist, as recommended by the Senate, to make certain that CPSC decisions are informed by the best available data and information.

If confirmed, I will look forward to working with each of you as well as CPSC's dedicated staff to fulfill the Commission's essential mission. I will be happy to answer any questions you may have for me today.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Nancy Beth Beck.
2. Position to which nominated: Chair and Commissioner, Consumer Product Safety Commission.
3. Date of Nomination: March 16, 2020.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: US EPA, 3101-M, 1200 Pennsylvania Ave, N.W., Washington, DC 20460.
5. Date and Place of Birth: May 5, 1966; New York, NY.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
 Not applicable.
7. List all college and graduate degrees. Provide year and school attended.
 - Ph.D. Environmental Health, University of Washington, 1998
 - M.S. Environmental Health, University of Washington, 1992
 - B.S. Microbiology, Cornell University, 1988
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
 - *National Economic Council*, Executive Office of the President, June 2019 to present.
 Policy Advisor, on detail under the leadership of NEC Director Larry Kudlow.
 - *U.S. Environmental Protection Agency*, May 2017 to present.

Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention.

- *American Chemistry Council*, Jan. 2012–April 2017.
Senior Director of Regulatory Science Policy.
- *Office of Management and Budget*, Office of Information and Regulatory Affairs, Executive Office of the President, Aug. 2002–Jan. 2012.
Toxicologist/Risk Assessor/Policy Analyst.
- *AAAS (American Association for the Advancement of Science) Science and Technology Policy Fellow*, Sept. 2000–Aug. 2002.
Fellow, U.S. EPA, National Center for Environmental Assessment.
- *Washington State Department of Health*, Office of Environmental Assessments, Feb. 1999–July 2000.
Toxicologist/Public Health Advisor.
- *Estee Lauder Companies*, Aug. 1988–Sept. 1990.
Microbiologist/Research scientist.

9. Attach a copy of your résumé.

See attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

- Board of Trustees, Evidence Based Toxicology Collaboration, May 2015–July 2017.
- Trustee, Toxicology Education Foundation, 2014–May 2017.
- Elected Treasurer, Society of Toxicology, National Capital Area Chapter, Apr 2014–2017.
- Elected Chair, Society of Risk Analysis, Risk Policy and Law Specialty Group, 2015–2016.
- Elected Councilor, Society of Toxicology, Risk Assessment Specialty Section, Mar 2012–Mar 2014.
- Elected Councilor, Society of Toxicology, Regulatory Safety Evaluation Specialty Section, Mar 2009–Mar 2012.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or disability.

- For the last 10 years I have been a member of the following scientific organizations: Society of Toxicology; American Association for the Advancement of Science (AAAS); Society of Risk Analysis; American Board of Toxicology; Association of Government Toxicologists (until 2012).
- None of the organizations listed above restrict membership on the basis of sex, race, color, religion, national origin, age, or disability.
- Additional positions held are listed in response to question 11 (see above).

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

No, I have never been a candidate for and/or held a public office.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

None, not applicable.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years.

None, not applicable.

16. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

- *Fellow, Society of Risk Analysis*, Dec. 2018
 - Selected as a Fellow for substantial achievements in science or public policy relating to risk analysis and substantial service to the Society.
- *American Association for the Advancement of Science (AAAS) Science and Technology Policy Fellow*, Sept. 2000–Aug. 2002
 - Selected and served at the U.S. EPA Office of Research and Development
- *OMB Cross-Cutting Group Award*, July 2011
 - Award given “For extraordinary efforts to develop and implement responses to the Deepwater Horizon oil spill.”
- *OMB Special Achievement Award*, July 2009
 - Award given “For continuing well-grounded scientific analyses that guide policy, initiatives to increase transparency in the presentation of risk values, and leadership of U.S. contributions to the international risk dialogue.”

17. Please list each book, article, column, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

In my capacity as a Federal employee and in the private sector, I have spoken at many scientific conferences and have spoken to many outside parties about science policy and regulatory issues domestically and internationally. Many of these speaking events, as a federal employee, are listed on my attached resume. In addition, scientific publications are also listed on my resume. This list is complete to the best of my knowledge.

18. List digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the name of an “alias” or “handle” you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

- Facebook: <https://www.facebook.com/nancy.beck.3154?ref=bookmarks>
- Twitter: @NancyB61
- LinkedIn: <https://www.linkedin.com/in/nancybbeck/>
- Instagram: nancyb477

19. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

I have testified before congress once. The date was March 9, 2017, in front of the U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management. The topic was “Regarding a Hearing on the Agency Use of Science in the Rulemaking Process: Proposals for Improving Transparency and Accountability”

A link to my testimony can be found here: <https://www.hsgac.senate.gov/imo/media/doc/BECK%20TESTIMONY.pdf>

20. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have spent the majority of my career in government service helping to improve safety and public health. I have focused not just on the general public, but also in ensuring the protection of susceptible populations, those who may have the greatest risks. The mission of the CPSC is to protect the public against unreasonable risks of injury or death from consumer products through education, safety standards activities, regulation, and enforcement. My educational training and work experiences make me an exceptional candidate for a leadership position at the CPSC. In addition,

tion to my scientific expertise in toxicology, I am a recognized leader in risk assessment—not only in understanding the principles and methodologies, but in implementing risk based programs that are designed to evaluate and regulate unreasonable risks. Having spent 10 years in the Office of Management and Budget (OMB), I have a depth and breadth of understanding of the regulatory process that is unmatched by most scientific experts. Coupling my strong understanding of the regulatory process, with my deep understanding of risk evaluation and toxicology, provides me with a strong ability to be an effective leader at the CPSC.

I wish to serve as Chairman/Commissioner of the CPSC because I know I can contribute greatly to meeting the mission of the CPSC. I have the skills not only to identify unreasonable risks, but to also help ensure that appropriate and permanent regulations are put in place to ensure public health protection. A leader of the CPSC must be able to ensure that the best available science and information are used to inform a science-based evaluation of unreasonable risks. These evaluations must include consideration of our most vulnerable populations, including our children and the elderly. In addition, a CPSC leader needs to be able to take appropriate risk management actions to ensure that unreasonable risks are prevented. The agency must be able to act quickly and deliberatively to protect public health. Finally, a CPSC leader must also be able to communicate both the risks and the preventative solutions to the public. My years of service in state and Federal government have provided me with the background, skills, and experiences necessary to be a highly effective leader of the CPSC. I would be honored to serve as chairman and commissioner of the CPSC.

21. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed, I will be responsible for ensuring the proper management and accounting controls for the CPSC. My 10 years at OMB, the preeminent budget authority within the government, have afforded me the opportunity to understand not only the budget process but also the importance of strong accounting controls throughout an agency. This includes ensuring that the leadership team of CPSC is properly trained, acting in accordance with all statutory and regulatory requirements, and leading with highest levels of ethical conduct. In my capacity as Deputy Assistant Administrator and Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP) within EPA, I led a team of over 1,200 FTE with a program budget of 240 million in appropriated dollars. The full OCSPP budget is greater than the appropriated funds as OCSPP also has fee programs associated with statutory programs (PRIA and FIFRA) that provide additional funds. For 20 months, I was the highest level political appointee overseeing the program and as such was also responsible for insuring the integrity of our financial systems and budgeting processes, including but not limited to grants, contracts, hiring, travel, and other program expenses.

22. What do you believe to be the top three challenges facing the department/agency, and why?

Three challenges include:

- (1) Taking appropriate and timely action to protect the public against unreasonable risks associated with consumer products within the CPSC statutory framework;
- (2) ensuring that CPSC has the risk communication and outreach tools to guarantee protection to our most vulnerable populations considering the changing ways through which consumers purchase and receive important information regarding consumer products; and
- (3) ensuring that CPSC programs are running as effectively and efficiently as possible so that CPSC can provide the highest level of protection to consumers and families. This includes ensuring that CPSC has the tools to assess and manage all the data that are used to inform safety determinations.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I do have a personal Roth IRA and a contributory IRA.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

Not applicable I have no existing commitments or agreements, formal or informal.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

During the nomination process, I consulted with the Office of Government Ethics and the CPSC's Designated Agency Ethics Official to identify potential conflicts of interest. Any conflicts will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with CPSC's Ethics Official (a copy of which has been provided to the Committee). I am not aware of any other conflicts of interest.

Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with CPSC's Ethics Official (a copy of which has been provided to the Committee). If any other potential conflict arises, I will seek the advice and counsel of the CPSC's Designated Ethics Official and, if faced with a legitimate conflict of interest, I will recuse myself and/or divest if necessary.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

During the nomination process, I consulted with the Office of Government Ethics and the CPSC's Designated Agency Ethics Official to identify potential conflicts of interest. Any conflicts will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with CPSC's Ethics Official (a copy of which has been provided to the Committee). I am not aware of any other conflicts of interest.

Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with CPSC's Ethics Official (a copy of which has been provided to the Committee). If any other potential conflict arises, I will seek the advice and counsel of the CPSC's Designated Ethics Official and, if faced with a legitimate conflict of interest, I will recuse myself and/or divest if necessary.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

During the nomination process, I consulted with the Office of Government Ethics and the CPSC's Designated Agency Ethics Official to identify potential conflicts of interest. Any conflicts will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with CPSC's Ethics Official (a copy of which has been provided to the Committee). I am not aware of any other conflicts of interest.

Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with CPSC's Ethics Official (a copy of which has been provided to the Committee). If any other potential conflict arises, I will seek the advice and counsel of the CPSC's Designated Ethics Official and, if faced with a legitimate conflict of interest, I will recuse myself and/or divest if necessary.

6. Describe any activity during the past ten years, including the names of clients represented, in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

From 2012–2017 I was employed at the American Chemistry Council (ACC) as a lobbyist. At ACC, I was not a lobbyist. As a technical expert, I did provide technical assistance and background information to inform legislative proposals regarding chemical safety.

From 2009–2012 I was at OMB and since May 2017, I have been at EPA. While serving in the government, I have been involved in providing technical assistance on numerous legislative proposals. While serving at EPA I have had responsibility for programs which develop and implement Federal regulations.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;

- c. Describe the citation, disciplinary action, complaint, or personnel action;
 - d. Provide the results of the citation, disciplinary action, complaint, or personnel action.
- No to all the items above.
2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain.
- No to all the items above.
3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain.
- No to all the items above.
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain.
- No I have never been convicted of any criminal violation.
5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.
- No, I have never been accused formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis.
6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.
- No further information to disclose.

D. RELATIONSHIP WITH COMMITTEE

- 1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority? Yes.
- 2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.
- 3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.
- 4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF NANCY BETH BECK PHD, DABT

SCIENCE & REGULATORY POLICY EXPERT

Ph.D. Toxicologist with over twenty years of applied public health experience. Recognized leader of large Federal program/workforce. Played a critical role in implementing bipartisan legislation to improve how the Federal Government ensures the safety of chemicals in commerce. Guided by the science, and focused on transparency and clarity, Dr. Beck has a deep understanding of scientific issues, risk assessment, and the U.S. regulatory process. Always brings a scientific dialogue to the policy discussions to inform critical decision-making to protect public health. Successful collaborations have involved partnerships with senior staff and policy officials throughout the Executive Office of the President and Federal agencies.

Education & Certification

Diplomat American Board of Toxicology (DABT), November 2002, recertified Aug 2016
 Ph.D. Environmental Health, *University of Washington*, Seattle, WA, 1998 M.S.
 Environmental Health, *University of Washington*, Seattle, WA, 1992
 B.S. Microbiology (minor economics), *Cornell University*, Ithaca, NY, 1988

APPLIED PUBLIC HEALTH & TOXICOLOGY EXPERIENCE

National Economic Council (NEC), Executive Office of the President, Washington DC

Policy Advisor, on detail under the leadership of NEC Director Larry Kudlow
 June 2019-present

- Provide technical and policy advice to the Special Assistant to the President and the Deputy Assistant to the President and Deputy Director of the NEC on diverse environmental and energy issues.
- Assist with the drafting and implementation of energy and environmental executive orders.

Environmental Protection Agency, Washington DC

Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention

Dec 2018-present

Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention

May 2017–Dec 2018

- Serving as principal policy advisor to the EPA Administrator in the management, operation, decision-making, planning, programming, policy development and implementation of the Office of Chemical Safety and Pollution Prevention (OCSPP). Program has over 1,200 FTE with a budget of over \$240 Million.
- Responsible for managing and establishing strategies to implement EPA's programs under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), the Food Quality Protection Act (FQPA), and for promoting and coordinating programs engaged in chemical safety and pollution prevention.
- Successfully met all statutory deadlines for the first two years of implementation of the 2016 Frank R. Lautenberg Amendments to the TSCA statute.
- Represent the EPA Administrator in communications with Congress, OMB, White House Offices, other Federal agencies, states, regional and local governments, public interest organizations, private industry, professional groups and the general public.
- Provide policy and program guidance to Regional Administrators and EPA Assistant Administrators in their relationships with other entities in establishing and implementing chemical safety and pollution prevention policies.
- Represent, explain, and defend the policies and programs of OCSPP to other agency, Federal, Congressional, and private sector groups.

American Chemistry Council (ACC), Washington DC

Senior Director of Regulatory Science Policy

January 2012–April 2017

- Leading expert for ensuring sound implementation of risk assessment practices within the Frank R. Lautenberg Chemical Safety for the 21st Century Act (signed into law June 2016).
- Develop technical and policy materials to develop sound scientific policies on science and health critical for the government assessment of chemicals.
- Oversee funding and development of projects to advance risk assessment methodologies and practices.
- Serve as an expert technical and strategy resource to committees and self-funded groups on the development and improvement of scientific documents.
- Analyze scientific documents to identify critical scientific issues relating to improving the scientific basis to support decisions making. Provide technical assistance in protocol development, monitoring, auditing and communication of results.
- Co-lead ACC panel on advancing risk assessment and science policy regarding issues related to characterizing uncertainty, systematic review, and weight of evidence evaluations.
- Work to resolve member company concerns and problems related to chemical assessments and their interpretation.
- Monitor, analyze, and track emerging issues, developments and trends on science policy and chemical assessment and management.
- Serve as spokesperson on behalf of ACC in front of Federal agencies, congressional staff, press, international groups, scientific societies and other organizations.

Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC

TOXICOLOGIST/RISK ASSESSOR/POLICY ANALYST

AUG. 2002–January 2012

- Utilized toxicology expertise to bridge the science and policy gap by framing and identifying scientific issues for an active policy debate.
- Lead expert for international regulatory discussions with the EU, Canada and Mexico on risk assessment and nanotechnology policy.
- Managed and led the scientific review of the toxicological/scientific analyses and risk assessments upon which rulemakings, proposals, notices, guidance documents, and information collection requests rely as part of the review and approval by the Executive Office of the President (EOP). Included review of IRIS assessments.
- Supervised the oversight of Federal agency implementation of the Information Quality Law and OMB Information Quality Guidelines.
- Coordinated and led OMB risk assessment initiatives, including oversight, authorship, coordination of working group, shepherding of draft documents through peer review and public comment, and culmination into a final OMB/OSTP Memorandum on Risk Analysis.
- Monitored and analyzed human health, environmental and safety information which appears in legislative testimony through the legislative review clearance process within the EOP.
- Provided direct scientific, risk assessment, toxicological, and environmental health assistance and interpretation to White House political appointees and senior leaders. Prepared and conducted various briefing papers and talks.

US EPA CAREER DEVELOPMENT DETAIL

US EPA, Office of the Assistant Administrator for the Office of Research and Development, Washington DC

Feb. 2006–May 2006

- Reviewed and provided comments on strategies and draft documents for the EPA Assistant Administrator (Dr. George Gray).
- Assessed differences and similarities of risk assessment procedures among different EPA program offices, with a specific emphasis on pesticides and the IRIS processes.
- Gained critical understanding of the Office of Research and Development and its role in regulations.

AAAS (American Association for the Advancement of Science) Science and Technology Policy Fellow, Washington DC

FELLOW—US EPA, National Center for Environmental Assessment

Sept. 2000–Aug. 2002

- Worked on toxicology projects focused on identifying health issues related to childhood susceptibilities, human variability, childrens toxicokinetics and toxicodynamics, and susceptible populations.

Washington State Department of Health, Office of Environmental Assessments, Olympia, WA

Toxicologist / Public Health Advisor

Feb. 1999–July 2000

- Prepared health and exposure assessments, including site specific risk assessments, for ATSDR and the Washington State Department of Health.
- Evaluated and analyzed human health risks using comprehensive toxicology knowledge, risk assessment tools, air modeling programs, hydrogeology knowledge, and a strong understanding of the fate and transport of compounds in the environment and the body.
- Interacted regularly and participated with other regulators and the general public at availability sessions, community meetings, and public meetings.
- Provided comments and technical support to local, state, and Federal agencies on Remedial Investigations, Feasibility Studies, sampling workplans, and ad-

verse health outcomes associated with exposures to chemicals and hazardous substances.

Estee Lauder Companies

Microbiologist / Research Scientist

Aug. 1988–Sept. 1990

- Initiated, coordinated, and assumed full responsibility for adaptation and in-house validation of two *in vitro* toxicity tests.
- Worked with chemists to develop preservative systems for products for human use.

RECENT PROFESSIONAL ACTIVITIES AND LEADERSHIP ACTIVITIES

- *Society Memberships*: American Board of Toxicology; Association of Government Toxicologists; Society of Toxicology; American Association for the Advancement of Science (AAAS); Society of Risk Analysis
- *Board of Trustees—Evidence Based Toxicology Collaboration*, May 2015–July 2017
- *Trustee—Toxicology Education Foundation*, 2014–May 2017
- *Elected Treasurer—Society of Toxicology, National Capital Area Chapter*, Apr 2014–2017
- *Elected Chair—Society of Risk Analysis, Risk Policy and Law Specialty Group*, 2015–2016
- *Elected Councilor—Society of Toxicology, Risk Assessment Specialty Section*, Mar 2012–Mar 2014
- *Elected Councilor—Society of Toxicology, Regulatory Safety Evaluation Specialty Section*, Mar 2009–Mar 2012
- *Elected President—Association of Government Toxicologists*, Mar. 2007–Mar. 2008
- *Elected President-Elect, Councilor—Association of Government Toxicologists*, Mar. 2004–Mar. 2007

ADDITIONAL LEADERSHIP AND TRAINING ACTIVITIES

Internal Revenue Service, Volunteer Income Tax Assistant, certified 2004–2017

Prepare tax returns for low-income DC residents during tax season

ACC Management Training Program, completed August 2016

European Union Visitors Program, November 2009, selected to participate in a six day program in Brussels visiting EU offices and experts including official visits to the Belgium Food Safety Authority, DG–SANCO, DG–Environment, DG–Research, DG–Agriculture, the European Parliament, and the U.S. Mission to the EU.

OPM, Executive Development Seminar: Leading Change, two week course completed May 2009

OPM, Conflict Resolution Skills Seminar, three day course completed August 2007

AWARDS & HONORS

Fellow, Society of Risk Analysis, December 2018

Selected as a Fellow for substantial achievements in science or public policy relating to risk analysis and substantial service to the Society.

OMB Cross-Cutting Group Award, July 2011

OMB Awards Ceremony, award given “For extraordinary efforts to develop and implement responses to the Deepwater Horizon oil spill.”

OMB Special Achievement Award, July 2009

Award given “For continuing well-grounded scientific analyses that guide policy, initiatives to increase transparency in the presentation of risk values, and leadership of U.S. contributions to the international risk dialogue.”

OMB Quality Step Increase Award, July 2008

Award recognizes employees whose performance is consistently at a high level in terms of quality and quantity, and appears likely to continue to be so indefinitely into the future.

OMB Professional Achievement Award, July 2007

Award given “For creative efforts in the uncharted territory of implementing the Information Quality Act, outstanding work in shepherding OMB’s Proposed Bulletin

on Risk Assessment, and important contributions to building support for scientific expertise in policy decisions.”

OMB Special Achievement Award, July 2006

Award given “For sound judgment, creativity, and groundbreaking work to develop the Proposed Bulletin on Risk Assessment.”

OMB Cross-Cutting Group Award, July 2005

OMB Awards Ceremony, award given “For working with EPA to develop an innovative cap-and-trade program to limit mercury emissions from coal-fired plants.”

OMB Professional Achievement Award, July 2004

OMB Awards Ceremony, award given “For contributions that have informed and improved numerous public health policy decisions and have fostered solid support for the critical importance of scientific expertise.”

Graduate Student Travel Award, Dec. 1998

Society of Toxicology 38th Annual Meeting

Graduate Student Platform Presentation Award, Sept. 1998

Pacific Northwest Association of Toxicologists, 15th Annual Mtg.

Excellent Question Award, Sept. 1998

Pacific Northwest Association of Toxicologists, 15th Annual Mtg.

Environmental Pathology/Toxicology Training Grant, 1993–1998

National Institute of Environmental Health Sciences (NIEHS)

Research Assistantship, Oct. 1990–Jan. 1993

Department of Environmental Health, University of Washington, Seattle, WA

Deans List, Aug. 1987–May 1988

Cornell University, Ithaca, NY

PUBLICATIONS

Hoffmann S, de Vries RBM, Stephens ML, Beck NB, Dirven HAAM, Fowle JR 3rd, Goodman JE, Hartung T, Kimber I, Lalu MM, Thayer K, Whaley P, Wikoff D, Tsaion K. A Primer on Systematic Review in Toxicology, *Arch Toxicol*. Jul;91(7):2551–2575, 2017

Juberg DR, Knudsen TB, Sander M, Beck NB, Faustman EM, Mendrick DL, Fowle JR 3rd, Hartung T, Tice RR, Lemazurier E, Becker RA, Fitzpatrick SC, Daston GP, Harrill A, Hines RN, Keller DA, Lipscomb JC, Watson D, Bahadori T, Crofton KM., Future Tox III: Bridges for Translation, *Toxicol Sci*, Oct 25, 2016 epub ahead of print

Simon TW, Zhu Y, Dourson ML, Beck NB, Bayesian methods for uncertainty factor application for derivation of reference values, *Regul Toxicol Pharmacol*, Oct;80:9–24, 2016

Stephens ML, Betts K, Beck NB, Coglian V, Dickersin K, Fitzpatrick S, Freeman J, Gray G, Hartung T, McPartland J, Rooney AA, Scherer RW, Verloo D, Hoffmann S., The emergence of systematic reviews in toxicology, *Toxicol Sci*. Jul;152(1):10–6, 2016.

Beck NB, Becker RA, Erraguntla N, Farland WH, Grant RL, Gray G, Kirman C, LaKind JS, Jeffrey Lewis R, Nance P, Pottenger LH, Santos SL, Shirley S, Simon T, Dourson ML., Approaches for describing and communicating overall uncertainty in toxicity characterizations: U.S. Environmental Protection Agency’s Integrated Risk Information System (IRIS) as a case study, *Environ Int*. Apr-May;89–90:110–28, 2016.

Beck NB, Becker RA, Boobis A, Fergusson D, Fowle JR, Goodman J, Hoffmann S, Lalu M, Leist M, Stephens ML. Instruments for assessing risk of bias and other methodological criteria of animal studies: omission of well-established methods, *Environ Health Perspect*. Mar;122(3):A66–7, 2014.

Rhomberg LR, Goodman JE, Bailey LA, Prueitt RL, Beck NB, Bevan C, Honeycutt M, Kaminski NE, Paoli G, Pottenger LH, Scherer RW, Wise KC, Becker RA., A survey of frameworks for best practices in weight-of-evidence analyses, *Crit Rev Toxicol*. 2013 Oct;43(9):753–84, 2013.

Ylitalo GM, Krahn MM, Dickhoff WW, Stein JE, Walker CC, Lassitter CL, Garrett ES, Desfosse LL, Mitchell KM, Noble BT, Wilson S, Beck NB, Benner RA, Koufopoulos PN, Dickey RW., Federal Seafood Safety Response to the Deepwater Horizon Oil Spill, *Proc Natl Acad Sci USA*, Dec 11;109(50):20274–9, 2012.

Sonawane, B., Beck, N.B., Threats to Children’s Environmental Health In Developing Countries: An Overview of the Problem, book chapter in: *The Handbook of Pediatric Environmental Health 2nd Edition*. Amer. Academy of Pediatrics 2003.

Beck, N.B., Sidhu, J.S., Omiecinski, C.J. Baculovirus Vectors Repress Phenobarbital-Mediated Gene Induction and Stimulate Cytokine Expression in Primary Cultures of Rat Hepatocytes. *Gene Therapy* 7: 1274–1283, 2000.

Beck, N.B., Omiecinski, C.J. Lack of Involvement of cAMP/PKA Pathways in the Phenobarbital Mediated Induction of the Rat CYP2B Genes in Primary Hepatocyte Cultures. *Biochemical Pharmacology* 58:1109–1114, 1999.

Ramsden, R., Beck, N.B., Sommer, K.M., Omiecinski, C.J. Phenobarbital Responsiveness Conferred by the 5'-Flanking Region of the Rat CYP2B2 Gene in Transgenic Mice. *Gene* 228:169–179, 1999.

Beck, N.B. Phenobarbital Mediated Induction of the Cytochrome P450 2B Genes: Mechanistic Investigations. Doctoral Dissertation. 1998.

Hassett, C, Robinson, K.B., Beck, N.B., Omiecinski, C.J. The Human Microsomal Epoxide Hydrolase Gene (EPHX1): Complete Nucleotide Sequence and Structural Characterization. *Genomics* 23:433–442, 1994.

Beck, N.B., Koenig, J.Q., Luchtel, D.L., Altman, L.C., Orsborn, M.T., Kenney, J.S. Ozone Can Increase the Expression of Intercellular Adhesion Molecule-1 and the Synthesis of Cytokines by Human Nasal Epithelial Cells. *Inhalation Toxicology* 6:345–357, 1994.

Beck, N.B. The Effects of Ozone on Intercellular Adhesion Molecule 1 Expression in Human Nasal Epithelial cells. Masters Thesis. 1992.

PUBLISHED ABSTRACTS, PRESENTATIONS, POSTERS, AND OTHER REPORTS:

Beck, N.B., Pottenger, L, Workshop: Understanding and Communicating Uncertainty in Hazard Assessment and Dose Response. March 2015 Society of Toxicology Annual Meeting, serving as workshop organizer and chairperson.

Beck, N.B., Symposium: Understanding the Elements of Systematic Review and Evidence Integration. December 2014 Society of Risk Analysis Annual Meeting.

Lewis, R.J., Beck, N.B., Symposium: EPA's Framework for Human Health Risk Assessment to Inform Decision Making: An Industry Perspective. December 2014 Society of Risk Analysis Annual Meeting.

Beck, N.B., Dose-Response: Current Challenges and Opportunities for Improvement. Presented at the October 2014 Society of Toxicology Environmental Toxicology and Chemistry Annual meeting as part of a workshop on Challenges Facing the Next Generation of Risk assessment.

Beck, N.B., Goodman, J.E., Continuing Education Course: Epidemiology for Toxicologists: What the Numbers Really Mean. March 2014 Society of Toxicology Annual Meeting, served as course organizer and chairperson.

Beck, N.B., Goodman, J.E., Workshop: Understanding Weight of Evidence: Exploring Different Approaches to Integrating Evidence From Diverse Data Streams. Presented at the 2014 Society of Toxicology Annual Meeting, served as workshop organizer and chairperson.

Beck, N.B., Dose-Response: Current Challenges and Opportunities for Improvement. Presented at the 2014 Society of Toxicology Annual Meeting as part of a workshop on Challenges Facing the Next Generation of Risk assessment.

Beck, N.B., Symposium: Modernizing the Tools & Approaches to Improve Data Availability & Transparency, 2013 Society of Risk Analysis Meeting, symposium chair and organizer.

Wise K, Beck N.B., Fischer D, Pottenger L.H., Beatty P, Cruzan G, Becker R.A., Getting the Science Right on Mode of Action: An Essential Element for IRIS Improvement. 2013 Society of Risk Analysis Meeting, Symposium on EPA's IRIS. Presentation to be given by Rick Becker.

Beck, N.B., Discussion: Pulling the Pieces Together. 2013 Society of Risk Analysis Meeting, Symposium on Integrating Evidence. Symposium Presentation.

Beck, N.B., Becker, R.A., Twardowski, A, Is there Overlap in U.S. Hazard Characterization Programs that Focus on Environmental Exposure? An Evaluation of the Data, Presented at the 2013 Society of Toxicology Annual Meeting, March 2013. Poster Presentation.

Beck, N.B., Becker, R.A., Twardowski, A, Is there Overlap in U.S. Hazard Characterization Programs that Focus on Environmental Exposure? An Evaluation of the Data, Presented at the 2012 Society of Risk Analysis Annual Meeting, December 2012. Poster Presentation.

Mercado-Feliciano, M., Beck, N.B., Refining Your Science Communication Skills: The Art of the One Pager; Session Chair and Presenter, Annual Society of Toxicology Meeting March 2012. Education Career Development Session.

Memorandum on Policy Principles for the U.S. Decision-Making Concerning Regulation and Oversight of Applications of Nanotechnology and Nanomaterials, co-lead staff author, released June 9 2011, available at: <http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/nanotechnology-regulation-and-oversightprinciples.pdf>.

Beck, N.B., Mercado-Feliciano, M., Bringing Toxicology to the Decision-Makers Table: Opportunities for Science Policy Positions in Washington DC; Session Chair at the 50th Annual Society of Toxicology Meeting March 2011. Education Career Development Session.

2011 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 3 on Information Quality, released June 2011: available at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf

2010 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 3 on Information Quality, released January 2009: available at: http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf

2009 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 4 on Information Quality, released January 2009: available at: http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/2009_final_BC_Report_01272010.pdf

2008 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 3 on Information Quality, released January 2009: available at: http://www.whitehouse.gov/omb/assets/information_and_regulatory_affairs/2008_cb_final.pdf

2007 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 3 on Information Quality, released June 2008: available at: http://www.whitehouse.gov/omb/assets/omb/inforeg/2007_cb/2007_cb_final_report.pdf.

OMB/OSTP Principles for Risk Analysis, M-07-24, lead author, released September 19, 2007, available at: http://www.whitehouse.gov/omb/assets/regulatory_matters_pdf/m07-24.pdf.

2006 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 4 on Information Quality, released January 2007: available at: http://www.whitehouse.gov/omb/inforeg/2006_cb/2006_cb_final_report.pdf.

OMB Proposed Bulletin on Risk Assessment. lead staff author, released January 2006: available at: http://www.whitehouse.gov/omb/inforeg/proposed_risk_assessment_bulletin_010906.pdf.

2005 Report to Congress on the Costs and Benefits of Federal Regulation. OMB report to Congress. lead author of Chapter 4 on Information Quality, released December 2005: available at: http://www.whitehouse.gov/omb/inforeg/2005_cb/final_2005_cb_report.pdf.

Information Quality: A Report to Congress Fiscal Year 2003. OMB Report to congress. lead author, April 2004; available at: http://www.whitehouse.gov/omb/inforeg/fy03_info_quality_rpt.pdf.

Beck, N.B., Sonawane B. Children's Health Risk Characterization from Exposure to Tetrachloroethylene. Presented at the 42nd Annual Society of Toxicology Meeting by B. Sonawane, March 2003. Poster Presentation.

Beck, N.B., Rice, D, Sonawane B. The National Survey of Mercury Concentrations in Fish, Fish Consumption Patterns, and Major Sources of Mercury Throughout the United States. Presented at the WHO International Conference on Environmental Threats to the Health of Children, Bangkok, Thailand, March 2002. Session Talk.

Beck, N.B., Sonawane B. Are the Data Available to Protect the Children: Recent U.S. EPA Risk Assessments and Children's Health. Presented at the WHO International Conference on Environmental Threats to the Health of Children, Bangkok, Thailand, March 2002. Poster Presentation.

Beck, N.B., Sonawane B. Children's Health and Air Toxics: How Recent Risk Assessments are Addressing the Issues. Presented at 9th International Congress of Toxicology Meeting, Brisbane, Australia, July 2001. Poster presentation.

- Ginsberg G.L., Hattis D.B., Smolenski S., Russ A., Kozlak M., Goble, R.L., *Beck, N.B.*, Sonawane B. Assessing Pharmacokinetic Differences Between Children and Adults: Implications for Chemical Risk Assessment. Presented at 9th International Congress of Toxicology Meeting, Brisbane, Australia, July 2001. Poster presentation.
- Sonawane B. *Beck, N.B.* Health Risk Assessment of Benzene, an Update. Presented at 9th International Congress of Toxicology Meeting (by B. Sonawane), Brisbane, Australia, July 2001. Poster presentation.
- Sonawane B. Ginsberg G.L., Goldstein, D.A., *Beck, N.B.* A Conceptual Framework to Evaluate the Risks of Environmental Chemical Exposures to Children: Issues for Consideration. Presented at 9th International Congress of Toxicology Meeting (by D. Goldstein), Brisbane, Australia, July 2001. Poster presentation.
- Beck, N.B.*, Omiecinski, C.J. Lack of Involvement of cAMP and PKA in the Phenobarbital (PB) Mediated Induction of the Rat Cytochrome P450 (CYP) CYP2B Genes in Primary Hepatocyte Cultures. *Toxicological Sciences* 48(1-S) 405 abstr. 1999. Presented at the Society of Toxicology Annual Meeting, New Orleans, LA, March, 1999. Poster presentation.
- Beck, N.B.*, Omiecinski, C.J. Phenobarbital Mediated Induction of the Rat CYP2B Genes in Primary Hepatocyte Cultures. Presented at the Pacific Northwest Chapter of the Society of Toxicology, 15th Annual Meeting, Leavenworth, Washington, September 1998. Platform talk.
- Beck, N.B.*, Ramsden, R., Sommer, K.M., Omiecinski, C.J. Transcription Factor Binding to the Phenobarbital Responsive Element (PBRE) in the P450 2B2 Gene. *Toxicological Sciences* 42(1-S) 22 abstr. 1998. Presented at Society of Toxicology Annual Meeting, Seattle, Washington, 1998. Poster session.
- Beck, N.B.*, Ramsden, R., Sommer, K.M., Omiecinski, C.J. Characterization of the Phenobarbital Responsive Element (PBRE) in the P450 2B2 Gene. Presented at the Pacific Northwest Chapter of the Society of Toxicology, 14th Annual Meeting, Ocean Shores, Washington, September 1997. Platform talk.
- Beck, N.B.*, Omiecinski, C.J. Cooperative Interactions of Nuclear Proteins with the 5' Upstream Region of the Rat Cytochrome CYP2B2 Gene. *International Toxicologist* 7(1) abstr. 1995. Presented at the meeting of the International Congress of Toxicology, Seattle, WA, 1995. Poster Discussion session.
- Beck, N.B.*, Altman, L.C., Koenig, J.Q., Luchtel, D.L., Orsborn, M.T., Costa, L.G., Reilly, M.T., Kavanagh, T.J. Development of a Quantitative Morphometric Approach to Examine the Effects of Ozone on Intercellular Adhesion Molecule-1 on Human Nasal Epithelial Cells. *Toxicologist*. 13(1):298 abstr. 1993. Presented at Society of Toxicology Annual Meeting, New Orleans, LA, 1993. Poster discussion session.
- Beck, N.B.*, Altman, L.C., Luchtel, D.L., Koenig, J.Q., Orsborn, M.T., Kavanagh, T.J., Baker, C., Welch, M., Kinney, J.S. Ozone Stimulates ICAM-1 Expression and Cytokine Release from Cultured Human Nasal Epithelial Cells. *J Allergy Clin Immunol*. 91:254 abstr. 1993. Presented (by L.C. Altman) at Society of Allergy and Clinical Immunology Annual Meeting, Chicago, IL, 1993. Poster session.

SELECTED INVITED EVENTS

- 2017–2019: Diverse Domestic and International Speaking Engagements on behalf of EPA and the Office of Chemical Safety and Pollution Prevention.
- Transatlantic Week*, July 23, 2015, *Invited speaker* at session on Transatlantic Dialogue on Science and Public Policy, Washington DC.
- Alliance for Risk Assessment*, May 21, 2014, *Invited Speaker* at workshop on problem formulation and dose response, Austin TX.
- US Risk Assessment and Regulatory Policy*, 2012–2015, multiple presentations to various ACC member companies in the U.S.
- OPM Course on Federal Regulatory Policy*, May 22, 2013, *Invited Speaker* on Information Quality and Risk Analysis in the Federal Government, Shepardstown, WV.
- OECD/Mexico Workshop New Ideas for Risk Based Regulation and Regulatory Governance in Mexico*, July 13, 2011, *Invited Speaker* on U.S. Risk Guidance and International Cooperation in Evaluating and Improving the Quality of Domestic Policies and Regulations, Mexico City, Mexico.
- OPM Course on Federal Regulatory Policy*, June 29, 2011, *Invited Speaker* on Information Quality and Risk Analysis in the Federal Government, Shepardstown, WV.
- 2nd International Conference on Risk Assessment*, Jan. 25–25, 2011, *Lead of U.S. delegation, Invited Speaker, Uncertainty Working Group Session Chair*, Brussels Belgium.

Treasury Board of Canada Conference on Risk and Transatlantic Risk Dialogue meeting, June 2–4, 2010, *Invited Speaker* on U.S. Risk Analysis Guidelines and *Session Lead* for Working Group on Uncertainty, Ottawa, Canada.

OPM Course on Federal Regulatory Policy, June 17, 2009, *Invited Speaker* on Information Quality and Risk Analysis in the Federal Government.

Transatlantic Risk Dialogue, July 10–11, 2008, *Speaker and Organizer*, Washington DC; Nov. 12–14, 2008, *Speaker and Co-organizer*, Brussels, Belgium.

Bertelsmann International Risk Governance Conference, Nov. 16, 2008, *invited co-chair of session*, Berlin, Germany.

Workshop on the Regulatory Risk Assessment Guidelines for the Government of Canada. Feb 20 2008, *Invited Participant and Speaker*, Ottawa, Canada.

Society of Risk Analysis, Workshop on Quantitative Risk Assessment and Cost Benefit Analysis, Dec 9, 2007, *Invited Speaker* on Updated Principles for Risk Analysis and OMB Quality Initiatives, San Antonio, Texas.

Global Approaches to Risk and Regulation: A high level policy seminar. Feb 20th and 21st 2007, *Invited Participant and Speaker*, Ditchley Park, Oxfordshire, UK.

United Kingdom, Better Regulation Executive, Invited Speaker on Regulatory Review, Feb 19 2007, Whitehall St., London, UK.

Toxicology Forum, 32nd Annual Summer Meeting, Aspen, Colorado, July 10–13, 2006 *Invited Speaker* on Proposed Risk Assessment Bulletin. Sponsored by the Toxicology Forum.

House Science Briefing on the Proposed Risk Assessment Bulletin, Invited Lead Speaker, June 23, 2006, Washington DC.

Society of Risk Analysis Symposium, May 23, 2006, *Invited Speaker* on Proposed Risk Assessment Bulletin, representing OMB. 90 minute talk. Washington DC.

National Academy of Sciences, May 22, 2006, *Invited Speaker* on Proposed Risk Assessment Bulletin, representing OMB. Washington DC.

Society of Toxicology, Risk Assessment Specialty Section Annual Meeting, San Diego, California, March 6–9, 2006,

Invited Speaker on OMB Proposed Bulletin on Risk Assessment. Sponsored by the U.S. EPA.

Toxicology Forum 31st Annual Summer Meeting, Aspen, Colorado, July 10–14, 2005, *Invited Speaker* on Peer Review. Sponsored by the Toxicology Forum.

EPA National Conference on Managing Environmental Quality Systems, San Diego, California, April 11–13, 2004, *Invited Speaker* on Information Quality at plenary panel. Sponsored by the U.S. EPA.

University of Washington, School of Public Health and Community Medicine, Seattle, Washington October 14, 2004, *Invited Speaker* for Departmental Seminar Series. Sponsored by the University of Washington.

WHO IPCS Uncertainty in Exposure Assessment Working Group and Scoping Discussion on Data Quality, Geneva Switzerland, Aug 19–20 2004, *Invited Participant and document preparer*, Sponsored by the World Health Organization.

European Union-United States Meeting on Precaution, Berlin Germany, June 19–21 2003, *invited participant*, Sponsored by the U.S. State Department and the European Policy Center.

Chemical Control Policy Dialogue Meeting, Stockholm Sweden, Sept 15–17 2003, *Invited participant*, Sponsored by the U.S. State Department and the European Policy Center.

Association of Government Toxicologists, Washington DC, Sept 11 2003, *invited speaker*, topic: the Role of Science at OMB: Risk Assessment and Regulations.

National Science Board, National Science Foundation, Oct 16, 2003, *invited speaker*, topic: peer review.

National Center for Dissemination of Disability Research, Knowledge, Dissemination and Utilization Program meeting, Aug 26, 2003, *invited speaker*, topic: Information Quality Guidelines.

EPA/AFS/AAP/ACOG/AOEC Mercury Medical Symposium, Burlington, Vermont, Nov 19–20, 2002. Invited attendee.

Allegheny-Erie Society of Toxicology (AESOT) Meeting, Pittsburgh PA, May 2001. Led interactive lecture/training on toxicology outreach using the Tox-in-the-Box Toolkit.

The CHAIRMAN. Thank you very much, Dr. Beck.

And now Mr. Walsh.

**STATEMENT OF MICHAEL J. WALSH, JR., NOMINEE TO BE
GENERAL COUNSEL, U.S. DEPARTMENT OF COMMERCE**

Mr. WALSH. Chairman Wicker, Ranking Member Cantwell, and members of the Commerce, Science, and Transportation Committee, thank you for considering my nomination to be General Counsel at the U.S. Department of Commerce.

It is a privilege to appear before you today.

Thank you too, to the staff of the Committee for all the work that you have done in preparing for this hearing.

I am especially grateful to President Trump for nominating me to this position and for the continued support of Commerce Secretary Wilbur Ross.

And though they are not able to be here, I must also thank my wife Emily and my children, Charlotte, Michael, Francis Xavier, and Nicholas, who are watching on the Web stream right now, for all the sacrifices that they have made during my tenure in public service.

I also want to thank my parents, my sister, her family, and all of my family members and friends who are watching from Connecticut, Massachusetts, New York, and Virginia.

Finally, I would like to thank my wonderful colleagues at the Department of Commerce with whom I have enjoyed working over the past two and a half years.

Prior to joining the Commerce Department as Deputy General Counsel in early 2018, I was a partner at an international law firm where I litigated complex class action cases.

Since my arrival at the Department, I have been involved in many of the issues that encompass our agency's broad mission, including those associated with NIST, NOAA, trade enforcement, the protection of intellectual property, patents, and trademarks; and economic and minority business development and the Census Bureau, which announced this morning that retail sales were up 17.7 percent.

I have also supported the Bureau of Industry and Security's initiatives to secure our nation's defense industrial base and to carefully and thoughtfully administer our nation's export control laws.

I understand the importance of compliance with the laws that dictate every aspect of the Commerce Department's operations. If confirmed, I will ensure that these laws are upheld and are being applied with the greatest programmatic integrity and transparency.

I also look forward to working with all of the members of this committee on your ideas for new programs and policies aimed at rebuilding our industrial base, reshoring essential industries, protecting American intellectual property from foreign predation, and creating millions of great jobs that will provide every American with the opportunity to pursue the American dream.

I look forward to answering any questions and, again, I sincerely thank you for your consideration.

[The prepared statement and biographical information of Mr. Walsh follow:]

PREPARED STATEMENT OF MICHAEL J. WALSH, JR., NOMINEE TO BE GENERAL
COUNSEL, U.S. DEPARTMENT OF COMMERCE

Chairman Wicker, Ranking Member Cantwell, and members of the Commerce, Science, and Transportation Committee, thank you for considering my nomination to be General Counsel at the U.S. Department of Commerce.

It is a privilege to appear before you today.

Thank you, too, to the staff of the Committee for all the work you have done in preparing for this hearing.

I am especially grateful to President Trump for nominating me to this position, and for the continued support of Commerce Secretary Wilbur Ross.

And though they are not able to be here, I must also thank my wife, Emily and my children, Charlotte, Michael, Francis Xavier, and Nicholas, who are watching via the live Web stream, for all the sacrifices they have made during my tenure in public service.

I also want to thank my parents, my sister, her family, and all of my family members and friends who are watching from Connecticut, Massachusetts, New York, and Virginia.

Finally, I would like to thank my wonderful colleagues at the Department of Commerce, with whom I have enjoyed working over the past two and a half years.

Prior to joining the Commerce Department as Deputy General Counsel in early 2018, I was a partner at an international law firm, where I litigated complex class action cases.

Since my arrival at the Department, I have been involved in many of the issues that encompass our agency's broad mission, including those associated with NOAA; NIST; Census; trade enforcement; the protection of intellectual property, patents, and trademarks; and economic and minority business development.

I have also supported the Bureau of Industry and Security's initiatives to secure our Nation's defense industrial base, and to carefully and thoughtfully administer our export-control laws.

I understand the importance of compliance with the laws that dictate every aspect of the Commerce Department's operations.

If confirmed, I will ensure that these laws are upheld, and are being applied with the greatest programmatic integrity and transparency.

I also look forward to working with all members of this Committee on your ideas for new programs and policies aimed at rebuilding our industrial base, reshoring essential industries, protecting American intellectual property from foreign predation, and creating millions of great jobs that will provide every American with the ability to pursue the American Dream.

I look forward to answering any questions and, again, I sincerely thank you for your consideration.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):

Michael John Walsh, Jr. (Mike).

2. Position to which nominated: General Counsel, Department of Commerce.

3. Date of Nomination: May 4, 2020.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: 1401 Constitution Avenue, NW, Washington, D.C. 20230.

5. Date and Place of Birth: September 21, 1977; Waterbury, CT.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Emily Walsh, N/A.

7. List all college and graduate degrees. Provide year and school attended.

Boston College, B.A., 1999.

Columbia Law School, J.D., 2002.

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Brenner Saltzman & Wallman, LLP, Summer Associate (2000, 2001).

Hale & Dorr, LLP, Summer Associate (2001).

Hunton & Williams, LLP, Associate (2002).

O'Melveny & Myers LLP, Associate (2003–2007), Counsel (2008–2012), Partner (2012–2018).

U.S. Department of Commerce, Deputy General Counsel (January 2018–October 2018).

U.S. Department of Commerce, Chief of Staff (October 2018–August 2019).

U.S. Department of Commerce, Chief of Staff; Performing the Delegated Duties of the General Counsel (August 2019 to present).

Beginning at O'Melveny & Myers and continuing through the present, all of my employment involved managing large teams of lawyers. As Deputy General Counsel at the Department of Commerce, I, along with the then-General Counsel, managed the Office of General Counsel. As Chief of Staff at the Department of Commerce, I manage the Office of the Secretary and together with the Deputy Secretary, I am responsible for overseeing all of the Department's component bureaus on behalf of the Secretary of Commerce.

9. Attach a copy of your résumé.

Attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

I was an equity partner at my former law firm, O'Melveny & Myers LLP, from February 1, 2012 through January 7, 2018.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or disability.

Hidden Creek Country Club, Reston, VA (2008–2011).

Army Navy Country Club, Arlington and Fairfax, VA (2011 to present).

Barefoot Resort & Golf Club, North Myrtle Beach, SC (2013 to present).

These clubs do not restrict membership on the basis of sex, race, color, religion, national origin, age, or disability.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

In 2016, I volunteered to assist the president's campaign with vetting potential Vice Presidential candidates. I also provided volunteer assistance to the transition team.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years.

I have not made any political contributions to any individual, campaign organization, political party, or similar entity over the past 10 years. I did contribute \$1,120 to my former law firm's political action committee between April 2013 and December 2016.

16. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

I received scholarships from the Waterbury Country Club, the Knights of Columbus and the Middlebury Lions Club for my undergraduate studies at Boston College.

I graduated from Boston College magna cum laude. I also received a partial merit scholarship to attend Columbia Law School.

In private law practice, I received the following recognitions and awards:

Super Lawyers, Rising Star, 2013–2018.

Legal 500, Leading Lawyer, Securities: Shareholder Litigation, 2015–2018.

Friend of Children (for pro bono work), Justice for Children, 2011.

17. Please list each book, article, column, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Seth Aronson, Robert Stern, and Michael Walsh, “Courts Deny Plaintiffs Over Section 304 Suits,” *International Financial Law Review*, March 2006.

Jeffrey Kilduff, Robert Stern, Michael Walsh, and Julia Schiller, “Digimarc: The Final Nail in the SOX 304 Coffin,” *Securities Law 360*, January 2009.

18. List digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the name of an “alias” or “handle” you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

LinkedIn: <https://www.linkedin.com/in/mike-walsh-8563ab>

Twitter: @m_j_w_j_r

19. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

20. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have served at the Department of Commerce since 2018. As Deputy General Counsel, Chief of Staff, and now performing the duties of the General Counsel, I oversee all mission critical legal matters within the Department, including litigation, export enforcement, AD/CVD and other trade compliance issues, GDPR, CFIUS, and supply chain risk management. I provide legal and strategic advice to the Secretary, Deputy Secretary, and other senior Department leaders. I also coordinate closely with other senior lawyers in the Executive Branch through the inter-agency process. I am deeply familiar with the operations of the Office of General Counsel and the Department.

In private practice, I provided clients with strategic legal advice on cutting edge legal issues. If confirmed, I look forward to continuing to do so at the Department of Commerce.

21. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The role of the General Counsel is to provide legal advice to support the strategic vision and policies set by the Secretary of Commerce as informed by the President’s agenda. If confirmed, I will ensure that the execution of this strategic vision complies with the law. Proper management and accounting controls are critical to the health of any large organization, and, if confirmed, I will continue to work with the Secretary, Deputy Secretary, and Chief Financial Officer to ensure those controls are maintained and remain strong.

I have managed large teams of people for more than a decade, first as counsel and partner at my former law firm, and next as Deputy General Counsel and Chief of Staff at the Department of Commerce.

22. What do you believe to be the top three challenges facing the department/agency, and why?

The top challenge facing the Department is conducting a complete and accurate 2020 Decennial Census in the face of unprecedented attempts to misinform the public and disrupt or otherwise undermine the count. The Department must successfully implement and integrate all operations and information technology systems and complete non-response follow up operations in an uncertain environment as the Federal government battles the COVID–19 virus. The Department must also ensure

data quality, motivate hard to count populations to respond, and effectively monitor contracts to validate performance, control costs, and achieve 2020 Census goals.

Second, the Department must continue to pursue free, fair, and reciprocal trade policies for the United States. The continued focus on anti-dumping and counter-vailing duties investigations alongside the Department's trade promotion efforts will continue to reinvigorate domestic industry and provide economic prosperity for all Americans.

Third, the Department must continue to refine existing processes and personnel allocation to continue to ensure protection of economic and national security. From the administration of the Section 232 exclusion process to the implementation of ECRA and FIRREA, the Department must continue to ensure it is well placed to protect our Nation's economic and national security.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I do not have any financial arrangements, deferred compensation agreements, or other continued dealings with my former law firm. I rolled my former employer sponsored Keogh retirement account into an IRA in 2018.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

I am not aware of any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which I have been nominated.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

Under the Trump Administration Ethics Pledge, I was subject to a two-year bar on participating in matters directly involving my former law firm and my former clients. That bar expired on January 8, 2020.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

In connection with the nomination process, I have consulted with the Office of Government Ethics and Department of Commerce ethics officials to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement. I understand that my ethics agreement has been provided to the Committee. I am not aware of any potential conflict of interest.

6. Describe any activity during the past ten years, including the names of clients represented, in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain.

In approximately June 2011, I was charged with violating Virginia Code 46.2–862 for traveling 81 mph in a 70 mph zone. The charge was reduced to “defective equipment,” a non-criminal, non-moving, non-point violation on August 2, 2011.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF MICHAEL J. WALSH, JR.

EDUCATION

Columbia Law School, New York, New York

J.D., May 2002

Journal: *Columbia Business Law Review*

Boston College, Chestnut Hill, Massachusetts

B.A., *magna cum laude*, Political Science, May 1999 Minor:

Faith, Peace, and Justice

REPRESENTATIVE EXPERIENCE

Department of Commerce, Washington, D.C., August 2019-present

Chief of Staff, Performing the Delegated Duties of the General Counsel (Security Clearance—TS/SCI)

Oversee the Office of General Counsel; Chief Legal Officer, Department of Commerce

- Manage entire legal portfolio at the Department of Commerce, with over 600 lawyers reporting through to me.
- Oversee highest impact legal initiatives throughout the Department, including export administration, export enforcement, emerging technologies supply chain risk management, GDPR, and CFIUS.
- Manage critical litigation in Federal district and appellate courts throughout the country.
- Coordinate the determination of Department positions on Supreme Court cases.
- Provide legal and strategic advice to the Secretary, Deputy Secretary, bureau leadership, and other senior Department leaders.
- Coordinate with White House counsel and interagency lawyers on important legal issues.

Department of Commerce, Washington, D.C., September 2018–August 2019

Chief of Staff (Security Clearance—TS/SCI)

Oversee the entire Department of Commerce, a 47,000-employee organization divided into twelve bureaus reporting to the Secretary of Commerce through me.

- Together with the Office of General Counsel, oversee all mission critical legal matters within the Department, including litigation, export enforcement, AD/CVD and other trade compliance issues, GDPR, CFIUS, supply chain risk management, and congressional oversight.
- Interface with CEOs, boards of directors, and other C-suite executives with critical business before the Department.
- Interface with foreign heads of state, ministers, and other officials on a variety of issues.
- Represent the United States in bilateral trade talks.
- Interface with Cabinet members, their Chiefs of Staff and General Counsels, and the White House on important administration priorities and execute those priorities through bureau heads and other senior Commerce Department leadership.
- Coordinate with senior administration policymakers through NSC-led inter-agency process to determine, implement, and execute administration policy.
- Provide legal and strategic advice to the Secretary of Commerce.

Department of Commerce, Washington, D.C., January 2018–October 2018

Deputy General Counsel (Security Clearance—TS/SCI)

Principal Deputy to General Counsel; oversee all legal and operational aspects of Office of General Counsel.

O'Melveny & Myers LLP, Washington, D.C., January 2003–January 2018

Partner, Litigation Department, Securities Litigation Practice Group and Financial Services Group, February 2012–2018; *Managing Partner*, Pro Bono, Washington, DC Office, 2013–2018

Securities and Shareholder Derivative Litigation

- Represented government sponsored enterprise in complex, Federal multi-district securities class action and parallel individual securities and shareholder derivative actions arising out of the financial crisis of 2008 and alleging upwards of \$40 billion in damages.
 - Briefed general counsel, head of litigation, C-suite executives, and members of the Board of Directors on litigation strategy and impact of litigation positions on business.
 - Successfully dismissed Section 11 and 12(a)(2) claims under the Securities Act of 1933 on novel exemption grounds.
 - Successfully dismissed two counts of fraud under Securities Exchange Act of 1934.
 - Successfully argued for dismissal of individual plaintiff state law claims under Securities Litigation Uniform Standards Act of 1998.
 - Led successful multi-firm effort before the Judicial Panel on Multidistrict Litigation to transfer and coordinate all actions in Southern District of New York.
 - Managed all aspects of electronic document discovery and successfully argued against motion to compel production of over 60 million pages of documents.
 - First chair defense of senior executive and board member depositions.
 - First chair merits depositions of senior executives and board members of plaintiff institutions.
 - Negotiated resolution of matter in hotly contested mediation.
- Represented government sponsored enterprise in complex Federal multi-district securities class action arising out of accounting restatement and alleging upwards of \$9 billion in damages as well as accompanying regulatory and internal inquiries.
 - Briefed general counsel, head of litigation, and C-suite executives on litigation strategy and impact of litigation positions on business.
 - Authored motions to dismiss and motions for summary judgment.
 - Managed all aspects of electronic document discovery. Coordinated team of twenty attorneys preparing for offensive and defensive expert discovery regarding accounting standards, corporate governance, and damages.
 - First chair merits depositions of senior management and outside director witnesses.
 - Interfaced daily with accounting and corporate governance experts and economists in connection with preparation of expert reports.

- First chair expert depositions of plaintiff and defense-side experts.
- Coordinated responses to over 75 third-party document subpoenas issued to current and former officer and director indemnitees.
- Created and implemented crisis management strategies in response to government and internal investigations and multi-billion dollar private lawsuits.
- Collaborated with client to formulate strategy regarding protection of attorney-client and attorney work product privilege. Formulated offensive and defensive discovery strategy from document retention, collection and production through fact development and merits depositions.
- Collaborated with client to create comprehensive records retention policy tailored to banking regulatory examination, SEC and DOJ investigations, and civil litigation.
- Conducted document retention training sessions in connection with implementation of records retention policy for all client employees, including those in legal, finance, and accounting divisions. Monitored employee compliance with records retention policy in accordance with *Zubulake* decisions.
- Led team that evaluated electronic vendors, including assessing capability to provide full service in-house archiving system.
- Managed team of over 75 attorneys for expedited privilege review.
- Represented Real Estate Investment Trust in shareholder derivative litigation regarding allegedly improper payment of management compensation. Motions to dismiss are pending.

Financial Services and ERISA Litigation

- Represented government sponsored enterprise in all litigation stemming from allegations of constitutional takings and violations of the Administrative Procedure Act in connection with amendment to Treasury's preferred stock purchase agreement.
 - Secured dismissal of APA case filed in District Court for the District of Columbia.
 - Numerous dispositive motions pending in other actions.
- Represented health insurer in multiple ERISA class actions and individual actions stemming from allegations of improper overpayment recovery processes and procedures.
 - First chair defense of merits depositions of company employees.
 - First chair deposition of plaintiff corporate representatives and fact witnesses.
 - Authored motions to dismiss, motions for summary judgment, and motion for class decertification. Motions for summary judgment and decertification are pending.
 - Successfully argued against motion seeking to impermissibly broaden the fiduciary exception to the attorney client privilege.
 - Attempting to negotiate resolution in court-ordered mediation sessions.
- Represented senior officers and directors of government sponsored enterprise named as defendants in ERISA class action case stemming from financial crisis of 2008.
 - Authored motion that resulted in dismissal of one count and six defendants.
 - First chair defense of merits depositions of senior officers.
 - Participated in hotly contested mediation that led to settlement.
- Represented government sponsored enterprise and senior officers and directors named in ERISA class action stemming from accounting restatement.
 - First chair defense of merits depositions of senior officers and members of board of directors.
 - Participated in contested mediation that led to settlement.

Congressional Investigations

- Coordinated multi-firm effort to respond to requests for documents and other information regarding financial crisis from House Committee on Oversight and Government Reform on behalf of client.

- Led team of over 25 attorneys collecting, reviewing, and producing responsive documents. Coordinated with senior client officers to formulate responses to committee staff requests for information.
- Lead attorney in responding to requests for information from the Minority side of the House Committee on Oversight and Government Reform regarding allegations of improper preferential treatment for senior officers of client by customer.

Financial Crisis Inquiry Commission

- Interfaced regularly with Commission Staff in connection with all aspects of inquiry into client.
- Represented witnesses as first chair in connection with Staff interviews.
- Assisted former officers of client with preparation for public hearings.
- Supervised team of ten attorneys responding to requests for documents, data and other information from Staff.

Telecommunications Litigation

- Managed successful representation of incumbent local exchange carrier in arbitration before Federal Communications Commission; drafted pre-filed direct and rebuttal testimony, prepared cross-examination questions, sat as second chair at hearing, and drafted initial post-hearing brief and reply brief.
- Managed representation of incumbent local exchange carrier in litigation of inter-carrier compensation dispute in two states; argued summary judgment motion, cross-examined Chief Executive Officer of opposing party, first-chaired latter portion of multi-week hearing, and drafted all pre-trial and post-trial briefs.
- Provided strategic counseling to incumbent local exchange carrier; prepared briefing points for Senate Judiciary Committee and “red team” examination of carrier’s general counsel.

AWARDS AND ACTIVITIES

Super Lawyers, Rising Star, 2013–2018
 Legal 500, Leading Lawyer, Securities: Shareholder Litigation, 2015–2018
 Friend of Children (for pro bono work), Justice for Children, 2011

PUBLICATIONS

Seth Aronson, Robert Stern, and Michael Walsh, “Courts Deny Plaintiffs Over Section 304 Suits,” *International Financial Law Review*, March 2006.
 Jeffrey Kilduff, Robert Stern, Michael Walsh, and Julia Schiller, “Digimarc: The Final Nail in the SO_x 304 Coffin,” *Securities Law 360*, January 2009.

BAR MEMBERSHIPS

New York (2003), District of Columbia (2003), United States District Court for the District of Columbia (2004), United States Court of Appeals for the District of Columbia Circuit (2004), United States District Court for the Southern District of New York (2009), United States District Court for the Eastern District of Michigan (2009), United States Court of Appeals for the Second Circuit (2012), United States Court of Federal Claims (2016), United States Supreme Court (2019)

The CHAIRMAN. Thank you very, very much, Mr. Walsh.
 And now remotely by video, the Chair recognizes Mary Toman.

**STATEMENT OF MARY A. TOMAN, NOMINEE TO BE UNDER
 SECRETARY OF COMMERCE FOR ECONOMIC AFFAIRS,
 U.S. DEPARTMENT OF COMMERCE**

Ms. TOMAN. Good afternoon. Mr. Chairman, Ranking Member Cantwell, and distinguished members of the Committee, thank you for inviting me today.

What a great country that someone like me, the first in my family to speak English as a native language, could be at a hearing in front of such a distinguished Senate Committee. I am grateful to President Donald Trump, Secretary of Commerce Wilbur Ross, and

many others for having the confidence in me to nominate me for Under Secretary for Economic Affairs at the Department of Commerce. I am deeply humbled and honored.

I am grateful to my family and friends: my very supportive husband of 31 years, Milt Miller; my daughter Mary Ann, whom I respect for balancing law school and child care for her young daughter; and my mother, energetic at 96.

One reason for my interest in returning to public service is my strong desire to give others the opportunities I have had. New prospects for economic growth must be identified and communicated to all.

If confirmed, I would oversee an important constitutional responsibility, the 2020 Decennial Census. I will do everything in my power to ensure that everyone is counted. I would work with Congress and your staffs to ensure that the Census is completed fully and accurately. Data security, privacy, and confidentiality are paramount.

The Bureau of Economic Analysis calculates our country's GDP and other key economic indicators. This treasure trove of data must become increasingly accessible to all users to identify new jobs. That is how to expand our manufacturing base, services, and exports.

The Under Secretary is also responsible for macroeconomic and fiscal policy analyses. Regaining the momentum that prevailed in our economy as recently as February is key. We must use our resilient economic engine to restore employment through the innovation that drives America's growth.

The digital data world is upon us and can boost productivity. We must reflect innovation in our analyses and communications. The Commerce Department is at the forefront of these governmentwide efforts, serving as a lead for the Federal data strategy and the implementation of the Foundations for Evidence-Based Policymaking Act. The Under Secretary's office drives this for the Department, using data to do its decisionmaking and increase data access for American businesses and households.

In my previous position as Deputy Assistant Secretary of the Commerce Department, we produced key industrial statistics for over 120 industries. Much of this directly complemented the data produced by Commerce's Bureau of Economic Analysis. I led trade negotiations with the Government of Japan that significantly increased U.S. exports and brought more jobs to America. Encouraging job growth is a key goal for the Commerce Department. If confirmed, I will take that objective to heart daily to produce incisive economic information as data opens doors.

In my time as Deputy Treasurer of the State of California, we used Commerce data extensively. We managed about \$200 billion, including the CalPERS and CalSTRS pension funds. That experience would be relevant as the Under Secretary advises the Secretary of Commerce in his role as a member of the Pension Benefit Guarantee Corporation board.

My career has been balanced between government public service and the private sector. At Procter & Gamble, we used Commerce statistics daily for forecasts and new product markets. As a commissioner of the City of Los Angeles, we relied on Commerce data

too. So I understand the practical side of how Commerce data is used.

If reported favorably by this committee and confirmed by the full Senate, I look forward to working with you and your staffs. I will always be interested in hearing about your priorities and working with you cooperatively. Working together, anything is possible in America.

Thank you for this opportunity and I look forward to answering any questions.

[The prepared statement and biographical information of Ms. Toman follow:]

PREPARED STATEMENT OF MARY A. TOMAN, NOMINEE TO BE UNDER SECRETARY FOR
ECONOMIC AFFAIRS, U.S. DEPARTMENT OF COMMERCE

Good afternoon. Mr. Chairman, Ranking Member Cantwell, and distinguished members of the Committee. Thank you for inviting me today.

What a great country that someone like me, the first in my family to speak English as a native language, could be at this hearing before such a distinguished Senate Committee. I am grateful to President Donald Trump, Secretary of Commerce Wilbur Ross, and many others for having the confidence in me to nominate me for Under Secretary for Economic Affairs at the Department of Commerce. I am deeply humbled and honored.

I am grateful to my family and friends: my energetic 96 year old mother Mary; my very supportive husband of 31 years Milt Miller; and my daughter Mary Ann whom I respect for simultaneously balancing law school and childcare for her young daughter.

One reason for my interest in returning to public service is my strong desire to give others the opportunities I have had. New prospects for economic growth must be identified and communicated to all.

If confirmed, I would oversee an important Constitutional responsibility, the 2020 Decennial Census. I will do everything in my power to ensure that everyone is counted. I will work with Congress and your staffs to ensure that the 2020 Decennial Census is completed fully and accurately. Data security, privacy, and confidentiality are also paramount.

The Bureau of Economic Analysis calculates our country's Gross Domestic Product (GDP) and other key economic indicators. One of my goals is to make this treasure trove of data increasingly accessible to all users so new jobs can be identified. That's how to expand our manufacturing base, services and exports.

The Under Secretary is also responsible for macroeconomic and fiscal policy analyses. Regaining the momentum that prevailed in our economy as recently as February is key. We must use our resilient economic engine to restore employment with the innovation and adaptability that have traditionally driven America's growth.

The digital data world is upon us and can boost productivity. We must reflect innovation effectively in our analyses and communications. The Commerce Department is at the forefront of these government-wide efforts, serving as a lead of the Federal Data Strategy and the implementation of the Foundations for Evidence-Based Policymaking Act. The Under Secretary's Office drives this forward for the Department. I understand the importance of the Department using its data to both guide its own decision-making, as well as increasing access to data for American businesses and households.

In my previous position as Deputy Assistant Secretary of the Commerce Department, we produced key industry statistics for over 120 industries. Much of this directly complemented the data produced in Commerce's Bureau of Economic Analysis. I led trade negotiations with the Government of Japan that significantly increased U.S. exports and brought more jobs to America. Encouraging job growth is a key goal for the Commerce Department. If confirmed, I will take that objective to heart daily to produce incisive economic information. Data opens doors.

In my time as Deputy Treasurer of the State of California, we used Commerce data extensively. We managed about \$200 billion, including the CalPERS and CalSTRS pension funds. That experience would become directly relevant as the Under Secretary advises the Secretary of Commerce in his role as a member of the Pension Benefit Guarantee Corporation board.

My career has been balanced between government public service and the private sector. At Procter & Gamble, we used Commerce statistics daily for forecasts and

new product markets. As a Commissioner of the City of Los Angeles, we relied on Commerce data to project growth and resource allocation, so I understand the practical side of how Commerce data is used.

If reported favorably by this committee and confirmed by the full Senate, I look forward to working with you and your staffs. I will always be interested in hearing your priorities and working with you cooperatively. Working together, anything is possible in America.

Thank you for this opportunity and I look forward to answering any questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Mary A. Toman.
2. Position to which nominated: Under Secretary (Economic Affairs), Department of Commerce.
3. Date of Nomination: May 4, 2020.
4. Address (List current place of residence and office addresses):
Residence: Information not released to the public.
Office: 604 N. Elm Dr., Beverly Hills, CA 90210.
5. Date and Place of Birth: March 31, 1954; Pasadena, CA.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Husband: Milton A. Miller, retired partner, Latham & Watkins LLP, Los Angeles, CA.
Daughter: Mary Ann Toman-Miller, 28.
7. List all college and graduate degrees. Provide year and school attended.
B.A. with honors in Economics, Stanford University, 1976.
MBA, Harvard Business School, 1981.
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Government

**Deputy Assistant Secretary of Commerce, International Trade Administration, Trade Development, Automotive Affairs and Consumer Goods (1989–1992).* Headed U.S. delegations negotiating auto parts (the MOSS Talks) and vehicle issues with the Government of Japan. Duties included responsibility for export expansion and trade policies in I20 industries.

**Deputy Treasurer of the State of California (1995–1996).* Responsible for the State of California's treasury management, banking, cash management, investments and pensions. Represented the State Treasurer on the boards of the State's two public pension funds: the California Public Employees' Retirement System (CalPERS) and the State Teachers' Retirement System.

**Chairman and Commissioner, Industrial Development Authority of the City of Los Angeles (1993–1995).* Responsible for development projects and job creation through infrastructure and business development with emphasis on underserved urban neighborhoods.

**Presidential Transition Team of President-Elect George H.W. Bush: The Export-Import Bank of the United States and Overseas Private Investment Corporation (1988–1989)*

Business

**Bain & Co., Strategic Planning (1976–1977).* Research and Management Consulting.

**Procter & Gamble Company (1977–1979).* Brand management and marketing.
E.F. Hutton (1980). Corporate Finance Department.

**The Burton Group PLC (1981–1984).* Corporate and Strategic Planning Department founder for an international diversified company.

The London Group (1992–1994, 1997–1999, 2003 present). Created and manage international stock and real estate portfolio.

9. Attach a copy of your résumé.
Please see résumé attachment.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.

Member, Advisory Committee on Human Trafficking Subcommittee on Training and Awareness, U.S. Department of Transportation (2018–2019)

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

Board of Governors, Bath S. University, Bath, United Kingdom (1988–2014).

Director of a homeowners' association called "4 Ferncroft Freehold" during the past ten years. A directorship comes with ownership of an apartment. I have never worked and do not work for the homeowners' association and receive no income or fees of any kind from it.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or disability.

Harvard Business School Alumni Association (1981 to present)

Stanford Alumni Association (lifetime member)

Board of Governors, Bath S. University, Bath, England (1988–2014)

University Club, Washington, D.C. (2015 to present)

California Republican Party (2010–2014, 2016)

Heritage Foundation (2017–2019)

CPAC (2018–2019)

Incline Village Crystal Bay Republican Women (2016–2017)

Jonathan Club, Los Angeles (2004 to present)

Harvard Club of New York (over 25 years)

To the best of my knowledge, none of these organizations restricts membership on any of the stated grounds.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

Yes. No debt was ever incurred, and no debt is outstanding.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

Member, California Republican Party (2010–2014, 2016), no services rendered.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years.

11–05–2018	Marsha Blackburn	1,000
09–27–2017	Ed Royce	900
12–31–2016	Ed Royce	2,700
09–17–2016	Ed Royce	300
09–22–2014	Ed Royce	500
10–26–2012	Tommy Thompson	1,000
12–30–2011	Ed Royce	2,500

16. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Honorary Fellowship awarded by Bath S. University in 2014 in recognition of service on the Board of Governors of the University.

17. Please list each book, article, column, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. Also list any speeches that you have given on topics relevant

to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

None.

18. List digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the name of an "alias" or "handle" you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

Facebook, active, <https://www.facebook.com/mary.toman.125>
2002 campaign website, dormant, <http://marytoman.org/>

19. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

Testimony, Hearing before the Subcommittee on Innovation, Technology and Productivity of the Committee on Small Business, U.S. Senate, on U.S./Japan Auto Parts Trade, April 20, 1990. This testimony was in my capacity as Deputy Assistant Secretary of Commerce.

20. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

My background demonstrates deep experience in federal, state and local government as well as extensive and successful involvement in the private sector in both large and small businesses. In my government and private sector roles, I have been both a producer and consumer of Commerce Department data, experiences that will facilitate the making and implementation of policies to promote jobs, growth and continued prosperity.

As Deputy Assistant Secretary of Commerce, International Trade Administration, Trade Development for Automotive Affairs and Consumer Goods in President George H. W. Bush's Administration, I gained experience in the areas for which the Under Secretary is now responsible. My group produced statistics for analyses and forecasts for the automotive and 120 consumer goods industries that were published in the Department's annual *U.S. Industrial Outlook*. Many of these analyses now take place in Bureau of Economic Analysis (BEA). We used Census Bureau data, inflation data and GDP statistics along with private sector sources to produce and analyze key information about the economy.

As Deputy Assistant Secretary, I led quarterly International Trade Advisory Committee meetings of industry experts to consult with the private sector on economic issues and sectoral developments including trade and tariffs. I am very familiar with how the Commerce Department works not only on a data and statistical basis, but also through synergistic interaction with other parts of the government such as the Council of Economic Advisors, with which the Under Secretary interfaces. I established and led an interagency group to communicate and coordinate trade and economic policies regarding the auto sector (USTR, Treasury, State, Labor and Agriculture). Interagency coordination is an integral part of this Under Secretary position.

My responsibility for heading U.S. delegations negotiating auto parts (the MOSS Talks) and vehicle trade issues with the government of Japan provided an extensive and relevant understanding of international trade, an important data area of BEA. I have observed the Commerce Department activities since I was a DAS, so would hit the ground running.

My Stanford University degree in Economics (with Honors) and my Harvard University MBA gave me relevant economic, management and data skills to lead this area. At Stanford I studied under Michael Spence, recipient of the Nobel Prize in Economics, whose specialty was information flows and market development. The appropriate data and information flows in BEA and for the Census Bureau must be constantly improved to best serve our country, while taking appropriate measures to maintain the accuracy, security and integrity of the data.

As Deputy Treasurer of the State of California, I was responsible for the State's treasury management, banking, cash management and investments. This required extensive knowledge of fiscal and monetary policy, national and state macroeconomic policy and forecasts, inflationary trends and regulatory issues, which is also necessary to oversee and lead BEA. Working with state data agencies provided experience directly relevant to BEA. The Treasurer's office used the data produced by BEA and the Census Bureau on a regular basis, as the State and localities made

key decisions based on its statistics. In any treasury function, the accuracy of numbers is paramount.

I represented the State Treasurer on the boards of the State's two public pension funds: the California Public Employees' Retirement System (CalPERS) and the State Teacher's Retirement System (CalSTRS) which had combined pension assets of \$150 billion and over two million beneficiaries. This deep experience with pension funds will be useful as the Under Secretary represents the Commerce Secretary on the U.S. Pension Benefit Guarantee Corporation.

BEA is also involved with government policy development, which I have performed as a DAS, Deputy Treasurer, and as a member of a Presidential transition team focusing on the Export-Import Bank of the United States and the Overseas Private Investment Corporation (OPIC). Moreover, as a Commissioner and Chair of the Los Angeles Industrial Development Authority, I focused on economic policies that would create jobs with an emphasis on underserved urban areas.

Having spent roughly half of my career in the private sector, I have been an extensive user of BEA and Census Bureau data and statistics. At Procter & Gamble, I analyzed and applied these statistics daily, with many strategies driven by Census demographic data. I planned million dollar marketing plans and chose test markets based on Census data. We relied fully on the accuracy of this data, so I clearly understand how BEA and Census data drives industry growth and jobs.

Strategic planning was my specialty at Bain & Company, where every day we used data produced by BEA and the Census Bureau (overall economic information, sector specific data, demographic data) to prepare long term forecasts for company and industry growth strategies. Sectors included high tech (silicon chip manufacturers, LED producers and other electronics), chemicals, financial service and mining.

I wish to serve in this position because I believe deeply in this country and our Constitution. Conducting an accurate decennial census is a vital constitutional responsibility, and it would be a great honor to help fulfill these duties that strengthen our democracy, recognize and enhance economic and job growth and help society as a whole.

This country has given me unparalleled opportunities to experience firsthand the blessings of liberty and achievement. I want to do my part to keep our country strong through economic growth and strength so that more and more people can prosper and achieve their potential.

21. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

As Deputy Treasurer of the State of California, I managed and oversaw nearly \$200 billion of pension and other assets, which required strong and effective measures to identify and eliminate risks quickly. I have a successful track record of proper management and improving accounting controls in large organizations. Having direct responsibility for banking for the state required working closely with staff in the Treasurer's Office as well as those in the banking sector to reduce risks. I made significant improvements in accounting controls. My responsibilities included representing the State Treasurer on the boards of the CalPERS and CalSTRS pension funds, which provided retirement and other benefits for over two million state employees and retirees. These roles presented extremely large management issues regarding people and funds, and reviews of hundreds of contracts each month. I did not approve any without improved scrutiny, due diligence and proper assurances. I provided educational opportunities for other board members and staff to learn about proper and effective accounting controls so that my improvements could be enhanced and sustained.

My training at Harvard Business School (MBA) in advanced accounting has served taxpayers well in discovering problems and finding solutions. My extensive people management skills and experience are also critical to achieving this mission.

As a Deputy Assistant Secretary of the U.S. Department of Commerce as well as in my service on a presidential transition team, my management skills were applied to the Federal government to recommend ways to reduce risks and apply cost-effective strategies. I sought to ensure that the country would receive optimal benefits from our budgets and the taxpayers would be proud of our work. Regarding staff, my approach was to work with those around me to motivate and empower them to prioritize proper management and accounting controls for the present and future.

My experience in the private sector, such as with Procter & Gamble, trained me well in the very best of management and accounting skills. Accuracy, timeliness, integrity and good planning are hallmarks of the culture of Procter & Gamble. My budgeting and expenditure responsibilities in numerous industries and government entities have given me a broad base of judgment to carry out effectively these responsibilities.

22. What do you believe to be the top three challenges facing the department/agency, and why?

The top three challenges are:

- (1) To conduct a full, fair, accurate and efficient decennial census, with subsequent accurate analyses of the data to fulfill essential functions including re-apportionment of representation in the Congress and states in a timely and transparent manner. Supporting the hardworking staff is critical.
- (2) To provide accurate and relevant data to support economic activity in the United States and disseminate it clearly to all potential users. There are always ways to improve the timeliness, accuracy and relevance of data, its analyses and forecasting so that job creation can be enhanced through policy development. As the U.S. economy evolves, new and more modern ways of structuring the architecture of U.S. economic data and analyses must be considered, developed, implemented and communicated. It is important to increase consultations with the private sector on new sectoral developments and to be responsive to Congress and users of the information.
- (3) To continue actively supporting the hardworking staff in the Bureau of Economic Analysis as we constantly seek to assist growth and job creation in the U.S. economy. The workload is heavy and their invaluable efforts to monitor and analyze an evolving and innovative economy must be facilitated.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

457(b) Plan with the State of California. I have not received any distributions from this Plan to date.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest.

In connection with the nomination process, I have consulted with the Office of Government Ethics and Department of Commerce agency ethics officials to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement. I understand that my ethics agreement has been provided to the Committee. I am not aware of any potential conflict of interest other than those that are the subject of my ethics agreement.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. Explain how you will resolve each potential conflict of interest. None.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

Any potential conflicts of interest will be resolved in accordance with the terms of my ethics agreement. I understand that my ethics agreement has been provided to the Committee.

6. Describe any activity during the past ten years, including the names of clients represented, in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

- No.
2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.
 3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.
 4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.
 5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.
 6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority? Yes.
2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.
3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.
4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF MARY A. TOMAN

Education and Degrees

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| 1979–1981 | HARVARD GRADUATE SCHOOL OF BUSINESS ADMINISTRATION
Awarded Master of Business Administration (MBA). |
| 1972–1976 | STANFORD UNIVERSITY
Awarded Bachelor of Arts degree, in Economics, with honors. Studied under Michael Spence, recipient of Nobel Prize in Economics, 2001 (information flows and market development). |

Government/Political Experience

- | | |
|-----------|---|
| 1989–1992 | UNITED STATES DEPARTMENT OF COMMERCE—WASHINGTON, D.C.
<i>Deputy Assistant Secretary of Commerce, International Trade Administration, Trade Development, Automotive Affairs and Consumer Goods</i>
Headed U.S. delegations negotiating auto parts (the MOSS Talks) and vehicle trade issues with the Government of Japan. Achieved significant increases in U.S. industry exports through trade negotiations and intensive compliance monitoring. Portfolio included responsibility for export expansion, trade policies and economic forecasts for 120 industries. Developed strategies to open global market access for U.S. companies small and large. Established and led interagency coordination on auto parts with White House and State, USTR, Treasury and Labor. Successfully resolved numerous trade disputes. Administrative achievements included budget reductions. Led quarterly International Trade Advisory Committee meetings of industry experts to consult with private sector on economic issues, sectoral developments and tariffs. Trade missions to increase exports to Asia (Japan, Korea), Europe and the Middle East. Produced and analyzed international and domestic economic data and statistics for Commerce Department publications, including the <i>U.S. Industrial Outlook</i> . Handled national security oceanic border dispute as well as sensitive agricultural and fishing issues. |
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1995–1996	STATE OF CALIFORNIA—SACRAMENTO <i>Deputy Treasurer of California</i> Responsible for the State of California's treasury management, banking, cash management, investments and pensions. California's investments totaled nearly \$200 billion and included: domestic and international equity of developed and emerging economies; domestic and international fixed income (U.S. Government Treasury bonds and bills); and domestic and international real estate. Position required firm grasp of monetary and fiscal policies, national and state macroeconomic policy and forecasts, inflationary trends and regulatory issues. Represented the State Treasurer on the boards of the State's two public pension funds: the California Public Employees' Retirement System (CalPERS) and the State Teachers' Retirement System, with combined assets of \$150 billion. Responsible for analyses and voting decisions on CalPERS, including investments, general administration and personnel responsibilities, long-term care insurance, mortgage programs, healthcare appellate reviews and healthcare for over 2 million CalPERS beneficiaries. Reviewed thousands of international and domestic investment proposals requiring complex statistical analyses. Dealt with contentious labor and environmental investment issues. Refused to support investing in risky derivatives and mortgage-backed securities long before such instruments were recognized as too speculative for pension funds and fiduciary institutions.
2018–2019	U.S. DEPARTMENT OF TRANSPORTATION—WASHINGTON, D.C. <i>Member, Advisory Committee on Human Trafficking Subcommittee on Training and Awareness</i>
2002	REPUBLICAN CANDIDATE FOR CALIFORNIA STATE TREASURER
1999–2003	REPUBLICAN PARTY OF LOS ANGELES COUNTY—LOS ANGELES <i>Chairman</i> Elected and re-elected Chairman of the Nation's largest county with approximately 10 million people and 18 Congressional seats—larger than 42 states. Speaker at Republican National Convention 2000 in Philadelphia. To be elected Chairman, one must first run for public office (the position of County Central Committee member) and be elected by the voters in a California State Assembly district (approximately 475,000 people). Ran successfully for eight successive terms on County Central Committee.
1988 to present	BATHS. UNIVERSITY—BATH, ENGLAND <i>Fellow; Former Governor</i> Privatized university from government control. Board's governance includes strategic planning, financial results, academic quality, international students and exchange programs, investments, treasury and banking functions, budget, growth, policy, labor management, land use, community relations and commercial operations for 8,000 students. As a Fellow, was graduation keynote speaker.
1993–1995	CITY OF LOS ANGELES—LOS ANGELES <i>Chairman and Commissioner, Industrial Development Authority</i> Appointed by Mayor Richard Riordan and confirmed by the City Council in a unanimous vote. Focused on job creation through infrastructure and business development with emphasis on underserved urban neighborhoods. Authorized to issue industrial development bonds. Keynote speaker at convocation of city commissioners.
1988–1989	PRESIDENT-ELECT GEORGE H.W. BUSH—WASHINGTON, D.C. PRESIDENTIAL TRANSITION TEAM <i>The Export-Import Bank of the United States</i> <i>Overseas Private Investment Corporation (OPIC)</i> Focused on economic growth, strategic trade, trade finance, and international trade exports strategy.
1998–1999	CALIFORNIA PUBLIC SERVICE BOARDS—SACRAMENTO <i>California State Jobs Training Coordinating Council</i>, implementing the Federal Workforce Investment Act of 1998 in California to increase the employment, retention and earnings of workers. Labor market policies and jobs training to increase occupational skill attainment.
1994–1995	<i>California State Economic Advisory Council</i>
Key Business Experience	
2003 to present	
1997–1999	THE LONDON GROUP—LOS ANGELES

1992–1994	Created and manage successful stock and real estate portfolio.
1981–1984	THE BURTON GROUP PLC—LONDON Corporate and Strategic Planning Department founder, Finance Department, for an international diversified company, including manufacturing, finance, data analyses, trucking, and property management of over 1,000 key properties and 600 retail stores. Trebled stock price in three years. Achieved profitable turnaround. Worldwide supply chains from over 50 countries, with India, Turkey and Hong Kong being the largest suppliers. Complex international exchange rates, economic analyses and forecasts.
1980	E.F. HUTTON—NEW YORK Corporate Finance Department Paid intern assigned to mergers and acquisitions including Gulfstream/Rockwell.
1977–1979	THE PROCTER & GAMBLE COMPANY—CINCINNATI Brand Management and Marketing. Coordinated product development, market research, statistical analyses, focus groups, economic forecasts, communications, polling, finance, sales, production and engineering. Used census and other data to plan multimillion-dollar marketing campaigns. Implemented bar coding. Improved efficiency of factory production lines for environmental improvements (chlorofluorocarbon eradication).
1976–1977	BAIN & COMPANY, Strategic Planning—BOSTON Research and management consulting. Prepared economic forecasts and statistical analyses to plan company growth strategies. Integrated finance, marketing, manufacturing policy and competitive analyses to identify growth opportunities for silicon chip manufacturer, chemical company, high tech companies, mining and service companies.

The CHAIRMAN. Well, thank you very, very much. And the remote testimony went very nicely.

We now begin questions under the 5-minute rule.

Mr. Szabat, the U.S. Department of Transportation is expected to release a detailed reauthorization plan in the near future. Do you have an update on the reauthorization of the surface transportation programs? We need to act on this, and I am hoping that the Department's plan will be released soon. What can you tell us about that?

Mr. SZABAT. Thank you, Senator. I believe if not for COVID-19, I believe the Administration's plan, the entire \$1 billion 10-year plan, would have been released in full by now. Currently, my hope is that we will have the plan out before the members of this committee have an opportunity to ask me questions for the record, and I am confident that we will have the plan out before I have an opportunity to answer those questions for the record.

The CHAIRMAN. OK, all right. So, well, thank you very much.

Let me move on then to the Consumer Product Safety Commission. Dr. Beck, thank you for being with us.

Let me ask about an investigation last June. The Committee conducted an investigation into unauthorized disclosure of the confidential manufacturer information in violation of section 6(b) of the Consumer Product Safety Act. The investigation found that a lack of formal training, ineffective management, and poor information technology implementation at the CPSC contributed to the disclosures. If confirmed, how will you work to address these issues to improve the functioning of the Commission and ensure that incidents like the unauthorized disclosures do not happen again?

Dr. BECK. Senator, thank you for that question.

I am aware of the report and the investigation from this committee.

First and foremost, it is important that CPSC follow all the statutory requirements, and one of those includes protecting important confidential business information. If confirmed to the CPSC, I will make it a priority to ensure that that part of the statute is followed to make sure that everyone at the CPSC, including myself, is appropriately trained on a regular basis so that releases such as this will not happen again.

The CHAIRMAN. OK. Well, let us see. But they also found that lack of formal training was a problem and ineffective management. Could you comment on those findings, since you are familiar with the report? What about the ineffective management aspect of it?

Dr. BECK. So not being at the CPSC, it is hard for me to comment on that aspect. I believe it was related to the managers and the training and the oversight of the training and the processes and procedures. So it is really important that every manager, including the Commissioners, be trained on the appropriate statutory requirements, be trained on the processes and procedures throughout the organization. Everyone needs to be aware of the appropriate practices.

The CHAIRMAN. All right. Thank you very much.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

And I thank the witnesses. I have a lot of questions and not probably enough time to go through all of them. So if you could be succinct on your answers, I would certainly appreciate it.

I want to start with you, Dr. Beck. Obviously, the Consumer Product Safety Commission and its important responsibility is to protect the public. I mean, literally these rules are about life and death.

And overwhelmingly bipartisan 2016 Toxic Substances Control Act reform, TSCA, requires the EPA to study the risk of chemicals and then step up to protect people against those risks. One of those chemicals being studied is TCE, a chemical used for decades as a grease remover and dry cleaning solvent. It was found at hundreds of Super Fund sites in every single state and drinking water all across America. It was poisonous.

Documents and other Trump reports show that the Trump administration EPA rejected industry science designed to downplay the risk of birth defects and those chemical causes and the White House overruled EPA's own scientists.

So, Dr. Beck, yes or no. Were you involved or responsible for the direction of the White House that it gave EPA to edit the risks of TCE to remove the cardiac birth defects from those documents?

Dr. BECK. Senator Cantwell, I think you are referring to an interagency review process, which is standard practice. During that process, the lead agency has the authority and they have the pen. They decide which comments are accepted, which comments are rejected, and whether or not any changes are made to the assessment. So the draft assessment that was released is a reflection of the EPA.

Senator CANTWELL. So did you advocate for removal of cardiac birth defect risk from those documents? Did you advocate for that?

Dr. BECK. So the interagency review process, which I participated in for many years, 15 years now, is a very important process

that allows for frank and candid and deliberative discussion within an agency and across an agency.

Senator CANTWELL. Yes or no. Did you advocate? Yes or no. That is all I am asking.

Dr. BECK. Senator, what you are asking for is deliberative information.

Senator CANTWELL. So you are saying at this point you do not know whether you believe that TCE information about cardiac birth defects is important?

Dr. BECK. Information about cardiac birth defects with TCE or with any chemical is very, very important.

Senator CANTWELL. And so did you participate, you personally, in asking for that to be removed?

Dr. BECK. So the interagency process is designed to protect deliberative information—

Senator CANTWELL. OK. We are going to go on to the next question.

Senator Carper has been a lead obviously in his EPA role. In 2015, the Obama administration proposed a rule that was designed to restrict the use of the most dangerous PFAS chemicals in consumer products. And Senator Carper has indicated that you personally tried to delay and weaken a proposed rule. Senator Carper—as part of the White House review, when you left EPA, you tried repeatedly to weaken the rule by allowing companies that continued to include PFAS chemicals in consumer products have a safe harbor from enforcement if they said they did not know they were supposed to have ensured that PFAS was removed. So yes or no. Did you participate in that process?

Dr. BECK. Senator, I can assure you that I did not weaken or delay any PFAS rules. The PFAS—I think it is the SNUR that you are referring to, is a draft document that was released by EPA. EPA has the pen on that document, and EPA decides what is in and what is not in that draft document.

Senator CANTWELL. So do you believe that the company should have a safe harbor?

Dr. BECK. I am not prepared to answer that question.

Senator CANTWELL. OK. Well, here is what my constituents are prepared for, this report, this report that basically is from the Agency for Toxic Substances and Disease Registry. And it is about the assessment in the Spokane community about the unacceptable levels of PFAS. That is what is beyond acceptable. I cannot support your nomination when you cannot answer these questions. When I go to this report and I look on page 4 of the report and it says PFAS levels in tap water, collected and tested water samples from participating households, the PFAS levels for all 19 tap water samples were below all Federal and applicable State guidelines for PFAS in drinking water. I cannot tell my constituents that I supported you because you cannot tell me about this important thing did not have a safe harbor for these people. So, listen, this issue is well known in Spokane. It is well known at Fairchild Air Force Base. I know our colleagues have tried to deal with this issue.

But I have to just bring up the Ligado issue, if I could, really quickly because it is such an important issue. And we have three people here that also could say something about it.

Obviously, the Ligado issue—you know, with the FCC's recent approval, you are putting into competition, in my mind this GPS system, which threatens the safety and security from civil aviation and military operations to weather forecasting. And I just want to know what the witnesses, Mr. Szabat, Walsh, and Toman, whether you have any comments about that, and Mr. O'Rielly, if I have a minute left or have a few comments. I guess I could wait another round.

Mr. SZABAT. Thank you, Senator, for the question.

The Ligado issue and its predecessor, the LightSquared issue, was in fact a very difficult issue to grasp with.

The Department of Transportation—I think we have an easier way forward than our colleagues do at the FCC. Our mandate is to look out for the interests of the GPS system, as you have pointed out. Our testing has indicated that the Ligado system, if deployed, would interfere with GPS, and therefore we have been remaining opposed to its deployment.

Senator CANTWELL. OK. My time has run out, Mr. Chairman. So I will put in for the record, if I could, to let the rest of the witnesses answer that question.

But I am also going to put into the record a question to Ms. Beck about COVID-19 guidelines for the White House. There are also questions about your role in basically trying to deny the release of information that would have been helpful in a horrific accident in Washington as people conveyed in Skagit County to sing in a choir, and so many people from that event got COVID. So I want to understand whether you participated in anything in suppressing information that would have been helpful in that.

So thank you, Mr. Chairman.

Senator BLUNT [presiding]. Thank you, Senator Cantwell.

Senator Moran.

STATEMENT OF HON. JERRY MORAN, U.S. SENATOR FROM KANSAS

Senator MORAN. Let me turn my attention first to Ms. Beck. Ms. Beck, I chair the Subcommittee on Consumer Protection with jurisdiction over the CPSC, and I want to see that that agency is managed in a way and that there is camaraderie and good will among the members. And I would love to hear your assurance that as we have hearings in our Subcommittee that deal with the Commissioners, that you move the Commission in the direction of transparency, fair process, bipartisanship in every way possible. Can you assure me of that?

Dr. BECK. Yes, Senator, I can. There is no place for bipartisanship when it comes to public health and consumer protection.

I have already spoken with all the sitting Commissioners, both Democratic and Republican, and if confirmed, I would look forward to working with all of them. Each one brings a unique background and experience to the Commission, and we can only really truly be effective if we work together toward a common goal.

Senator MORAN. Do you see impediments toward that happening?

Dr. BECK. I certainly hope not, no.

Senator MORAN. Ms. Beck, Chairman Wicker asked you about this topic, about the release of information that was inappropriately released. He asked you about management. I just want to also reiterate the importance of that issue. Senator Wicker and I wrote inquiring about this topic. I want to make sure you will use your chairmanship to address those concerns and make certain that the individuals are educated, trained, and have the right approach and attitude toward protecting the privacy as required by law. Is that something you can assure me of?

Dr. BECK. Yes, Senator. I would be happy to make that a priority, and if confirmed, I will look into it and I would be happy to report back to you.

Senator MORAN. Thank you very much.

Let me turn to Commissioner O'Rielly. Commissioner, it is nice to see you again. This morning I was with Chairman Pai in an Appropriations subcommittee hearing.

You wrote an interesting blog, a post on an issue related to prohibiting presale or conditional sale radio frequency devices that caught my attention. And are there other similar consumer good marketing prohibitions that you are aware of outside this issue of radio frequency devices that we ought to be paying attention to?

Mr. O'RIELLY. None off the top of my head that come to mind. I spent a good deal of time working on the presale issue and the importation issue that I both wrote about. But I am happy to review to make sure that we have not missed anything.

Senator MORAN. Do you think that the FCC has the ability to change what you find flawed?

Mr. O'RIELLY. I do, yes. We do have within our rights to change our process. We always look to Congress, to your leadership if you so would choose.

Senator MORAN. Let me ask you a question that I asked Chairman Pai this morning. Keep America Connected Pledge. The result of that pledge, abiding by that pledge would have caused a number of companies, providers, to lose income related to those who are unable and have not paid their bills or unable to pay late charges. So as we try to make certain that those companies remain in existence to provide broadband services to Americans, particularly rural Americans, what is in the works to see that there is the actual capability of doing so, sufficient revenue in light of the fact that people are not or cannot pay bills? I asked the Chairman this morning if the FCC has any numbers about lost revenue, which I was informed does not exist. But do you have any understanding of what the magnitude of this problem is?

Mr. O'RIELLY. I do not have any better data. I would have to defer to the Chairman on his program in terms of its establishment.

But your point is well taken. I am concerned about the lost revenue and the potential—it would not just be the late fees but also the underlying revenue from the service. And it is a one thing to pledge if it is a month or 2 months, but now we are talking 6 months or 9 months. And that is going to be problematic for a lot of small providers.

Now, when I talk to providers and representatives of them, their interest is to keep people connected and do everything they need

to make sure. Whether it be deferral payments or to try and work out payment plans, I would certainly appreciate that. And then Congress itself has a number of programs that may be applicable, already in the CARES Act depending on the size of the company. But I certainly would look to the guidance of the Committee or the Congress in terms of if it decides to allocate additional resources or funding for this purpose.

Senator MORAN. If you have suggestions in that regard, please let me know.

Mr. Szabat, I have 22 seconds in my allocation. I appreciate the time you spent with me by phone considering essential air service and the response under the CARES Act. I would ask you for airports, the EAS and non-essential air service airports—they continue to feel the impact of COVID-19—what else can we be doing to support them?

Mr. SZABAT. Senator, thank you for the question and for your interest and concern for essential air service because they are, in fact, essential for the rural communities that they serve.

Right now, the single most important thing you have already done, which is through the CARES Act, that you have ensured funding to keep all of those services operating through the end of this fiscal year, well into next fiscal year. I would ask only that we are able to continue to have contact with you, your staff, the other members of this committee as we identify going into next year what the overall effects of the coronavirus will be and what alterations and changes we have to make in policy and funding to keep EAS performing.

Senator MORAN. Mr. Szabat, thank you for your answer and thank you for working with me earlier this year in this regard. Thank you.

Senator BLUNT. Thank you, Senator Moran.

Senator Udall.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman.

Dr. Beck, I think members of this committee should oppose your nomination. You have taken actions that demonstrate a real disregard for public health and safety. And we are talking about a position that is supposed to be one of our nation's preeminent consumer watchdogs.

Why should members of this committee place their trust in you when your record has been one of constantly blocking, weakening, and delaying public health protections proposed by our nation's top scientists and regulators? I think if they hear from people like Wendy Hartley, they will have trouble putting their trust in you. Wendy's son, Kevin, lost his life using a dangerous chemical in paint strippers—methylene chloride, while you stalled the effort to remove this chemical from store shelves. Drew Wynne lost his life as well and many others that we know of.

As you know, I was the lead author of the chemical safety reform effort in the Senate. We worked very hard to move forward with a very protective law. But your implementation of the law has been anything but protective. Shortly before your arrival at the EPA, the

agency proposed regulating methylene chloride in paint strippers. EPA had been reviewing this chemical for many years, and our legislation explicitly protected that work. But after your arrival, we saw nothing but blocking, weakening, and delaying, and that resulted in the loss of Kevin's life, Drew's life and several others.

According to the "New York Times," you questioned the proposed ban on methylene chloride, suggesting that only a small number of users are harmed by it. It is 1 percent. You purportedly asked an EPA colleague, is that report true or false, and is the 1 percent an acceptable rate of injury when those injuries include a risk of death?

Dr. BECK. Senator Udall, thank you for your question.

My heart goes out to the Hartley family and the Wynne family. The acute fatalities were tragic that we saw with methylene chloride. This is why there is now a ban in place so that methylene chloride can no longer be manufactured, processed, distributed to retailers or by retailers to consumers. It is effectively removed from the big box stores and from the local hardware stores, and I am confident that we have effectively blocked any further acute fatalities. Protection of public health is first and foremost.

Senator UDALL. You are not answering my question. I asked you specifically is the report true and is this 1 percent figure an acceptable rate of injury? What is the answer to those two questions?

Dr. BECK. Senator, before answering a specific question like that, I would like to see the report that you are referring to. But I do not believe that we can put a number or a percentage on the value of a life.

Senator UDALL. This was an esteemed EPA Deputy Administrator, longtime career employee, that says that you made that quote. And I think Wendy Hartley and Brian Wynne would strongly object if their loved ones are just a minor statistic. It is unacceptable that it took 2 years and a lawsuit for you to finalize this regulation, and you still managed to put out a less protective rule which allows the use of methylene chloride in paint strippers for commercial use by workers. This is despite the EPA's own conclusions that workers are at much greater risk from exposure than consumers. And in fact, its use by workers also endangers bystanders. EPA had already considered and rejected the extra training as insufficient to protect workers and bystanders from the unreasonable risk, including a quick death posed by methylene chloride.

Did you know that Kevin Hartley was professionally trained to use this product and he wore gloves and a ventilator mask and still this chemical infiltrated his mask and the heavy fumes killed him? Did you know those facts? It is a yes or no question.

Dr. BECK. Senator, I was aware of the tragic circumstances that surrounded his death. I was not aware of the particular type of respirator that he was wearing.

But the evaluation that was done——

Senator UDALL. OK.

Had you and the EPA not delayed banning methylene chloride, Kevin would be alive today. Drew would be alive today, and others would still be alive. For a scientist charged with protecting public health, we should expect better. Your training gave you the tools to fully assess risk and exposure to toxic chemicals. Instead, you

go against peer-reviewed science and consistently favor industry without a solid scientific basis. Your entire career has been less like a toxicologist conducting rigorous, unbiased science and more like a defense attorney zealously defending guilty chemical clients.

Mr. Chairman, in my work to reform the chemical safety law, I spent years working hard to reform a badly broken law, but with Nancy Beck at the EPA, we have seen chemical safety reform fail us time and time again. In the 4 years since it passed, Nancy Beck and the EPA have blocked, weakened, and delayed protections from PFAS, from lead, from TCE, and so many other dangerous chemicals. In these 4 years, the only ones who have been protected by her leadership have been chemical companies, not workers exposed to dangerous toxins at work, not the public who purchases dangerous products at the store.

That is why I am so concerned to see her nomination to chair the very organization charged with protecting consumers. The American consumer is entitled to leadership at the Consumer Product Safety Commission that will protect their health, safety, and lives. This nominee fails this test, and I urge this committee to oppose.

Mr. Chairman, I would ask to enter into the record a list of dangerous and unprotected measures that Nancy Beck has taken during her tenure at EPA, along with a letter from over 100 national and state organizations that have joined to oppose this nomination, and a statement from Brian Wynne, Chairman of the Drew Wynne Foundation. In his statement, it starts, this nominee delayed a ban on the toxic chemical that killed my brother.

I yield back, Mr. Chairman.

Senator BLUNT. Thank you, Senator Udall. Without objection, those will be entered into the record.

[The information referred to follows:]

June 10, 2020

Via Electronic Mail

Alexandra Dapolito Dunn, Assistant Administrator
Environmental Protection Agency
Office of Chemical Safety and Pollution Prevention
Washington, DC.

E-mail: dunn.alexandra@epa.gov

Re: Urgent Request to Prevent Federal Register Publication of Final Rule, "Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances; Toxic Chemical Release Reporting" (Docket# EPA-HQ-TRI-2020-0142) Due to Legal Violations

Dear Assistant Administrator Dunn:

The undersigned organizations and coalition of communities impacted by per- and polyfluoroalkyl substances ("PFAS") urgently request that you prevent publication in the Federal Register of the final rule entitled "Implementing Statutory Addition of Certain Per- And Polyfluoroalkyl Substances; Toxic Chemical Release Reporting," Docket# EPA-HQ-TRI-2020-0142 ("TRI reporting rule").¹ The TRI reporting rule suffers from three major flaws: First, the public was not given notice of a proposed rule and the opportunity to comment on it, in violation of the Administrative Procedure Act ("APA"). EPA's invocation of the "good cause exception" is unsustainable; notice and comment is practicable, necessary, and in accord with the public interest. Sec-

¹The pre-publication version of the TRI reporting rule was signed by you on May 18, 2020, and is posted on the website of the U.S. Environmental Protection Agency ("EPA"). See *Pre Publication Version of Final Rule: Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances to the TRI Chemical List*, EPA (May 18, 2020), <https://www.epa.gov/toxics-release-inventory-tri-program/pre-publication-version-final-rule-implementing-statutory> ("Pre-publication version").

ond, the TRI reporting rule violates section 7321 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116–92, § 7321, 133 Stat. 1198, 2277–81 (“NDAA TRI mandate”) because it allows exemptions to the reporting mandate not contemplated by Congress or permitted by the statute’s plain terms. Finally, the TRI reporting rule reflects a dramatic departure from prior EPA policy without explanation, rendering it arbitrary and capricious. It is imperative that EPA withdraw the prepublication version of the TRI reporting rule from EPA’s website and from the Office of the Federal Register, and publish a proposed version of the rule so that the concerns of the undersigned groups, as well as others with a direct interest in enforcement of the NDAA TRI mandate, can be considered before EPA adopts a final rule.

A. The APA requires EPA to publish a proposed rule implementing the NDAA TRI mandate.

It is critical that the TRI reporting rule not be officially published as a final rule because the public has not received proper notice and sufficient time to comment on a proposed version, in violation of a fundamental tenet of rulemaking required by the APA. *See* 5 U.S.C. § 553(b) (c). This requirement may be skipped only when the agency finds good cause that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* § 553(b)(3)(B). The “good cause” exception, however, is to “be narrowly construed and only reluctantly countenanced.” *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984) (quotations and citation omitted). Indeed, the exception is applied only in emergency situations or where there is an imminent threat of serious harm. *Jifry v. Fed. Aviation Admin.*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (“The exception excuses notice and comment in emergency situations . . . or where delay could result in serious harm.”) (citation omitted).

There is no emergency or serious threat that requires EPA to deny the public its right to comment on the Agency’s proposed approach for incorporating the NDAA TRI mandate into its regulations. Companies are already conducting the data collection that the rule purports to require because they are already required to do so by the NDAA. Given the self-executing nature of the NDAA TRI mandate, EPA cannot claim any emergency justification for forgoing notice-and-comment rulemaking here.

Moreover, EPA is simply wrong to contend that notice and comment is “unnecessary” because the TRI reporting rule was adopted “to comply with an Act of Congress.”² Prepublication version at 6. Although Congress did not specify where in the Code of Federal Regulations EPA would codify the addition of PFAS to the TRI, by mandating a 100-pound reporting threshold, Pub. L. 116–92, § 7321(b)(2), Congress contemplated that PFAS would be listed without being subject to a *de minimis* concentration exemption, as is the case for all other TRI chemicals with a 100-pound reporting threshold. *See* 40 C.F.R. §§ 372.28 (lower threshold chemical listing), 372.38(a) (carving out chemicals listed in § 372.28 from *de minimis* concentration exemption). In defiance of clear congressional intent (which is discussed below in section B, and calls for further elaboration in a public comment period), EPA codified the addition of 172 PFAS to the TRI in a manner that incorporates the *de minimis* concentration exemption. *See Pre-Publication Version of Final Rule: Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances to the TRI Chemical List* at 11–12 ((failing to incorporate newly listed PFAS chemicals into § 372.28 *de minimis* exemption carve-out). As this approach has significant consequences for how much information the public will receive, and was not specified by Congress, notice and comment is “[n]ecessary” and in “the public interest.” 5 U.S.C. § 553(b)(3)(B).³

EPA’s assertion that it “does not expect the public to object” to the TRI reporting rule, Prepublication version at 6, is not credible.⁴ The Agency is well aware that the Attorneys General of eighteen states recently filed comments asking EPA to add the newly listed PFAS to 40 C.F.R. § 372.28—the path EPA went out of its way not to take.⁵ The Agency should expect these states to have strong objection to its deci-

²EPA does not contest that notice and comment is practicable and it says nothing about public interest.

³For this same reason, EPA lacks “good cause” for ordering an immediate effective date for purposes of the Congressional Review Act. Prepublication version at 10.

⁴EPA’s expectation is also irrelevant, as the APA requires notice and comment regardless of whether an agency “expect[s]” its action will be uncontroversial.

⁵Comments of the Attorneys General of the States of New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin on the Advance Notice of Proposed Rulemaking, *Addition of Certain Per- and Polyfluoroalkyl Substances; Community*

sion to reject their request. In addition, EPA should have expected that communities in the vicinity of facilities that manufacture or process PFAS—such as the members of the National PFAS Contamination Coalition,⁶ which is a signatory to this letter—among others concerned about PFAS contamination, will have strong objection to application of the *de minimis* concentration exemption to PFAS since it will significantly limit the information they receive. As just one example, if this exemption applies, a facility could specify that it will not purchase any mixture containing any single PFAS at a concentration greater than 1 percent, so that it would not have to submit a TRI report for these chemicals. Yet, a facility's use of a mere 25 drums (or 1,400 gallons) of a mixture that includes a 0.9 percent concentration of a PFAS could result in the facility releasing more than 100 pounds of the PFAS to the environment in a year.

Under these circumstances, the APA requires EPA to adhere to the standard rule-making process, including the publication of a proposed rule for notice and comment.⁷

B. The TRI reporting rule should not be published as a “final rule” in its current form because it violates the NDAA TRI mandate and EPA has not explained its departure from a longstanding practice.

EPA should also withdraw the final TRI reporting rule because in its current form it runs afoul of the NDAA TRI mandate and contravenes EPA's established practice. The proper time to provide a detailed accounting of the legal flaws is after EPA has published a proposed rule and given the public at least 30 days to comment. 5 U.S.C. § 553(d). While we are not attempting to identify all of the legal flaws in the TRI reporting rule at this time, without the benefit of the required 30-day comment period, we note that when Congress specified a 100-pound reporting threshold for releases of the PFAS subject to the TRI reporting rule, Pub. L. 116–92, § 7321(b)(2), it was well aware that all other TRI chemicals with a 100-pound reporting threshold are codified at 40 C.F.R. § 372.28. It was also well aware that the *de minimis* concentration reporting exemption in 40 C.F.R. § 372.38(a) does not apply to chemicals listed in in 40 C.F.R. § 372.28. *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988) (“We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.”). Under these circumstances, there is no ambiguity that Congress intended releases of PFAS to be reported without an exemption for *de minimis* concentrations, as is the case for all other TRI chemicals with a lower reporting threshold. Had Congress intended EPA to treat PFAS differently than any other lower threshold chemical, it would have said so. EPA cannot adopt an exemption that Congress did not authorize. *Sierra Club v. EPA*, 755 F.3d 968,980 (D.C. Cir. 2014) (holding that EPA cannot adopt an unauthorized regulatory “carve out”).

Not only does the TRI reporting rule violate the NDAA TRI mandate, it also violates the APA because it reverses longstanding EPA policy without a reasoned explanation. The APA prohibits an agency from acting in a manner that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Though an agency may lawfully reverse its position on a particular policy choice, it must “display awareness that it is changing position,” *Fed Commc'ns Comm'n v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), and it must provide a “reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* at 516. EPA has a longstanding policy that the TRI *de minimis* concentration exemption does not apply to persistent, bioaccumulative, and toxic chemicals (PBTs). See Persistent Bioaccumulative Toxic (PBT) Chemicals; Lowering of Reporting Thresholds for Certain PBT Chemicals; Addition of Certain PBT Chemicals; Community Right-to-Know Toxic Chemical Reporting, 64 Fed. Reg. 58,666, 58,670 (Oct. 29, 1999). As discussed in the State ANPRM comments, and recognized by scientists and governments around the

Right-to-Know Toxic Chemical Release Reporting, 84 Fed. Reg. 66,369 (Dec. 4, 2019) (Feb. 3, 2020), <https://www.regulations.gov/document?D=EPA-HO-TRI-2019-0375-0086> (“State ANPRM comments”), at 6.

⁶The National PFAS Contamination Coalition is an organization of 30 grassroots community groups in 21 states around the country whose members have been exposed to PFAS and who, collectively, are seeking stronger health protections for their families and communities.

⁷This is also the approach used when an agency issues an “interim” or “direct” final rule that receives substantive adverse public comments. See Office of the Fed. Reg., A Guide to the Rule-making Process 9 (Jan. 2011), https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

world,⁸ some PFAS are PBTs, a fact EPA itself acknowledges.⁹ Accordingly, for EPA to codify the addition of 172 PFAS to the TRI so that the *de minimis* concentration reporting exemption applies, without providing a “reasoned explanation” for this dramatic change, is arbitrary, capricious, and unlawful.

For the foregoing reasons, we strongly urge you to withdraw the TRI reporting rule from the Office of the Federal Register, and to publish a proposed version of the rule for notice and comment. We also urge EPA to advise the regulated community that its obligations under the NDAA TRI mandate went into effect on January 1, 2020 and that any delay in codification of EPA’s rule does not impact the duty to comply, and to publicly affirm that it has done this. If you have any questions, please contact Eve Gartner, egartner@earthjustice.org or (212) 845-7381.

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EARTHJUSTICE
NEW YORK, NY

MEMORANDUM

EPA’s PFAS-related responsibilities under the National Defense Authorization Act for FY-2020

On December 20, 2019, the National Defense Authorization Act for Fiscal Year 2020 (“NDAA 2020” or the “Act”) was enacted. NDAA 2020 requires the Environmental Protection Agency (“EPA”) to add certain per- and poly-fluoro alkyl substances (“PFAS”) to the Toxic Release Inventory (“TRI”), which was established

⁸See, e.g., Stockholm Convention on Persistent Organic Pollutants, *The 16 New POPs* (June 2017), <http://chm.pops.int/TheConvention/ThePOPs/TheNewPOPs/tabid/2511/Default.aspx>; *The Madrid Statement on Poly- and Perfluoroalkyl Substances (PFASs)*, 123 *Env’tl. Health Persp.* A107 (2015), <https://ehp.niehs.nih.gov/doi/pdf/10.1289/ehp.1509934>; *Heisinger Statement on Poly- and Perfluorinated Alkyl Substances (PFASs)*, 114 *Chemosphere* 337 (2014), <https://www.sciencedirect.com/science/article/pii/S004565351400678X?via%3Dihub>; Eur. Chems. Agency, *Candidate List of Substances of Very High Concern for Authorisation*, <https://www.echa.europa.eu/candidate-list-table> (last visited June 9, 2020).

⁹See, e.g., EPA, PFAS Research and Development, Presentation at Community Engagement in Fayetteville, North Carolina (Aug. 14, 2018), https://www.epa.gov/sites/production/files/2018-08/documents/r4_combined_presentations.pdf.

under the Emergency Planning and Community Right-to-Know Act to ensure communities know when toxic chemicals are released near them. 42 U.S.C. section 11023.

NOAA 2020 creates three distinct processes for introducing PFAS to the TRI: 1) immediate inclusion, 2) inclusion following EPA action, and 3) inclusion following determination.¹ These are described below.

- (1) *Immediate Inclusion on the TRI.* The NDAA mandated that certain PFAS be added to the TRI as of January 1, 2020. Based on this mandate, EPA added 172 PFAS to the TRI. <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa> EPA is in the process of codifying these additions to the TRI. However, its approach is deeply flawed because it allows exemptions to the reporting mandate not contemplated by Congress or permitted by the plain terms of the NDAA 2020. I have shared a letter to EPA outlining the concerns.
- (2) *Inclusion on the TRI Following Certain EPA Action.* Certain categories of PFAS will be added to the TRI on January 1 of the year after EPA takes certain actions. Notably, when a significant new use rule (“SNUR”) is issued for a PFAS, it is automatically added to the TRI. The NOAA 2020 requires EPA to adopt a SNUR for certain PFAS in consumer products this month (June 2020), so many more PFAS will be added to the TRI shortly.

The EPA actions that trigger adding PFAS to the TRI are:

- EPA finalizes a toxicity value for a PFAS (or classes of PFAS);
- EPA adopts a SNUR for a PFAS (or classes of PFAS);
- EPA adds a PFAS to a list of covered substances subject to an existing SNUR; and
- EPA approves a new PFAS for manufacture or processing, and it is added to the TSCA Inventory and designated as an active chemical under either subsections 5(A) or (5)(B) of TSCA Section 8(b).

June 10, 2020

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Dear Chairman Wicker and Ranking Member Cantwell:

We write this letter—supported by over 90 scientists—to express our opposition to the White House nomination of Nancy Beck to Chair the U.S. Consumer Product Safety Commission (CPSC).¹

Nancy Beck is currently detailed to the White House, where she is empowered to oversee the chemical evaluations that she was in charge of developing while serving as the political head of the EPA’s Office of Chemical Safety and Pollution Prevention (OCSPP).² In that role she led the implementation of the revised Toxics Substances Control Act (TSCA), updated in 2016 by Congress to ensure that chemical substances and mixtures are evaluated and regulated so as not to present an unreasonable risk to human health or the environment, including infants, children, pregnant women, workers, and the elderly.³

Under Beck’s leadership, her office issued a TSCA Systematic Review document that was strongly criticized by scientists:

¹ § 732l(b)-(d).

² White House Press Release. President Donald J. Trump Announces Intent to Nominate and Appoint Individuals to Key Administration Posts. Issued on: March 2, 2020. Available at <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-individuals-key-administration-posts-32/>

³ A New Face at the CPSC? White House to Nominate Dr. Nancy Beck as Chair. The National Law Review, March 3, 2020 <https://www.natlawreview.com/article/new-face-cpsc-white-house-to-nominate-dr-nancy-beck-chair>

² <https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp>

³ The official text of TSCA as amended by the Frank R. Lautenberg Chemical Safety Act of the 21st Century is available in the United States Code, from the U.S. Government Printing Office. 15 USC Ch. 53: TOXIC SUBSTANCES CONTROL. <https://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter53&edition=prelim>

"The EPA officially calls the method a "systematic review" framework for TSCA, but it is systematic in name only, as it falls far short of best practices for systematic reviews. Application of the TSCA method will exclude relevant research from chemical assessments, leading to underestimation of health risks and resulting in inadequate policies that allow unsafe chemical exposures, thus harming public health. The TSCA systematic review method could be especially detrimental for populations more vulnerable to chemical exposures, such as pregnant women and children."⁴

Among its many flaws, Beck's notion of a "systematic review" incorporates one of her most harmful policy positions—to discount epidemiologic evidence if all the relevant data (including information on individual study participants) are not made public. Beck argued for this in public comments to EPA, while she was still working for the American Chemistry Council, the chemical industry trade association, immediately prior to her move to EPA.⁵

Beck's dangerous and unscientific policy—to discount relevant evidence from human populations—is also at the center of EPA's discredited so-called 'Science Transparency Rule' that was strongly criticized by experts including academic scientists, EPA's own Science Advisory Board, and the Bipartisan Policy Center, among others.⁶ In fact, "[E]ditors-in-chief of five major scientific journals in May 2018, reflected alarm that the proposal's push for 'transparency' would be used as a mechanism for suppressing the use of relevant scientific evidence in policy-making, including public-health regulations."⁷ Even *The Economist* opposed the rule, in an editorial titled 'Swamp Science' emphasizing that it would stifle science, and hamstring health protective regulations.⁸ In summary, Beck's views are long-standing and inconsistent with scientific best practices.⁹

Beck's approaches consistently disregarded scientific best practices, favor chemical manufacturers, and put vulnerable populations in harm's way. As one of her first acts at EPA, Beck refused to finalize the 2017 proposed ban on methylene chloride (MC) in paint strippers for consumer uses and most commercial uses. Four people died of MC asphyxiation between the time the ban was proposed and when EPA finally took partial, inadequate action. When Beck's office did ultimately finalize the ban, after a two-year delay, it excluded commercial products, thus stripping worker protections.¹⁰

⁴Singla VI, Sutton PM, Woodruff TJ. The Environmental Protection Agency Toxic Substances Control Act Systematic Review Method May Curtail Science Used to Inform Policies, With Profound Implications for Public Health. *Am J Public Health*. 2019 Jul;109(7):982–984. doi: 10.2105/AJPH.2019.305068.

⁵Public comments submitted by Nancy Beck on behalf of the American Chemistry Council. Teleconference of the Science Advisory Board Chemical Assessment Advisory Committee Augmented for the Review of EPA's Draft Ammonia Assessment 12/17/2014. Available at <https://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/SAC4AB630077A1B385257D860078EA72?OpenDocument>. Direct link at [https://yosemite.epa.gov/sab/sabproduct.nsf/0B80EDF9EA0C407D85257DAF00797454/\\$File/ACC+Comments+on+Ammonia+CAACdraft+report+12152014.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/0B80EDF9EA0C407D85257DAF00797454/$File/ACC+Comments+on+Ammonia+CAACdraft+report+12152014.pdf)

⁶More than forty medical and environmental health professionals with expertise and interest in protecting children and their families from exposures to neurotoxic chemicals write to oppose Pruitt's flawed "censored science" proposed rule. July 16, 2018. Available at <https://www.nrdc.org/resources/letter-opposing-pruitts-proposed-rule-restrict-epas-use-science>

⁷Science Advisory Board (SAB) Consideration of EPA Proposed Rule: Strengthening Transparency in Regulatory Science. EPA-SAB-18-003. June 28, 2018. Available at [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentBOARD/4ECB44CA28936083852582BB004ADES4/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentBOARD/4ECB44CA28936083852582BB004ADES4/$File/EPA-SAB-18-003+Unsigned.pdf)

⁸Bipartisan Policy Center (BPC) comments. EPA-HQ-OA-2018-0259-0670. May, 2018. Available here: <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0670>

⁹Joint statement on EPA proposed rule and public availability of data (2019) H. Holden Thorp, Magdalena Skipper, Veronique Kiermer, May Berenbaum, Deborah Sweet, Richard Horton. *PLoS Med*. 2019 Nov; 16(11): e1003014. Published online 2019 Nov 26. doi: 10.1371/journal.pmed.1003014

¹⁰Joint statement on EPA proposed rule and public availability of data (2019). H. Holden Thorp, Magdalena Skipper, Veronique Kiermer, May Berenbaum, Deborah Sweet, Richard Horton. *Proc Natl Acad Sci U.S.A.* 2019 Dec 17; 116(51): 25368. Published online 2019 Nov 26. doi: 10.1073/pnas.1920635117

J. Berg *et al.*, *Nature* <http://doi.org/crq8>; 2018

⁸The Economist. Swamp science: Scott Pruitt embarks on a campaign to stifle science at the EPA. New policies would hamstring clean-air and pesticide standards. April 26, 2018. Available at: <https://www.economist.com/united-states/2018/04/26/scott-pruitt-embarks-on-a-campaign-to-stifle-science-at-the-epa>

⁹For more information and citations on Nancy Beck, see: Six Ways Nancy Beck Showed Us She Doesn't Care About Us or Science. Genna Reed, Lead Science and Policy Analyst. May 13, 2020. <https://blog.ucsusa.org/genna-reed/six-ways-nancy-beck-doesnt-care-about-science>

¹⁰The deadly omission in EPA's Methylene Chloride rule. Program on Reproductive Health and the Environment Program on Reproductive Health and the Environment, University of Cali-

Nancy Beck's disregard for worker protections runs through all the TSCA chemical evaluations that she oversaw. All her TSCA chemical risk evaluations—including TCE, methylene chloride, 1,4 dioxane, carbon tetrachloride and 1-bromopropane—presume that personal protective equipment (PPE) is available, in good working condition, provided to all workers that need it, fitted properly, used consistently, and adequately protective in all situations of workplace and do-it-yourself exposure to chemicals. However, EPA's Scientific Advisory Committee on Chemicals (SACC) has repeatedly underscored that an expectation of universal and effective PPE use is in fact contrary to the scientific evidence of real-world workplace practice and contrary to established principles of worker protection:¹¹ “[M]any members of the Committee believed EPA should place more emphasis on the limited likelihood that respiratory protection will be adopted without specific occupational exposure guidelines . . . EPA's characterization of reasonable risk relying on use of PPE is not sufficiently supported by the practical realities of many workplaces.”¹² Yet, EPA has maintained that it will continue this unscientific and unprotective approach in its upcoming chemical assessments, including for formaldehyde: “EPA also plans to consider the effect(s) that engineering controls (EC) and/or personal protective equipment (PPE) have on occupational exposure levels as part of the draft risk evaluation.”¹³

EPA's fictitious assumption of 100 percent PPE availability use is only one of numerous policy decisions made by Nancy Beck that are contrary to scientific practice and undermine protection for children, consumers, first responders and other workers. A Federal court overturned the decision by Beck's office to unlawfully exclude common sources of exposure to lead and asbestos—two of the most notoriously dangerous chemicals known to science—from TSCA risk evaluations.¹⁴ Beck's approach would have ignored exposures to leaded paint, lead water pipes, asbestos insulation, and other toxic consumer products. Beck's unwillingness to include a half-century of scientific evidence on the health harms of even low levels of lead and asbestos in her office's risk evaluations is deeply disturbing.

The risk evaluations prepared under Beck's leadership have also failed to consider the potential impacts of exposure to chemicals from drinking water, air pollution, and contaminated soil—justifying this exclusion by claiming that other environmental statutes address these exposure pathways. Here again, EPA has refused to alter its unscientific approach, despite repeated criticism from the Agency's own Scientific Advisory Committee on Chemicals: “Exposure scenarios that include consumers are important given the known presence of 1,4-Dioxane in plastics, other commercially available products, surface water, drinking water, groundwater, and in sediments. The Committee also had concerns that the omission of these multiple routes of exposure puts workers who inhale or ingest 1,4-Dioxane outside the workplace at even greater risk.”¹⁵ The Science Advisory Committee further noted that this exclusionary approach, “strayed from basic risk assessment principles by omitting well known exposure routes such as water consumption by all occupationally and non-occupationally-exposed humans as well as similar exposures to other biological receptors.”¹⁶ The Scientific Advisory Committee on Chemicals similarly

fornia, San Francisco. June 4, 2019. Swati Rayasam. Available at <https://prheucsf.blog/2019/06/04/the-deadly-omission-in-epas-methylene-chloride-rule/>

¹¹Information for all the EPA Science Advisory Committee on Chemicals (SACC) meetings, including final reports, can be found on EPA's webpage at <https://www.epa.gov/tsca-peer-review/science-advisory-committee-chemicals-meetings>

¹²Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC) meeting, July 2019. Peer Review of the Draft Risk Evaluations for HBCD and 1,4-Dioxane. Final Report, October 2019. EPA-HQ-OPPT-2019-0237-0064. Available at <https://www.epa.gov/tsca-peer-review/peer-review-draft-risk-evaluations-hbcd-and-14-dioxane>

¹³Draft Scope of the Risk Evaluation for Formaldehyde, EPA Document# EPA-740-D-20-014, April 2020 (Section 2.3.5, p. 33) Available here: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-formaldehyde>

¹⁴Court rules Trump EPA unlawfully ignored dangerous chemicals. A Federal appeals court says the Trump administration unlawfully excluded millions of tons of some of the most dangerous materials in public use from a safety review. By Matthew Brown, Associated Press. November 14, 2019. Available at <https://abcnews.go.com/Technology/wireStory/court-rules-trump-epa-unlawfully-dangerous-chemicals-67025256>

¹⁵Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC) meeting, July 2019. Peer Review of the Draft Risk Evaluations for HBCD and 1,4-Dioxane. Final Report, October 2019. P. 18. EPA-HQ-OPPT-2019-0237-0064. Available at <https://www.epa.gov/tsca-peer-review/peer-review-draft-risk-evaluations-hbcd-and-14-dioxane>

¹⁶Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC) meeting, July 2019. Peer Review of the Draft Risk Evaluations for HBCD and 1,4-Dioxane. Final

Continued

pushed back on Beck's EPA in its review of 1-Bromopropane for failing to include air emissions and other environmental releases.¹⁷

EPA's pesticide office also fell under Beck's leadership, where she withheld needed protection for children, agricultural workers and rural communities by blocking the proposed cancellation of the neurotoxic organophosphate pesticide chlorpyrifos.¹⁸ Prenatal exposure to chlorpyrifos is linked to neurodevelopmental disorders including impaired cognition, behavioral problems, and delayed social development in children.¹⁹

Under Beck's leadership, EPA delayed children's protections for lead by failing to update the hazard standard for lead paint—contrary to decades of scientific evidence showing harm, and in violation of a Federal court order.²⁰

And, under Beck's leadership, EPA failed to take meaningful action to address the crisis of PFAS chemicals that contaminate our drinking water, food, and consumer products. Beck had the authority to take numerous steps to gather additional information, inform the public and impose restrictions on the use of PFAS—but she did none of those things. Congress has been forced to step in and require action by EPA, yet even the records released illustrate Beck's attempts to weaken those actions mandated by Congress.

If she was confirmed as Chair of the Consumer Product Safety Commission, Nancy Beck would be in a position to rollback important consumer protections including the CPSC's planned rulemaking to limit toxic flame retardant chemicals in furniture including children's products;²¹ and, the CPSC's recently adopted bans on certain phthalate chemicals in toys and other children's products.²² These classes of chemicals are linked to reproductive impairment, neurological impacts, and disruption of critical hormones. The CPSC's actions are supported by a decade of scientific evidence, expert peer review and multiple opportunities for stakeholder and public comment.

The Consumer Product Safety Commission must provide important public protections from dangers associated with consumer products including toys, children's products, home furnishings, cleaning supplies, and some building materials. There is no place for Nancy Beck in such an Agency.

Respectfully,

JENNIFER SASS, PHD,

Senior Scientist, Natural Resources Defense Council, Professorial Lecturer,

George Washington University.

Report, October 2019. P. 18. EPA-HQ-OPPT-2019-0237-0064. Available at <https://www.epa.gov/tsc-peer-review/peer-review-draft-risk-evaluations-hbcd-and-14-dioxane>

¹⁷Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC) meeting, Sept 2019. Peer Review of the Draft Risk Evaluations for 1-Bromopropane. Final Report, December 2019. P. 17. EPA-HQ-OPPT-2019-0235-0061. Available at <https://www.epa.gov/tsc-peer-review/peer-review-draft-risk-evaluation-1-bromopropane>

¹⁸U.S. EPA. EPA Revised Human Health Risk Assessment on Chlorpyrifos. December 2014. Docket ID EPA-HQ-OPP-2008-0850. Available from: <http://www.epa.gov/ingredients-used-pesticide-products/revised-human-health-risk-assessment-chlorpyrifos>

U.S. EPA. Chlorpyrifos: Revised Human Health Risk Assessment for Registration Review. U.S. Environmental Protection Agency Washington, DC; 2016. Document ID: EPA-HQ-2015-0653-0454. Available from: <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0653-0454>.

¹⁹Hertz-Picciotto I, Sass JB, Engel S, Bennett DH, Bradman A, Eskenazi B, *et al.*, (2018) *Organophosphate exposures during pregnancy and child neurodevelopment: Recommendations for essential policy reforms.* PLoS Med 15(10): e1002671. <https://doi.org/10.1371/journal.pmed.1002671>

²⁰Groups sue over botched lead hazard rule: no level of lead exposure is safe for children. Earthjustice press release, August 1, 2019. <https://earthjustice.org/news/press/2019/groups-sue-over-botched-lead-hazard-rule>

²¹Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products. September 2017. 82 FR 45268. Available at <https://www.federalregister.gov/documents/2017/09/28/2017-20733/guidance-document-on-hazardous-additive-non-polymeric-organohalogen-flame-retardants-in-certain>

²²Final Rule. Children's Products, Children's Toys, and Child Care Articles: Determinations Regarding Lead, ASTM F963 Elements, and Phthalates for Engineered Wood Products. June 2018. 83 FR 28983. <https://www.federalregister.gov/documents/2018/06/22/2018-13392/childrens-products-childrens-toys-and-child-care-articles-determinations-regarding-lead-astm-f963>

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AMERICAN ASSOCIATION FOR JUSTICE
June 11, 2020

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Dear Senator Wicker and Senator Cantwell:

The American Association for Justice (AAJ), formerly the Association of Trial Lawyers of America (ATLA), is writing to express our opposition to the nomination of Nancy Beck as Chair of the Consumer Product Safety Commission (CPSC). AAJ, with members in the United States, Canada, and abroad, is the world's largest plaintiff trial bar and works to preserve access to justice. AAJ speaks for individuals who have been exposed to and harmed by toxic substances. We work to ensure that all impacted individuals retain their ability to hold the responsible party accountable under the law.

The CPSC is a small agency with big responsibilities. The agency is responsible for protecting children and families by overseeing the safety of over 15,000 consumer products, including toys, cribs, home furnishings, power tools and cleaning supplies. Its jurisdiction is broad and critically important to the health and well-being of every American. The commitment by the Chair of CPSC to fulfilling the life-saving mission of the agency is critical to its success or failure. We believe Nancy Beck is absolutely the wrong person for the job.

Throughout her career, Ms. Beck has worked to weaken, delay and undermine important health protections from toxic chemicals in the environment and household products. She served for over five years as a senior director at the American Chemistry Council, the trade association that lobbies on behalf of the Nation's largest chemical manufacturers. In her position at ACC, she repeatedly advocated positions harmful to consumers and workers. For example, she argued against strong regulation of inorganic arsenic, a highly toxic carcinogen; she urged EPA to adopt procedures that would limit the effectiveness of the Lautenberg Chemical Safety Act, a bipartisan bill intended to improve EPA's oversight of toxic chemicals; and she advocated for EPA to delay a regulation for two toxic chemicals in particular—NMP and Methylene Chloride. In her current position in the Trump Administration, Ms. Beck continued to delay these protections, and in the meantime, at least four people have died from exposures to methylene chloride, exposures that could have been prevented if EPA had acted.

Ms. Beck joined the Trump Administration in 2017 as director of EPA's Chemical Safety office, and was detailed to the White House in 2019. During her time as a government official, she has been able to implement many of the policies she advocated for on behalf of the chemical industry. Her record of harm to the American people includes blocking a proposed ban on chlorpyrifos, a pesticide that can cause brain damage; stopping proposed regulations of TCE, which is linked to cancer, fetal heart defects and other serious health issues; delaying important changes to the

lead paint standard that would have helped to prevent childhood lead poisoning; and pushing an interpretation of Federal chemical safety laws that ignore legacy exposures to harmful substances such as asbestos.

Of great concern to many of AAJ's members, who represent communities harmed by the toxic chemicals called PFAS (per- and poly-fluoroalkyl substances), Ms. Beck has led efforts within the Trump Administration to block stronger protections from these very dangerous chemicals. PFAS exposures have been linked to cancer, birth defects and immune system disorders. They are called "forever chemicals" because they never break down in the environment and remain in our bodies for years. Studies show that almost every American has PFAS in their blood. PFAS contaminated drinking water has been found on military bases and in communities across the United States. Firefighters, in particular, have elevated blood levels because PFAS is found in firefighting foams. Despite all the evidence and a bipartisan consensus that we need to strengthen protections against PFAS, Ms. Beck has used her position at EPA and the White House to block needed reforms.

Ms. Beck's record of aggressive advocacy in favor of the chemical industry and against the health and safety of consumers and workers makes her particularly unsuited to lead the CPSC. The Commission has jurisdiction over a wide variety of consumer products that contain hazardous substances, such as phthalates, lead, asbestos, PFAS and toxic flame retardants. In fact, the agency has an active rule-making to ban the use of toxic organohalogen flame retardants in toys, mattresses, children's products and electronic casings. We are very concerned that Ms. Beck would undermine and block needed action to protect the public from these harmful substances.

But our concern is not limited to chemical hazards. Ms. Beck's record of favoring industry interests over public health indicates that she will not provide the leadership necessary to carry out CPSC's mission to protect children and families from unreasonably dangerous consumer products, from lead in toys to cribs that strangle to unsafe table saws. In fact, we are concerned that Ms. Beck will actively undermine that mission by blocking, delaying and weakening needed protections, as she has done throughout her career. For the foregoing reasons, AAJ strongly urges you to oppose the nomination of Nancy Beck as Chair of the Consumer Product Safety Commission.

Sincerely,

LINDA LIPSEN,
Chief Executive Officer,
American Association of Justice.

LEARNING DISABILITIES ASSOCIATION OF AMERICA
June 12, 2020, Pittsburgh, PA

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee, on Commerce, Science and
Transportation,
United States Senate,
Washington, DC.

Dear Chairman Wicker and Ranking Member Cantwell:

The Learning Disabilities Association of America (LDA), is a national nonprofit organization representing individuals with learning disabilities and their families and has 29 state affiliates and members in nearly every state and territory. One in 5 American children have a learning or attention disability and over 7 million children, including more than 2 million with specific learning disabilities, rely on IDEA and Section 504 to receive necessary special education supports, services, instruction and protections. The autism rate continues to rise now affecting 1 in 54 children, which nearly tripled since 2000¹. The incidence of these types of disabilities is rising every year at an alarming pace, especially for autism and ADHD.

*We are writing to express our opposition to the White House nomination of Dr. Nancy Beck to Chair the U.S. Consumer Product Safety Commission (CPSC) and to urge you to oppose this nomination.*²

¹John Hopkins Bloomberg School of Public Health <https://www.jhsph.edu/news/news-releases/2020/us-autism-rates-up-10-percent-in-new-cdc-report.html> and Center for Disease Control <https://www.cdc.gov/ncbddd/autism/data.html>, March 2020

²White House Press Release. President Donald J. Trump Announces Intent to Nominate and Appoint Individuals to Key Administration Posts. Issued on: March 2, 2020, <https://www>

The National Academy of Sciences estimates that *environmental factors, including toxic chemicals, cause or contribute to 28 percent of learning and developmental disabilities in American children.*³ Scientists have learned that the developing human brain is much more susceptible to toxic substances than the adult brain, and that even tiny amounts of certain chemicals can do lasting harm to the developing brain, at levels that were once thought to be safe.

LDA's Healthy Children Project was established in 2002 to eliminate the preventable causes of neurological disabilities, particularly chemical exposures, and reduce the incidence of neurological disabilities in future generations.

The U.S. Consumer Product Safety Commission (CPSC) is the key Federal agency that is charged with protecting the public from consumer products that pose dangers, including from chemical, fire, electrical, and mechanical hazards.⁴ They regulate over 15,000 different consumer products, including most products in our homes.

The CPSC is governed by a bipartisan commission of five commissioners with staggered terms. The Chair is currently vacant, and Nancy Beck has been nominated to be the Chair. She now serves at the Office of Management & Budget after spending years in the chemical safety office of the Environmental Protection Agency. Prior to that, she was a high-ranking senior executive for the American Chemical Council.

Sadly, Nancy Beck has a history of not protecting our health, and even worse, has used her positions to prevent other public officials from doing more to protect children and adults with learning disabilities from harm.

- While at the EPA, Beck overrode the agency staff and rewrote rules under the Toxic Substances Control Act (TSCA)⁵ to ignore exposures to lead from pipes and paint because they are no longer used in new products, and other chemicals when deciding whether they pose an “unreasonable risk” to health. *Her approach was rejected⁶ by a Federal Court of Appeals⁷—in a case brought by the LDA and other environmental and health organizations—for violating the health protective requirements of the law.*
- Beck also directed EPA staff to ignore that people are exposed⁸ to neurotoxic chemicals from polluted drinking water, air and soil when evaluating whether the containment chemicals pose an unreasonable risk to health. That approach dramatically underestimates the impacts of exposure to those chemicals—particularly for infants, children and vulnerable communities. The agency refused to change the approach, despite criticism from the EPA's own Science Advisory Committee which noted that consumer exposures including drinking water, air pollution, and other environmental releases exposures should be included.⁹
- Beck has withheld needed protections for children¹⁰, workers¹¹, and rural communities¹² by blocking the proposed ban¹³ on brain-damaging pesticide chlorpyrifos.¹⁴ EPA Administrator Andrew Wheeler said EPA blocked the ban because it questioned the link between chlorpyrifos and brain damage, despite the strong scientific evidence cited by EPA's own scientists. EPA's failure to ban chlorpyrifos is currently undergoing legal challenge by health groups including

[.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-ap-point-individuals-key-administration-posts-32/](https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-ap-point-individuals-key-administration-posts-32/)

³Scientific Frontiers in Developmental Toxicology and Risk Assessment, Executive Summary, http://www.nap.edu/openbook.php?record_id=987l&page=1, National Academy of Sciences Committee on Developmental Toxicology

⁴<https://www.cpsc.gov/About-CPSC>

⁵<https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>

⁶<https://www.nrdc.org/experts/trump-epas-industry-friendly-tsca-policy-starts-unravel>

⁷<https://www.nrdc.org/sites/default/files/tsca-opinion-20191114.pdf>

⁸<https://www.nytimes.com/2018/06/07/us/politics/epa-toxic-chemicals.html?action=click&module=Relatedlinks&pgtype=Article> and <https://www.documentcloud.org/documents/4495888-Problem-Formulations.html>

⁹Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC) meeting, July 2019. Peer Review of the Draft Risk Evaluations for HBCD and 1,4-Dioxane October 2019, <https://www.epa.gov/tsca-peer-review/peer-review-draft-risk-evaluations-hbcd-and-14-dioxane>

¹⁰<https://www.nrdc.org/experts/miriam-rotkin-ellman/epa-toxic-pesticide-fruitsveggies-puts-kids-risk>

¹¹<https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Giev%20Kashkooli%20TestimonyPESTICIDES031319.pdf>

¹²<https://www.nytimes.com/2019/12/17/opinion/chlorpyrifos-pesticide.html>

¹³<https://www.nytimes.com/2019/07/18/climate/epa-chlorpyrifos-pesticide-ban.html>

¹⁴<http://www.panna.org/resources/chlorpyrifos-facts>

the Learning Disabilities Association of America and some of our state affiliates.

- Beck has rejected protection for children by refusing to ban the use of a brain-damaging pesticide (TCVP)¹⁵ in pet products, including flea collars and shampoos. A Federal court recently ordered¹⁶ EPA to respond to a petition to ban the use of TCVP in pet products.
- Beck delayed children's protections for lead by failing to update the hazard standard for lead paint¹⁷—contrary to Federal court order.

The pattern of decisions demonstrates that Nancy Beck has a clear history of not protecting the health of families. If confirmed by the U.S. Senate for a position of much greater authority, Nancy Beck will Chair the CPSC for seven years, and be able to not only block our efforts to protect our members, but to repeal existing protections as well.

For all the above reasons we ask you to oppose Nancy Beck's nomination to the Consumer Product Safety Commission.

Respectfully,

Tracy Gregoire,
Healthy Children Project Director
Learning Disabilities Association of America

Matthew Talley, President
Learning Disabilities Association of Alaska

Tamara Massey, President
Learning Disabilities Association of Alabama

Brittany Franklin, MSE ECSE, Healthy Children Project Coordinator
Learning Disabilities Association of Arkansas

Gregg French, President
Learning Disabilities Association of Connecticut

Cathy Einhorn, President
Learning Disabilities Association of Florida

Carolyn Kingsley, Healthy Children Project Volunteer
Learning Disabilities Association of Georgia

Bev Johns, President
Learning Disabilities Association of Illinois

Penny Richards, President
LDA of Illinois Kane/Kendall Chapter

Patty Useem, President
Learning Disabilities Association of Indiana

Paula Hamp, President
Learning Disabilities Association of Iowa

Ann Johnson, President
Learning Disabilities Association of Maine

Jaime Brown, President
Learning Disabilities Association of Maryland

Amy Barto, Healthy Children Project Coordinator
Learning Disabilities Association of Michigan

Martha Moriarity, Executive Director
LDA Minnesota

Clarice Jackson, President
Learning Disabilities Association of Nebraska

Sollie Pinkston, Healthy Children Project Coordinator
Learning Disabilities Association of New Jersey

Kathryn Cappella, Treasurer
Learning Disabilities Association of New York

JoAnna J. Barnes, Esq., President

¹⁵ <https://www.nrdc.org/experts/miriam-rotkin-ellman/no-more-poisons-pets-epa-must-act>

¹⁶ <https://www.nrdc.org/sites/default/files/court-opinion-tcvp-20200422.pdf>

¹⁷ <https://earthjustice.org/news/press/2019/groups-sue-over-botched-lead-hazard-rule>

Learning Disabilities Association of North Carolina

Evie Lindberg, Executive Director

Learning Disabilities Association of Oklahoma

Analisa Smith, President

Learning Disabilities Association of South Carolina

Dr. Joy S. Marsh, State President

Learning Disabilities Association of Tennessee

Pam Smith, Healthy Children Project Coordinator

Learning Disabilities Association of Texas

Gaylia Tanner, Healthy Children Project Coordinator

Learning Disabilities Association of Utah

Dr. Louis Allen MD, FAAP, MPH

Able Differently

Diane Sixel, President

Learning Disabilities Association of Wisconsin

June 15, 2020

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee, on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Dear Chairman Wicker and Ranking Member Cantwell:

We write to express our strong opposition to the confirmation of Nancy Beck to be Chair of the Consumer Product Safety Commission (CPSC).¹ Throughout her career, Ms. Beck has opposed and weakened standards that impact our health, safety, and environment, particularly with respect to toxic chemicals. If confirmed to lead the CPSC, she will be empowered to do even more damage to public health and consumer protection for many years.

The CPSC is responsible for protecting consumers from hazards posed by consumer products.² The agency has the responsibility for ensuring that more than 15,000 products are safe, including toys, household products, furniture, cribs, and recreation equipment including all-terrain vehicles. Robust product safety protects not only consumers, but also workers including those involved in product manufacturing and disposal, as well as fire fighters who face high risk of illness when exposed to smoke from consumer products containing toxic chemicals. From lead paint to flame retardants to toxic per- and poly-fluoroalkyl substances (PFAS) to asbestos, Ms. Beck has fought for years to weaken safeguards designed to protect public health.

As an official at the Environmental Protection Agency (EPA) over the past three years, Beck has been the architect of numerous policies to undermine health protection from toxic chemicals, increasing risk to first responders, children, and vulnerable communities.

Beck's Record on PFAS Is Troubling

Per and polyfluoroalkyl substances (PFAS) are a class of toxic chemicals that have been linked to testicular and kidney cancer, thyroid disease, decreased fertility, decreased response to vaccines, birth defects, immune system disorders and other health effects.³ PFAS are found in many consumer products as well as firefighting foam that is used at military bases. PFAS chemicals, which are highly persistent

¹ The term "chairman" is codified in statute and states that the chair is the "principal executive officer of the Commission" and exercises "all of the executive and administrative functions of the Commission." 15 U.S. Code § 2053.

² *About CPSC*, U.S. CONSUMER PROD. SAFETY COMM'N, <https://www.cpsc.gov/About-CPSC> (last visited December 19, 2019).

³ Per- and Polyfluoroalkyl Substances (PFAS) and Your Health, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, <https://www.atsdr.cdc.gov/pfas/PFAS-health-effects.html> (last visited Jan. 13, 2020) and Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, https://www.niehs.nih.gov/health/materials/perfluoroalkyl_and_polyfluoroalkyl_substances_508.pdf (last visited Jan. 13, 2020).

and mobile, have contaminated drinking water throughout the United States. Nearly 99 percent of people have PFAS in their bodies.⁴

While at EPA, Beck assisted in delaying the release of a government study which found that EPA's current health standard for PFAS is too weak to protect the public. The White House deemed the report a "public relations nightmare."⁵ The final report is *still* stuck at the White House, where Beck is currently working on PFAS policies. Beck also failed to take measures to protect drinking water from PFAS contamination, to limit people's exposure to PFAS in consumer products, or to provide information to communities about discharges into the local environment—all measures that have been urged by a bipartisan group of Senators, Representatives, Governors, local officials, EPA staff, and the public. Congress finally stepped in with last year's National Defense Authorization Act to direct EPA to take some of the protective actions that Beck had resisted for years. Despite this congressional intervention, Beck has worked to weaken the measures that Congress directed.⁶ With such a troubling track record, if Beck is confirmed to chair the CPSC, it is foreseeable that she will continue to undermine efforts to protect consumers from PFAS.

Beck's Implementation of TSCA Has Been Rejected by Federal Courts and Scientific Peer Reviewers

Beck has played the leading role in EPA's implementation of the Toxic Substances Control Act (TSCA), revised in 2016 by Congress to require evaluation of chemicals, and protection of the public—including susceptible populations—from unreasonable risks. One of Beck's first actions at EPA was to block a proposed ban on the use of the dangerous solvent methylene chloride in paint strippers. It is known to pose a lethal risk to workers and consumers. In the two years that followed, four people died using the paint strippers. After several organizations sued EPA, it finalized a ban on consumer sales, but not commercial use—meaning workers and consumers are *still* unprotected. Beck also blocked proposed bans on some workplace and consumer uses of trichloroethylene (TCE) a cancer-causing solvent that has also been associated with structural cardiac defects in newborns resulting from in utero exposures. And she pressured EPA scientists not to focus on the cardiac hazards when they evaluated whether the chemical presents unreasonable risk.

But Beck was just getting started: she overrode agency science and legal staff to re-write EPA's policies for evaluating toxic chemicals—directing staff to ignore potential exposure from drinking water, air pollution, and contaminated soil—a policy that will exclude the most vulnerable communities from protection. Another Beck policy would have ignored potential exposure to asbestos and lead in homes, buildings, and schools across the country when evaluating how much of a danger they pose to public health. A Federal appeals court recently rejected that approach. Beck has also blocked EPA from prohibiting the use of the brain damaging pesticide chlorpyrifos, which several states have since banned, and is under review by a Federal court. And she has blocked the ban of a related pesticide commonly used in pet collars and other products, endangering children. A Federal court recently ordered the agency to respond to a rulemaking petition to ban it.

Beck's Work Has Been Criticized for Distorting Science and Undermining Health Protections

While Beck's supporters tout her scientific education and training, her background as a scientist adds little value to the CPSC because her scientific work has repeatedly been criticized by independent experts. A peer review panel appointed by the Trump administration found that chemical evaluations produced under Beck's oversight "strayed from basic risk assessment principles," resulting in draft evaluations that were, "unscientific," "misleading," riddled with "mistakes and inconsistencies," and "generally lacking in [their] ability to present a coherent picture of worker risks. This assessment is consistent with previous reviews of Beck's work. In 2006, the non-partisan National Academy of Sciences noted in a report that a document Beck wrote during her time at OMB was "fundamentally flawed," "simplistic" and "of serious concern," and unanimously recommended that it be withdrawn. It was. Beck has also advocated for policies embodied in the administration's proposed rule

⁴ Calafat, A. M., Wong, L. Y., Kuklenyik, Z., Reidy, J. A., & Needham, L. L. (2007). Polyfluoroalkyl Chemicals in the U.S. Population: Data from the National Health and Nutrition Examination Survey (NHANES) 2003-2004 and Comparisons with NHANES 1999-2000. *Environmental Health Perspectives*, 115(11), 1596-1602, <https://doi.org/10.1289/ehp.10598>.

⁵ Annie Snider, *White House, EPA Headed Off Chemical Pollution Study, Politico* (May 14, 2018), <https://www.politico.com/story/2018/05/14/e-mails-white-house-interfered-with-science-study-536950>.

⁶ Press Release, *Carper: New Evidence and Leaked Documents Reveal White House Official Worked to Weaken PFAS Protections* (April 17, 2020).

to limit the use of human exposure studies, which has been widely criticized by scientific bodies and organizations, including EPA's own Science Advisory Board. Nancy Beck's professional training as a scientist is not a sufficient reason to confirm her to lead the CPSC, and her record of advocacy far outside mainstream public policy or science underscores her lack of fitness for this important position.

Beck Played a Role in Suppressing CDC Guidelines, Continuing a Career-Long Trend

The Associated Press reported that as an official on detail to the White House, Beck recently contributed to suppressing detailed guidelines that the Centers for Disease Control and Prevention (CDC) sought to release to help the country reopen in the midst of the COVID-19 pandemic. Beck is neither a public health official, a medical doctor, nor a virologist, and there is a great deal of uncertainty as to what her current responsibilities are within this administration.⁷ Although her role in this recent matter has not been fully explained, it appears to be consistent with other incidents—including blocking or slow-walking the release of the government report on PFAS noted above, and administration efforts to suppress the release of hazard assessments of formaldehyde and other chemicals by EPA's IRIS Program.⁸ If the CPSC is to be led by someone who follows the science, it is clear that Nancy Beck is the wrong choice for the position.

CPSC Will Be Beck's Biggest Perch to Weaken Safety Standards and Undermine Science

Immediately prior to joining EPA, Beck was the Senior Director of Regulatory & Technical Affairs at the American Chemistry Council, a powerful chemical industry lobbying group. Understanding her role there is important because the CPSC has jurisdiction—and the statutory obligation—to safeguard consumers from products that contain hazardous levels chemicals. For example, the CPSC has issued a rule, as directed by Congress, limiting the use of phthalates in children's products, and is currently considering a rule limiting the use of toxic flame retardants in certain consumer products. The chemical industry has ardently opposed these protections, which have significant impacts for the health and safety of consumers and is even challenging the phthalates ban in Federal court. It is foreseeable that Nancy Beck will thwart the CPSC's ability to protect consumers from the well-documented harms that these chemicals pose.

Confirming Nancy Beck would leave a seasoned and aggressive fox guarding the henhouse—and responsible for the protection of children and consumers—for the next seven years. The CPSC is already hamstrung by laws that make it difficult for the agency to robustly protect families from injury and death. For example, recent reports have shown how a little-known provision of the law prevented the CPSC from informing the public that inclined sleep products were linked to the deaths of more than 90 infants.⁹ The agency has also come under fire for working with a stroller company to evade undergoing a recall for faulty parts that contributed to injuries of more than a hundred children and adults.¹⁰ Consumers and children cannot afford a further erosion of the CPSC's commitment to protect the public from dangerous products.

After examining her very troubling track record, only briefly summarized here, there is no reason to doubt that if confirmed, Nancy Beck would continue to block and oppose needed safety standards, but with even more power to do so. Confirming her into a position of such public trust where she would slow down, weaken, or thwart safety standards will be to the lasting detriment of families and communities across the country. We urge you to make clear that you stand with our families, our children, and our first responders and oppose Nancy Beck's nomination. With questions, please contact: Eve Gartner, at egartner@earthjustice.org, Remington A. Gregg, at rgregg@citizen.org, Daniel Rosenberg, at drosenberg@nrdc.org, Pamitha

⁷ Ms. Beck currently works at the White House, though her title and position are not clear; indeed, the website of the Environmental Protection Agency (EPA) reports that she holds a senior position there.

⁸ Annie Snider, *Sources: EPA Blocks Warnings on Cancer-Causing Chemical* <https://www.politico.com/story/2018/07/06/epa-formaldehyde-warnings-blocked-696628>

⁹ Public Citizen, *DELAY AND SECRECY: HOW SECTION 6(B) OF THE CONSUMER PRODUCT SAFETY ACT KEEPS CONSUMERS IN THE DARK*, available at <https://www.citizen.org/article/delay-and-secrecy/> (last visited Dec. 19, 2019) and Rachel Rabkin Peachman, *When Recalls Fail*, CONSUMER REPORTS (Oct. 31, 2019), <https://www.consumerreports.org/recalls/when-recalls-fail/>.

¹⁰ All Things Considered, *How a Stroller Company Avoided a Recall with the Help from the CPSC*, NPR (April 3, 2019), <https://www.npr.org/2019/04/03/709573914/how-a-stroller-company-avoided-a-recall-with-help-from-the-chair-of-the-cpsc>.

Weerasinghe, at pweerasinghe@ucsusa.org, and Rachel Weintraub, at rweintraub@consumerfed.org

Sincerely,

AFL–CIO
 Alaska Community Action on Toxics
 American Association for Justice
 AKPIRG (Alaska)
 Arizona PIRG
 Asbestos Disease Awareness Organization
 Blue Ridge Environmental Defense League
 Blue Ridge Environmental Defense League (Rabun Gap Chapter)
 Breast Cancer Action
 Breast Cancer Prevention Partners
 CALPIRG
 Cancer Prevention and Treatment Fund
 Center for Biological Diversity
 Center for Economic Justice
 Center for Environmental Health
 Center for Environmental Policy and Management
 Center for Justice & Democracy
 Center for Science in the Public Interest
 Chapel Hill Organization for Clean Energy
 Charlie's House
 Chicago Consumer Coalition
 Citizens' Environmental Coalition
 Clean and Healthy New York
 Clean Production Action
 Clean Water Action
 Collaborative on Health and the Environment
 Columbia Consumer Education Council
 Coming Clean
 Consumer Action
 Consumer Advocates Against Reverse Mortgage Abuse
 Consumer Assistance Council, Inc.
 Consumer Federation of America
 Consumers for Auto Reliability and Safety
 CoPIRG (Colorado)
 ConnPIRG
 Data for Justice
 Earthjustice
 Earthworks
 Ecology Center
 Endangered Species Coalition
 Environmental Defense Fund
 Environmental Health Strategy Center
 Environmental Working Group
 Fannworker Association of Florida
 Florida PIRG
 Florida Silver Haired Legislature Inc
 Food & Water Action
 Georgia PIRG
 Green Inside and Out
 Green Science Policy Institute
 HarperSmiles
 Healthy Babies Bright Futures
 Illinois PIRG
 Institute for Agriculture and Trade Policy
 International Center For Technology Assessment
 International Union, UAW
 Iowa PIRG
 KidsAndCars.org
 Kids In Danger
 League of Conservation Voters
 Maryland PIRG
 Massachusetts Breast Cancer Coalition
 MASSPIRG
 Meghan's Hope

Mid-Pinellas Coalition of Neighborhood Associations
 Moms Clean Air Force
 MoPIRG (Missouri)
 NC Child
 NCPIRG
 NHPIRG
 NJPIRG
 NMPIRG
 National Consumers League
 National Employment Law Project
 National PFAS Contamination Coalition
 National Women's Health Network
 Natural Resources Defense Council
 NC Conservation Network
 Nontoxic Certified
 Ohio PIRG
 Oregon Environmental Council
 OSPiRG (Oregon)
 Parents Against Tip-Overs
 PennPIRG
 PIRGIM (Michigan)
 Public Citizen
 Protect All Children's Environment
 RPIRG
 Safer Chemicals Healthy Families
 Safer States
 Shanes Foundation
 TexPIRG
 Toxic-Free Future
 Toxic Free NC
 Union of Concerned Scientists
 Union Veterans Council
 UPSTREAM
 U.S. Public Interest Research Group
 WashPIRG
 WISPIRG (Wisconsin)
 Women's Voices for the Earth
 Vermont Conservation Voters
 Zero Waste Washington

cc: Members of the Senate Commerce, Science, and Transportation Committee

NATIONAL CENTER FOR HEALTH RESEARCH

June 15, 2020

Hon. ROGER WICKER,
 Chairman,
 Committee on Commerce, Science, and
 Transportation,
 Washington, DC.

Hon. MARIA CANTWELL,
 Ranking Member,
 Committee, on Commerce, Science, and
 Transportation,
 Washington, DC.

Dear Chairman Wicker, Ranking Member Cantwell, and Members of the Committee:

On behalf of the National Center for Health Research, I am writing to express our opposition to the confirmation of Nancy Beck to be Chair of the Consumer Product Safety Commission (CPSC).

The mission of the Consumer Product Safety Commission is to protect consumers, and especially children, from exposure to harmful products. Their work saves thousands of lives every year. When Congress confirms a CPSC Chair, the lives of all their constituents are at stake. Unfortunately, while at the Environmental Protection Agency (EPA), Nancy Beck has consistently worked to oppose and weaken standards designed to protect the health and safety of children and adults. Her track record makes it clear that if she is confirmed, it will damage public health, and would put the safety of our children and grandchildren at risk.

The National Center for Health Research is a nonprofit research center that focuses on bridging the gap between scientific evidence and public policy, in order to improve the health and safety of all Americans. Our scientific staff review the same evidence that EPA and CPSC scientists and decision-makers review. We can say

with confidence that Nancy Beck's scientific work has frequently been criticized by independent experts, including a peer review panel appointed by the Trump administration found that chemical evaluations under Beck's oversight were "unscientific," and filled with "mistakes and inconsistencies." And as an official recently on detail to the White House, Beck was partly responsible for delaying the detailed guidelines that the Centers for Disease Control and Prevention had planned to release to provide safety recommendations for enable businesses and schools to reopen during the COVID-19 pandemic.

We can't emphasize strongly enough how important it is to American families that the CPSC Chair be committed to protecting the health and safety of our citizens. Nancy Beck's track records has demonstrated that she is not. Please do not hesitate to contact me at dz@center4research.org with any questions.

Sincerely,

DIANA ZUCKERMAN, PH.D.,
President.

cc: Members of the Senate Commerce, Science and Transportation Committee

LEARNING DISABILITIES ASSOCIATION OF AMERICA
Pittsburgh, PA

Subject: Nancy Beck Articles (2)—June 16, 2020

Date: Tuesday, June 16, 2020 at 1:27:07 PM Eastern Daylight Time

From: Fletcher, Jack (Commerce)

To: Strickland, David (Commerce)

CC: Burgess, Jami (Cantwell), Porter, Melissa (Commerce), Lacitis, Ansley (Cantwell), True, Peter (Commerce), Marvin-Vanderryn, Ben (Cantwell), Savin, Naomi (Cantwell), Day, Christopher (Commerce), Wildgoose, Laurence (Commerce), Marten, David (Cantwell), Mehیار, Naseem (Cantwell), Hale, Jonathan (Cantwell), Almond, Rance (Commerce), Stout, David (Commerce), Hurt, Louisa (Commerce)

[LINK] Environmental Working Group—How Trump's Consumer Safety Nominee Weakened Regulation of 'Forever Chemicals' in Consumer Products

There are many reasons for the Senate to oppose President Trump's nominee to chair the Consumer Products Safety Commission, Nancy Beck.

Since 1980, the use of methylene chloride in paint strippers has killed scores of people. But while in a top position at the Environmental Protection Agency's Office of Chemical Safety, Beck delayed a proposed ban of methylene chloride in paint strippers. People died.

Beck also stymied a proposed ban of some uses of the known carcinogen TCE, which contaminates hundreds of military bases, and played down the impact of TCE on fetal hearts. Beck twisted Federal law to frustrate EPA's efforts to finally ban asbestos—an interpretation recently deemed illegal.

But it's Beck's efforts to weaken consumer protections from the toxic fluorinated chemicals known as PFAS—also called "forever" chemicals because they never break down and build up in our blood—that should give senators the most serious pause.

Records released by the Senate Environment and Public Works Committee show that Beck succeeded in weakening a regulation that requires companies to notify and get permission from the EPA before they start using so-called long-chain PFAS like PFOA—the most notorious of the PFAS chemicals, linked to cancer and other serious health effects—in consumer products ranging from carpets to wiring to clothing.

In 2015, the EPA proposed a Significant New Use Rule, or SNUR, for long-chain PFAS that applied to many products. What that means is that manufacturers of everyday products would not only have to let the EPA know they were planning to use PFOA or other long-chain PFAS but would also have to seek the agency's approval.

In 2017, when Beck took a senior position in the EPA's chemical safety office, she sought to exploit a provision in a new toxic chemical law to weaken the SNUR for PFAS. After she left the EPA to work at the White House, records show, Beck continued her crusade against PFAS regulation.

Earlier this year, Beck succeeded in her quest to narrow the scope of the rule by limiting it to the surface coatings of products. As a result of her efforts, a company could use PFOA inside a product without getting the EPA's permission—even though many products degrade over time or wind up being disposed of in a landfill or incinerator.

**[LINK] Union of Concerned Scientists—How Safe Are Children’s Products?
It Might Depend on Trump’s Next Nominee to the Consumer Product
Safety Commission**

Today the Senate holds a hearing on the nomination of Dr Nancy Beck to chair the Consumer Product Safety Commission (CPSC). I doubt you spend much time thinking about the CPSC, but the little-known agency plays a crucial role in ensuring that the products in our homes are safe. And when things go wrong, that’s when you do hear about it—from lunchboxes contaminated with lead, to faulty jogging strollers that have injured children, to crib recalls due to infant deaths.

The Trump administration has already made harmful picks for commissioners at the CPSC, and under this administration’s tenure, the agency has had the lowest number of child product recalls in more than a decade. Nancy Beck is more bad news. For the full scoop on the risks to public health imposed by Beck’s problematic and conflicted history of interfering in science, see my colleague Genna Reed’s posts here and here.

Yesterday, at a Senate briefing hosted by Senator Richard Blumenthal and Senator Tom Udall, I spoke alongside advocates and parents who told powerful stories about lost loved ones and the dangers of having someone like Nancy Beck in charge at the CPSC. You can watch the full recording of the event here, and my comments are below. Finally, please contact your Senators and tell them that Nancy Beck is a dangerous choice for the CPSC.

NATIONAL PFAS CONTAMINATION COALITION
June 16, 2020

Via electronic mail

Hon. ROGER WICKER,
Chairman,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Hon. MARIA CANTWELL,
Ranking Member,
Committee, on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

RE: National PFAS Contamination Coalition OPPOSES Nancy Beck Nomination To
Chair Consumer Product Safety Commission

Dear Chairman Wicker and Ranking Member Cantwell:

We, the undersigned community group leaders, are writing to express our strong opposition to the nomination of Nancy Beck to Chair the Consumer Product Safety Commission (CPSC). We are members of the National PFAS Contamination Coalition¹. Our membership represents over 30 grassroots community groups in 21 states fighting PFAS chemical pollution in our air, soil, water, food, and from occupational exposures.

For decades, many residents in our communities have been overexposed to PFAS chemicals. We call PFAS “forever chemicals” because that’s what they do—they live forever, never breaking down. This dangerous forever chemistry bioaccumulates in our bodies² and in our environment.

For too long, the health and safety of our families have been disregarded. We are seeing major diseases and illnesses in people far too young in our communities. Many in our group have visited Congress on numerous occasions testifying about our personal heartaches, our illnesses, and our fears because of these forever chemical exposures.

As you know, the CPSC is the Federal agency responsible for protecting the public against dangers associated with consumer products including toys, children’s products, home furnishings, cleaning supplies, cookware, and some tools and building materials. We rely on this agency to protect our health and our children’s health from unnecessary toxic exposures. That’s why it concerned us to learn Nancy Beck is best known for her long career of opposing health protections from dangerous toxic chemicals, including her time as an official for the largest trade association of chemical manufacturers. For the past three years, Beck has headed EPA’s “Chemical Safety” office, and she is currently leading the Trump administration’s policies on PFAS.

¹<https://pfasproject.net/>

²Calafat, A. M., Wong, L. Y., Kuklenyik, Z., Reidy, J. A., & Needham, L. L. (2007). Polyfluoroalkyl Chemicals in the U.S. Population: Data from the National Health and Nutrition Examination Survey (NHANES) 2003–2004 and Comparisons with NHANES 1999–2000. *Environmental Health Perspectives*, 115(11), 1596–1602, <https://doi.org/10.1289/ehp.10598>.

As organizations and individuals whose families and communities have been directly harmed by PFAS chemicals in our drinking water, food supply, the very air we breathe, occupational exposures and consumer products, we judge her suitability as a nominee by her record of action (or inaction) to address the Nation's burgeoning PFAS contamination crisis. Unfortunately, her record is one of failure rather than one of action and urgency.

While directing EPA's Chemical Safety office, Nancy Beck has failed to use her authority to address PFAS contamination and she has undermined efforts to strengthen protections from these harmful toxic chemicals.

- Nancy Beck's first actions after arriving at EPA were to rewrite rules under the Toxic Substances Control Act (TSCA) to prevent consideration of the harm caused by PFAS in drinking water or polluted air.^{3 4}
- Beck never required chemical manufacturers to disclose information about PFAS, including how much was produced, how and where it was disposed of, and how many works and people were exposed. Finally, Congress stepped in and ordered the EPA to gather the information.
- Beck never required industry dischargers to report their releases of PFAS into our air, water or land. Finally, Congress stepped in and ordered EPA gather the information.
- Beck failed to require notice of potential new uses of PFAS in consumer products. Finally, Congress stepped in and ordered EPA to act. Beck has pressed EPA to adopt the weakest approach she could get away with⁵, meaning more of our loved ones will be exposed to PFAS.
- Beck failed to ban, or even temporarily postpone, the introduction of any new PFAS into the marketplace (and into the environment and our bodies). Instead, when the House was considering bipartisan legislation to postpone the approval of any new PFAS for five years, Beck helped issue a statement from the White House threatening to veto the bill (it passed anyway).
- Beck failed to issue a single order requiring toxicity testing of PFAS, despite the Administration's claims that it needs more information about PFAS before it can restrict their use or set safety standards.
- Beck worked with White House staff to suppress a CDC report showing EPA's existing health standards for toxic PFAS chemicals are too weak to protect our families. The White House was concerned that the report would be a "public relations nightmare."⁶

The CPSC has jurisdiction over numerous consumer products that may contain PFAS, including cookware, carpets, Grainger, and footwear. Beck's record at the EPA and the White House amply demonstrates her total lack of commitment to addressing the PFAS crisis and should disqualify her for consideration to be the next Chair of the CPSC.

Unfortunately, Nancy Beck's deeply problematic record isn't limited to undermining efforts to address the PFAS crisis. She has blocked numerous efforts to protect the public from cancer causing and brain-damaging chemicals, demonstrating her unfitness to lead an Agency charged with protecting our Nation's children.

Most notably, Nancy Beck has:

- Withheld needed protection for children, workers and rural communities by blocking the proposed ban on the brain-damaging pesticide chlorpyrifos.⁷

³Lipton, E. (2017, October 21). *Why Has the E.P.A. Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots*. The New York Times. <https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>

⁴Lipton, E. (2019, February 12). *How the Trump Administration Pulled Back on Regulating Toxic Chemicals*. Yale Environment 360. <https://e360.yale.edu/features/how-trump-administration-has-pulled-back-on-regulating-toxic-chemicals>. ("The changes [Beck] ordered reflected arguments, almost word for word, that she pushed as an industry advocate. She engineered these changes over the strong objection of long-time EPA professional staff.")

⁵Snider, A. (2018, May 14). *White House E.P.A., Headed Off Chemical Pollution Study*. Politico. <https://www.politico.com/story/2018/05/14/emails-white-house-interfered-with-science-study-536950>

⁶Annie Snider, *White House, EPA Headed Off Chemical Pollution Study*, POLITICO (May 14, 2018), <https://www.politico.com/story/2018/05/14/e-mails-white-house-interfered-with-science-study-536950>.

⁷Lipton, E. (2017, March 29). *E.P.A. Chief, Rejecting Agency's Science, Chooses Not to Ban Insecticide*. New York Times. <https://www.nytimes.com/2017/03/29/us/politics/epa-insecticide-chlorpyrifos.html>

- Rejected needed protection for children by refusing to ban the use of a brain damaging pesticide (TCVP) in pet products including flea collars and shampoos.
- Blocked proposed rules⁸ for protecting workers, consumers and children from *TCE* which is linked to cancer, fetal heart defects, liver and kidney toxicity and harm to the immune system.
- Refused to consider exposure to contaminated drinking water as a factor in determining whether to impose restrictions or set safety standards for 1,4 dioxane.⁹
- Delayed children's protections for lead by failing to update the hazard standard for lead paint—contrary to a Federal court order.

The last thing that our communities need is Nancy Beck as a Chair of the Consumer Product Safety Commission. Our children and family's health should be protected, not sacrificed. We strongly urge you to oppose her nomination.

Signed,

Linda Shosie
Tucson, Arizona
Environmental Justice Task Force—Tucson

Eric Weiner
Windsor, Connecticut
Clean Water Task Force @ Windsor
Climate Action

Stel Bailey
Cocoa, Florida
Fight For Zero

Lindsey Duhe
Pensacola, Florida
Saufley Field Community

Lynn Sprayberry
Summerville, Georgia
Chattooga County

Susan Phelan
West Barnstable, Massachusetts
GreenCAPE

Ryan Riley
Salem, Massachusetts
Your Turnout Gear and PFOA

Arnie Leirche
Oscada, Michigan
Wurtsmith Restoration Advisory Board
Community Co-chair

Hope Grosse
Joanne Stanton
Bucks and Montgomery Counties,
Pennsylvania
Buxmont Coalition for Safer Water

Kevin Ferrara
Lock Haven, Pennsylvania
Retired USAF Firefighter

Anthony Spaniola
Oscada, Michigan
Need Our Water (NOW)

Diane and Paul Cotter
Rindge, New Hampshire
Your Turnout Gear and PFOA

Laurene Allen
Merrimack, New Hampshire
Merrimack Citizens for Clean Water

Andrea Amico
Portsmouth, New Hampshire
Testing for Pease

Loreen Hackett
Hoosick Falls, New York
PfoaProjectNY

Jack Caldwell
New Windsor, New York
Quassiac Creek Watershed Alliance

Emily Donovan
Wilmington, North Carolina
Clean Cape Four

Katie Bryant
Pittsboro, North Carolina
Clean Haw River

Cheryl Cail
Myrtle Beach, South Carolina
SC Idle No More

Shaina Kasper
Montpelier, Vermont
Toxics Action Center

John Cranmer
Gillette, Wyoming
USAF Firefighter

⁸Tabuchi, H. (2019, January 2). *A Trump County Confronts the Administration Amid a Rash of Child Cancers*. The New York Times. <https://www.nytimes.com/2019/01/02/climate/tce-cancer-trump-environment-deregulation.html>

⁹Denison R., (2019, November 4). *EPA's scientific peer reviewers don't mince words in blasting its 1,4-dioxane and HBCD risk evaluations*. Environmental Defense Fund blog. <http://blogs.edf.org/health/2019/11/04/epas-scientific-peer-reviewers-dont-mince-words-in-blasting-its-14-dioxane-and-hbcd-risk-evaluations/>

PREPARED STATEMENT OF BRIAN WYNNE, CHAIRMAN, DREW WYNNE FOUNDATION

This Nominee Delayed a Ban on the Toxic Chemical that Killed my Brother. Last year, the chemical that killed my brother, Drew, was finally banned from store shelves. My family was relieved when the long-sought-after protection—a nationwide ban on the chemical methylene chloride in paint strippers for consumer uses—was finally adopted. But it was a battle: this ban was first proposed nine months before Drew passed away, and it took over two years before it was finalized. It was originally stronger too: the proposed ban included commercial uses of the paint strippers—to protect workers who are at risk when using the products.

Now, one of the key officials involved in delaying this ban and opposing other regulations on chemicals, Nancy Beck, could be nominated to lead the Consumer Products Safety Commission (CPSC) until 2025. This is a small, but critical, agency tasked with protecting Americans from dangers associated with consumer products, from cribs and children's toys to furniture and cleaning products. Nancy Beck is the absolute wrong choice for this role.

Beck started work for this administration at the Environmental Protection Agency (EPA), straight from her posting as a top executive at the chemical industry's main trade association. One of her first actions at EPA was blocking the proposed ban on methylene chloride in paint strippers—a move at the top of the chemical industry's wish list.

In an interview with the New York Times, Wendy Cleland-Hamnett—who previously led EPA's toxic chemicals office—cited a conversation in which Beck questioned whether the number of deaths from methylene chloride paint strippers warranted a ban on the chemical: “Is it 1 percent?” Ms. Hamnett recalled Dr. Beck asking. Such callous disregard for people's lives would be concerning for any position—but it is particularly alarming for someone nominated to protect American's health and safety.

Drew was only 31 when he died while using a methylene chloride paint stripper. From that tragedy, my family worked tirelessly to get paint strippers containing this chemical off of store shelves—we lobbied in Washington, urged retailers to stop selling the products, and kept telling Drew's story to draw attention to the problem. We were determined to save other parents and families from the pain that we have felt.

But Nancy Beck will put the safety of American families at risk if she is confirmed to lead the CPSC. In addition to her interference on methylene chloride, she also delayed bans on high-risk uses of another toxic chemical, trichloroethylene (TCE); made systemic changes to weaken how the country's main chemical safety law is carried out; and more. Her record clearly shows that, when making decisions about hazardous chemicals, industry interests outweigh the public's health and safety.

I did not want to have to speak out again—to feel the pain of sharing Drew's story again—but I knew I needed to do everything possible to stop this dangerous nomination from moving forward. The stakes are too high. My family and I know all too well that the decisions made in Washington about health and safety regulations have real life consequences. We cannot afford to have Nancy Beck in charge of protecting health for years to come.

**STATEMENT OF HON. ROY BLUNT,
U.S. SENATOR FROM MISSOURI**

Senator BLUNT. I want to recognize myself for two questions before we go to Senator Blumenthal.

Mr. Szabat, in the FAST Act, I was able to secure a provision in the FAST Act where existing railroad right-of-way would be treated like we had decided in a previous law to treat existing interstate right-of-way as it related to historic preservation and the impact an existing railroad would have had if you made changes in that existing railroad bed.

I think the Federal Railroad Administration and the Advisory Council on Historic Preservation have been working together to implement this provision. It has not been implemented yet, though I think most of them have done what they needed to do. I under-

stand there remains a concern about a property-based approach included in program guidance.

So I have written a letter on this issue to both the FRA and the Advisory Council on Historic Preservation in November. I recently received a response.

I want to use this opportunity to raise this issue with you since you will be overseeing the Federal Railroad Administration. I hear that some of the railroads—there remain concerns about the direction you are headed here. Would you talk to me a little bit about that? So what we are asking is you need to do the historic preservation effort you would need to do in an entirely new place if you are working where the railroad has always been. We made that decision on interstate highways. The Congress made the same decision for railroads, but it has not been implemented yet. And I would like to ask what you are going to do about that.

Mr. SZABAT. Senator Thune, thank you for the question and for your interest in this issue that is important both for historic preservation—

Senator BLUNT. It is actually Senator Blunt. I got out of the line here when Senator Thune was not here.

Mr. SZABAT. My apologies, Senator. Thank you, Senator Blunt.

This is an issue that is important, both to historical preservationists and, as you point out, also to our railroad stakeholders.

My understanding of the challenge is, as you mentioned, on the highway side the statutory provisions that were put in the regulations make it clear that the historical preservation, the section 160 provisions do not apply except for those instances that are explicitly spelled out. And the draft proposal that we have right now that we are working with the preservationist community and with the FRA flips that and says that on the railroad side, all the grade crossings would be affected by the 160's unless they are explicitly exempted.

So there is clearly some work to do, as you point out, for us to square the circle to ensure that we are not doing this inconsistently. You have my commitment that I work with the stakeholders, also with you, your staff, and the members of this committee to hopefully get us to a happy place where the interests of all of the stakeholders will be addressed.

Senator BLUNT. Well, that would be good, and I would be glad to help with that as I could.

Commissioner O'Rielly, you have been a vocal and vigorous member of the Commission. I admire what you have done there.

There are a lot of consumers who are looking at the choices they have for content now, the competition that is out there. Would you share with me some of your goals for working to update how the FCC views what competition means in our current media marketplace from an antitrust perspective?

Mr. O'RIELLY. Well, I believe that our current rules and those of the Department of Justice are problematic to reflect what is happening in the marketplace today. There are a number of video providers offering services to consumers that are regulated by no entity beyond there are just general practices, but they are not governed by the FCC. The legacy providers are, whether they are

broadcasters or cable providers. And the dichotomy between the two is incredibly problematic.

We have done good work at the FCC in my opinion to modify our rules to reflect that situation. I have run into a roadblock in my interpretation with the Department of Justice who refuses to change its perspective on how broadcasters and who they compete with. It is very problematic from my viewpoint that they believe that broadcasters only compete with broadcasters in a select market at a select time for select advertising. And I have tried to figure out how best to change that. We have done good work at the FCC. As the circumstance may be, I was hoping to work with the Department of Justice, but we ran into this—the pandemic has certainly changed the dynamic.

Senator BLUNT. Well, I think, Commissioner, on ownership issues and other issues, not recognizing how big the competitive field is, it makes a big mistake as we move into the future. And I hope you continue to vigorously pursue that discussion.

Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks, Mr. Chairman.

To Nancy Beck, you have been nominated for one of the most significant positions in our Federal Government. Fewer people have heard of the Consumer Product Safety Commission than maybe the Department of Defense or Veterans Affairs or some of the others, but this agency makes a life or death difference in the lives of literally hundreds of millions, maybe all Americans. And there is no better illustration of it than two letters that I have here, one from Crystal Ellis, the other from Janet McGee who lost children as a result of furniture tipping over on them. I ask that they be made part of the record, Mr. Chairman.

Senator BLUNT. Without objection.

[The information referred to follows:]

PREPARED STATEMENT OF CRYSTAL ELLIS

Hello, my name is Crystal Ellis. 6 years ago today, I removed my son from life support, because of injuries resulting from a furniture tip-over. Camden is a casualty of not only a specific manufacturer that chose to ignore “voluntary standards” that were already weak and ineffective at preventing injuries and deaths, his death is the consequence of an agency tasked with protecting consumers that has their hands tied by a small budget and the 6(b) gag order that prevents them from being able to do their job of protecting consumers.

The CPSC is the agency that has CONSUMER in its title, but has a history with struggles in being able to actually represent the voices and interests of Americans. This is in great part because of an unbalanced influence by industry, since 1981. Industry will always try and convince all parties tasked with regulation, that they can do a great job with self-regulation and the answer to all problems is de-regulation. Self-regulation is impossible, when it will affect the bottom line. De-regulation has hurt consumers in innumerable ways. Nancy Beck has a strong history of de-regulation and ignoring risk assessment data. This would be devastating for an agency that is already hurt by a balance of power in favor of industry.

Americans believe that if a product is in our marketplace, it has been vetted and tested by their government and would not be sold if it wasn't safe. They don't know which agency has this responsibility and they don't know who to report to, when they have problems. This lack of visibility favors industry and allows companies, like the one that killed my child, to hide their injuries and deaths for decades, without recalls or civil penalties of any significant amount or public awareness. Looking

at Nancy Beck's history, consumers would be at an even bigger disadvantage with her at the helm. We need a champion for protecting consumers and standing up to big companies that will fight hard to hide all of their misdeeds.

PREPARED STATEMENT OF JANET MCGEE, FOUNDING MEMBER,
PARENTS AGAINST TIP-OVERS

I'm Janet McGee, a founding member of Parents Against Tip-overs, which is a nationwide coalition of parents who have lost their children from furniture and TV tip-overs. On average, tip-overs happen every 24 minutes and a child in the U.S. dies every 2 weeks from a tip-over.

For about 20 years, the ASTM subcommittee that sets the voluntary safety standard for clothing storage units has been painstakingly slow to solve the furniture tip-over problem that has unknowingly lurked inside U.S. homes for decades. It's a problem that has, and continues to kill hundreds of children (my son, Ted, being one of them) and injure thousands more. We parents rely heavily on the Agency to use every tool available to them to stop production and sales, and push for recalls of unstable furniture on the market. While most manufacturers may tell parents to simply anchor your furniture, the real problem we face as a nation is poorly designed and unstable dressers, a risk that cannot be mitigated solely by anchoring. Just last week we watched nanny cam footage of a piece of furniture that fell on two children; the furniture HAD been anchored to a stud in the wall.

We need the Commission to lead their charge of protecting consumers, not defending businesses. We need the CPSC to push the voluntary standard process to result in a robust and effective standard that will save lives. The CPSC is currently conducting research on the adequacy of the current standard, has issued an ANPR, and is expected to issue an NPR this year. Would Nancy Beck support that? Would she find that a child dying every 2 weeks from a tip-over is sufficient risk for the CPSC to take action and aggressively pursue writing a mandatory standard? Nancy Beck's history of deregulation and protecting businesses in her position at OMB and EPA is deeply concerning as we consider what that might look like for the U.S. Consumer Product Safety Commission. We depend on this agency to protect our families.

As parents and families who have lost their children to defective products, Parents Against Tip-overs stands against the nomination of Nancy Beck for the U.S. CPSC Chairperson. We have significant concerns regarding how well consumers will be protected if she were to lead the Agency.

Thank you for allowing me to voice our concern today. I'm now going to turn it over to Crystal Ellis.

Senator BLUMENTHAL. So let me just ask you right from the start. All four current CPSC Commissioners have said that the furniture stability standard is inadequate. Do you agree? Yes or no.

Dr. BECK. Senator, thank you for your question.

I agree with you about the essential and important mission of the CPSC.

Regarding the tip over standard, I believe that is something that needs to be a priority. I am aware that CPSC is doing essential and important research on this now. Not being at the CPSC, I do not have access to all the data that the other Commissioners have. If confirmed, I would be happy to get back to you.

Senator BLUMENTHAL. You know, I am giving you a chance, in effect, to show us that you are on the side of consumers. I believe that your record to date is disqualifying for this position. And I am really giving you a chance to show that you would take vigorous and aggressive action to protect the consumers like Ms. McGee and Ms. Ellis and their families and children. And that answer is simply inadequate. I am not a member of the Commission either.

Dr. BECK. Senator, my heart goes out to those families.

Senator BLUMENTHAL. Well, I know your heart goes out to them, and I believe you.

My time is limited, so I am going to move on. Tell me about your role at the CDC in blocking the scientific guidance that it wanted to issue regarding COVID-19 standards?

Dr. BECK. Thank you for that question.

I can assure I did not block any CDC guidance. At the OMB, OMB plays an essential and important role in coordinating inter-agency review of thousands of regulations and guidance documents every year. I was helping to coordinate the review of the CDC guidance document, and my role was to make sure that all the decision-makers have an opportunity to comment on the document——

Senator BLUMENTHAL. Is it a fact that you blocked the issuance of the guidance?

Dr. BECK. Senator, I coordinated the interagency review to ensure that all the comments were received and considered by the CDC. That was essentially my only role.

Senator BLUMENTHAL. Well, in coordinating it, you prevented it from being released. Correct?

Dr. BECK. The OMB process requires that all the decisionmakers have an opportunity to review and comment on the document.

Senator BLUMENTHAL. Let me ask you about a separate issue, PFAS. As you know I am sure, a review from the United States Centers for Disease Control and Prevention, CDC, outlined a host of hazardous health effects associated with PFAS exposure, including cancer, liver damage, decreased fertility, increased risk of asthma, and thyroid disease. Connecticut had a major pollutant release of PFAS recently. These chemicals do not break down over time. They are forever chemicals. Do you agree that PFAS poses a significant health threat and should be removed from all household items?

Dr. BECK. Senator, the Federal Government is working very hard to understand the science and to take appropriate regulatory action to address PFAS.

My understanding is that the companies that used the long chain PFAS compounds, which were the ones that were going in consumer products, have essentially been phased out since, I think, 2008 or 2009. The problem is that we have these older rugs and carpets that were made before that period of time.

Senator BLUMENTHAL. Well, would you support removing PFAS from fire fighting chemicals that endanger the lives of those fire fighters?

Dr. BECK. Senator, I believe the National Defense Authorization Act requires the DOD to remove PFAS chemistries——

Senator BLUMENTHAL. The DOD, yes. And by the way——

Dr. BECK. And they are working hard.

Senator BLUMENTHAL.—I was one of the principal supporters——

Dr. BECK. Great.

Senator BLUMENTHAL.—of that amendment, as you may know. But I am talking about the countless fire service departments around the nation, including Connecticut, where PFAS flame retardants and chemicals are still in use. Would you support removing them and substituting other kinds of materials?

Dr. BECK. Senator, I am sure that once there is an appropriate—there is plenty of research going on, FAA, DOE, DOD, to help find an effective replacement to the PFAS chemistries for fire fighting

foam, and I am confident that once that replacement is found, there will be a broad transition in the marketplace.

Senator BLUMENTHAL. And you would support a ban.

Dr. BECK. I support a transition away from the PFAS foams. Absolutely.

Senator BLUMENTHAL. I have no further questions right now because my time has expired. Thanks, Mr. Chairman.

Senator BLUNT. Thank you, Senator Blumenthal.

Senator Lee.

**STATEMENT OF HON. MIKE LEE,
U.S. SENATOR FROM UTAH**

Senator LEE. Thank you very much, Mr. Chairman.

Mr. Szabat, I would like to start with you, if that is OK.

Navigable airspace is defined as the minimum altitude at which safe flight is possible. I understand that to be generally 500 feet. Does that sound about right to you?

Mr. SZABAT. Yes, Senator.

Senator LEE. Drones, of course, create a special set of circumstances because they really fall into a different category. A drone, if it goes to your house, can hover just inches above the blades of grass on your front yard, and that is a feature, not a bug. That is considered the safe, effective zone for a drone to operate, whereas with an aircraft, that would be unsafe. That is not a safe place to operate that. You are at that altitude only for a millisecond as you are taking off and as you are landing.

But the FAA believes that because drones can hover inches above the blades of grass in the front yard, the agency can, therefore, control that airspace in front of your front yard.

Now, do you agree with the FAA's current legal interpretation on that point?

Mr. SZABAT. Well, Senator, what I would agree with is to say that the Federal Government has authority over the national airspace for obvious reasons. You have to have one overriding standard. There are a lot of issues that are playing out right now regulatorily over who has what say for drones in that lower airspace, and we know that there is an awful lot of room for local law enforcement, State and local governments, emergency services, for example, to have their say as well.

So I would say for the higher airspace, yes. The FAA has—after a plane has taken off, after you are into the national airspace, the overriding consideration, except for the security agencies, is FAA. In the lower airspace, we are still frankly working out some of those issues.

Senator LEE. So what would you say to those property owners who are struggling to understand where their rights end and where they begin and what that means?

Mr. SZABAT. So, Senator, I would say the obvious. This is a complicated, difficult issue. This is a new emerging technology. And one of the reasons that we have been so hesitant to step in with new regulations right off the bat is because it is complicated and we want to get it right.

Senator LEE. Mr. O'Rielly, let us go to you for a moment.

Spectrum is a finite resource and it is one that is extremely valuable. Spectrum access both in the licensed realm and in the unlicensed realm is essential for any future U.S. efforts there might be to develop IOT devices and lead in the race toward 5G and eventually 6G networks or whatever comes after that.

Now, the FCC with your support has taken a number of very admirable efforts to find inefficiencies in commercial bands. What is the current state of our commercial spectrum pipeline?

Mr. O'RIELLY. So we have a number of auctions that are coming up for mid-band spectrum that will be key for 5G services. But post those, in both the C band and CBRS, with the premier being C-band and CBRS, and then 3.1 to 3.55 has been identified as a possibility. Beyond that, the pipeline in my opinion is fairly bare.

Senator LEE. Do we have enough commercial spectrum being made available to meet the future needs of the United States, and if not, how much time do you think we have?

Mr. O'RIELLY. I would say no.

Senator LEE. So you described the cupboard as being bare, meaning there is just nothing in there.

Mr. O'RIELLY. Well, we have not identified new bands that we should be trying to reallocate for commercial services, whether they be from commercial services today or from Federal Government agencies. That needs to be done immediately because it takes quite a number of years to clear a band. Even C band where providers are willing to change, it is still a number of years to make that happen.

Senator LEE. And we talk a lot, of course, about reallocating commercial spectrum, which is a good thing. We also cannot forget that there are large swaths of spectrum, really valuable beachfront spectrum that are in the possession of various government agencies. And everything affects everything else, and those agencies sitting on that spectrum to whatever degree they might not need it has a significant cost attached to it.

Would you agree that part of keeping the United States competitive in the tech space is going to require an all-of-the-above approach, one that will objectively consider both Federal and commercial spectrum allocation for future needs?

Mr. O'RIELLY. Oh, absolutely. I think in terms of acquiring or making available new mid-band spectrum for commercial services, 5G, 6G, et cetera, we are going to need an all-of-the-above strategy, but that certainly means the Federal agencies are going to need to shrink their footprint. That is, they hold the most ideal bands in mid-band. And it is a very difficult challenge, I admit, but that is part of our job.

Senator LEE. Thank you very much.

Senator BLUNT. Thank you, Senator.

Senator Baldwin.

**STATEMENT OF HON. TAMMY BALDWIN,
U.S. SENATOR FROM WISCONSIN**

Senator BALDWIN. I want to direct my question first to Mr. Szabat.

In 2018, the Trump administration released an infrastructure plan that did not mention Buy America once, despite the Presi-

dent's Executive Order to buy American and hire American which, by the way, he announced and signed in Kenosha, Wisconsin.

With 21 million people currently unemployed, it is really more important than ever that we use taxpayer dollars spent on infrastructure to support the American workforce. Will you commit that any infrastructure proposal that comes out of the Trump administration in your jurisdiction contains strong "Buy America" language?

Mr. SZABAT. Yes, Senator. I can go beyond that to say that all of the proposals that have come out of the Department, at least since I have had the honor of serving as the Acting Under Secretary, have reinforced the importance of "Buy America" or "Buy American."

Senator BALDWIN. And then President Trump also promised bold new steps on "Buy America" when he was in Kenosha 3 years ago. If confirmed as Under Secretary for Transportation Policy, what bold, new steps would you be recommending for "Buy America" at the Department of Transportation?

Mr. SZABAT. Thank you, Senator, for the question. I will always continue to support strong efforts for "Buy America" as I did in my previous job as Executive Director of the Maritime Administration where those "Buy America" provisions are so important for the maritime industry. I am not in a position to say specifically what I will be able to offer in the future because, of course, whatever I offer in the future has to be supported by my superiors in the administration.

Senator BALDWIN. I appreciated the chance to speak with you by telephone last week, and one of the things we discussed was the increasing frequency of flooding and extreme weather events. And certainly these events are not going to stop because Congress and our state and local partners are focused on the COVID-19 pandemic. They are still going to continue.

So as Congress works on surface transportation reauthorization, in my view it is imperative that we invest in climate-resilient infrastructure and ensure that State and local governments have the resources they need to do the same.

For example, my bipartisan "Rebuilding Stronger Infrastructure Act" was included in the EPW Committee's reauthorization legislation, and that bill requires the Federal Highway Administration to provide states and localities with the tools that they need to rebuild infrastructure that can withstand the next storm or flood. So I am looking forward to working with this committee to ensure that our reauthorization legislation similarly includes strong resiliency measures.

Now, I understand that the administration is working to release its own reauthorization proposal, and I will be looking closely at how that proposal prioritizes infrastructure resilience.

If confirmed, what would you do to ensure transportation infrastructure across DOT is more resilient to climate change and extreme weather events?

Mr. SZABAT. Again, Senator, thank you for your question but also for your focus on this important issue.

We will, as you say, be rolling out very shortly the administration's surface transportation reauthorization bill.

My commitment to you is if you find that it falls short in the resiliency aspect, that we look forward to working with you, the other interested members of this committee, and the staff to make sure it reflects those priorities.

In a different context, General Darren McDew, the former, now retired, head of the U.S. Department of Defense's Transportation Command, testified that his concern was the Nation was sacrificing too much resiliency for the sake of efficiency.

I think the same thing can be said for transportation, and to your point, the standards that we have for the next round of infrastructure that we build have to be something that can deal with the challenges 40 and 50 years from now, not just the standards that we had a decade ago.

Senator BALDWIN. And on a closely related topic, what more could you do, would you do to ensure that our State and local partners receive the technical support and funding that they need to build and rebuild more resilient infrastructure?

Mr. SZABAT. Senator, thank you. That is always an issue that we have to grapple with anytime that we are posing new programs or funding for our current programs is what is that right local-Federal match. Certainly right now we are seeing this as we go through the COVID-19 period. There are stress points for local governments where we cannot expect them to pitch in as much as they would have when the economy is in a better spot. And that is going to be one of the issues we are going to have to work through in consultation with the Congress as we discuss the various surface transportation reauthorization proposals.

Senator BALDWIN. Thank you, Mr. Chairman.

Senator BLUNT. Thank you, Senator Baldwin.

Senator Thune.

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman.

Commissioner O'Rielly, welcome back to the Committee. We look forward to confirming you to another term of the FCC.

As we have discussed before in this committee in the past, mid-band spectrum is crucial to 5G deployment. My question is how important is it that the FCC meet its planned auction in December to make C band spectrum available for commercial use?

Mr. O'RIELLY. I think it is critical. It is the only band identified that will make such a block available for 5G services in mid-band. The 280 megahertz is critically needed. The CBRS spectrum, which we are going to auction off in, give or take, 6 weeks, is not comparable because of some of the power limits and other things to it. This is the only band we have in the pipeline that is ready to go, and anything that delays that in my opinion would be extremely harmful.

Senator THUNE. I agree, and I hope you guys can expedite that process.

The coronavirus pandemic has highlighted the need for reliable broadband networks, particularly in the most rural areas of the country. If nothing else, what this pandemic has taught us is how

important the investments we make in that infrastructure—how much they pay off particularly at a time like this.

Would you support setting aside a portion of the auction proceeds for the build-out of broadband networks in unserved areas?

Mr. O'RIELLY. I appreciate anytime Congress dedicates additional funding for this purpose. This idea has been out there for a little bit and I think it is very favorable.

The only caveat I would say is sometimes our spectrum auctions can be a little—we have some ups and downs in terms of when we hold our auctions. So we can flush this year with some auctions held, but then we have a dearth. When I got there in 2013, it had been awhile. So it is a little bit unpredictable, and maybe there is a way to figure out how to resolve that issue.

But in terms of additional funding for building out broadband services to the millions of Americans who need it, absolutely.

Senator THUNE. Mr. Szabat, I have consistently asked the Department to thoroughly consider comments from rural states to ensure that these regions are adequately represented in the final national multimodal freight network. Can you provide an update on the Department's efforts to finalize the national multimodal freight network, specifically the evaluation of comments from states?

Mr. SZABAT. Senator, I can, and thank you for your interest in this issue.

So we got through a big hurdle at the end of last summer when finally we received all 51 of the state plans, which were a precursor before we went out for public comment. Those comments are now in, and the Department is in the process of evaluating and assessing and responding to each of those comments. And we are confident that we will, in fact, have the plan out this year.

Senator THUNE. Good.

Another question for you. The Department of Transportation has already made important strides toward safely testing and deploying automated vehicles, including granting exemption petitions and working with other Federal agencies to develop the AV 4.0 guidance document.

Could you speak more to the department's current efforts to safely test and deploy automated vehicles, particularly the testing partnership announced by NHTSA yesterday?

Mr. SZABAT. Yes, Senator.

So as I said in my opening statement, safety, both for drivers and pedestrians, remains the Department's number one priority. The automated driving systems offer significant safety enhancement opportunities.

You mentioned AV 4.0. We did. We rolled that out in January. This is consistent with our governmentwide approach for AV technologies that we want to support U.S. leadership in AV technology research, deployment, and integration. So this follows the release of our 2018 AV 3.0, which establishes voluntary guidance and outlines our multimodal approach toward tackling these issues.

And also, as you have mentioned, Senator, yesterday we rolled out the automatic vehicle transparency and engagements for safe testing, which is a mouthful, so we call it AV TEST. And this, again, is a voluntary, non-regulatory partnership to provide an online public-facing platform for sharing automated systems informa-

tion. So eight states and nine companies are participating in this initiative, including some of the largest automotive companies and some of the most innovative companies that are working in this space.

Senator THUNE. Well, and I thank you for the work you are doing. We had hoped, I think as you know, to have legislative direction originating in this committee, working with other committees and through Congress, that would help advance the cause of automated vehicles. But it is, as always, much harder to thread that needle than it should be. But I am pleased that you and your team are moving forward with that because it is critically important. It is a technology that I think will offer enormous benefits to people across this country, and we want to make sure that it proceeds in a safe way.

I guess I am out of time, Mr. Chairman. I will submit maybe another one for the record.

The CHAIRMAN [presiding]. Thank you very much, Senator Thune.

Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman, and thank you, Ranking Member Cantwell.

I am going to start with you, Dr. Beck.

The CHAIRMAN. Senator Tester, could you move just a little closer to the microphone?

Senator TESTER. OK. I can holler a little louder.

I will start with you, Dr. Beck.

Asbestos is a known carcinogen and it was one of the drivers behind TSCA. And quite frankly, the people of Libby, Montana know just how dangerous asbestos is and what kind of legacy it can leave behind.

Can you shed some light as to why the EPA has not completed its evaluation yet of asbestos?

Dr. BECK. Senator, thank you for that question.

When the Lautenberg Act was passed, the EPA had to prioritize 10 chemicals that would move first through the process. Asbestos was one of those chemistries.

EPA has met all the deadlines so far and has released a draft risk evaluation for asbestos. My understanding is that it has undergone peer review. I think that was last week, and I believe EPA intends to finalize that risk evaluation by the end of the year.

Senator TESTER. OK. So, you know, it has been 4 years I think since we passed—I mean, Frank has been dead a long time, quite frankly. So it has been a number of years since we passed it. It takes that long to do a review on a known carcinogen?

Dr. BECK. The Lautenberg amendments required that EPA do the robust risk evaluation before taking risk management action, and they gave us very rigorous deadlines considering the complexity of the science and the extent of the evaluation that EPA is conducting.

But I will say that EPA has also taken other action under this administration to strengthen protections on asbestos. Last year,

EPA finalized a significant new use rule which essentially blocks new uses of asbestos that had not been banned in 1989. So the agency is trying to move aggressively.

Senator TESTER. Let me ask you this. Is asbestos banned today?

Dr. BECK. I am sorry. I could not hear your question. Would you mind repeating it?

Senator TESTER. Is asbestos banned today?

The CHAIRMAN. He is asking if asbestos is banned today?

Senator TESTER. Thank you.

Dr. BECK. Certain uses of asbestos are banned today, but in 1989 when the ban was passed, there were ongoing uses.

Senator TESTER. But stop.

Dr. BECK. Those ongoing uses are what EPA is evaluating now.

Senator TESTER. Ma'am, just for a second. In 1989, they were supposed to evaluate on basic cost. The TSCA that we passed that Lautenberg pushed out and that Udall had such a big role on was supposed to deal with evaluating from health and safety standpoints. So the question is, four years later, if my math is right—and it could be off six months—is asbestos banned today?

Dr. BECK. There are still existing uses of asbestos today, and EPA is working aggressively under the Lautenberg requirements to conduct the risk evaluation that are required.

Senator TESTER. I would say this. I do not know what your definition of "aggressive" is, but with a known carcinogen such as asbestos is, it would appear to me that it has not been very aggressive from my perspective.

Dr. Beck, you were given a lot of opportunities, as I have been watching this entire hearing, to answer questions when people asked you direct questions. Senator Cantwell did on a chemical that causes birth defects. I listened to your opening statement and I listened to it very carefully because you talked about your whole career has been advancing public health and safety. You talked about the myriad of consumer risks that are out there. You talked about science informing policy. You talked about science as a pillar of good regulation.

I am going to tell you I have studied your record, and it does not bear out what you said in your opening statement unfortunately. And what is curious to me is not only why anyone on this committee would vote for your confirmation, but why you would want the job as Chairman of the Consumer Product Safety Commission when your career does not bear out anything about safety for consumers. And the truth is you could get a great job with a corporation doing what you have done your whole career, which is protecting those corporations.

I have one last question. And, by the way, O'Rielly, you get off easy this time because I will put some in the record for you. This is for Mary Toman.

Mary, my question deals with the 2020 Census and COVID-19. How do you plan to overcome those challenges that COVID-19 has presented for an accurate Census, particularly in Indian Country, particularly in the areas that are impacted by poverty?

Ms. TOMAN. Thank you, Senator Tester, for this very important question.

As I said in my opening statement, that is my first priority to count everywhere everyone. And I know that this is going to be very difficult with COVID in certain areas that you have just discussed. When I had some meetings last week with some staff, they asked me what the first thing I would do in this position. I said the first thing I would do is to go to people of consensus and say what can we do to make sure more people are counted. That is my first priority and my second priority and my third priority.

There have got to be more creative ways that we can always think about if we all put our heads together. I also would look forward to talking to your staff and staff for any states that face these issues because if there are community organizations that we can work with to learn from and work with immediately, we would very much like to work with you if you think that anything is being missed. This is a very, very serious question, very, very important.

Senator TESTER. I am way over time. I just want to say that I never heard the plan. And so if you can get that to me in writing, I would really appreciate it. Either my staff or I would be more than happy to talk with you about what needs to be done from our perspective. But we really need to have a plan or this thing is going to be a fiasco.

Thank you.

The CHAIRMAN. Thank you, Senator Tester.

Senator Rosen.

**STATEMENT OF HON. JACKY ROSEN,
U.S. SENATOR FROM NEVADA**

Senator ROSEN. Can everyone hear me? Yes.

Thank you, Ranking Member Cantwell, of course, to our nominees here today.

I want to talk about consumer confidence in air travel. So, Mr. Szabat, I am going to direct my questions to you because in Nevada, our economy depends on travel and tourism for motels, casinos, restaurants on the Las Vegas strip to outdoor recreation businesses near Lake Tahoe and everywhere in between. As a state where travel and tourism supports one in every three jobs, is \$20 billion in wages and salaries annually, and generates \$75 billion in annual economic output, Nevada now, unfortunately, has the highest unemployment rate in the nation, 28 percent, as a result of COVID-related slowdown in travel.

So the pandemic has been especially challenging for our aviation industry. In 2019, Las Vegas McCarran Airport saw over 50 million passengers, and in the wake of the pandemic, passenger totals have dropped precipitously down to about only 150,000 people in April, a 96.4 percent drop from last year.

It is clear that reinstalling confidence in air travel, that it is safe, is going to be key to bringing back the industries that support Nevada. We have to bring back travel and tourism to revive our economy.

So, Mr. Szabat, in your current position as Assistant Secretary for Aviation and International Affairs, you are very familiar with the devastating impact COVID-19 has had on aviation. So if you are confirmed as Under Secretary, you would be responsible for developing policies across all modes of transportation, including avia-

tion, and I have to imagine that mitigating impacts of COVID-19, well, if it is not, it should be a top priority.

So let me ask you this. Is the Department working closely with the Centers for Disease Control and Prevention on science-based steps that you can take to protect the health of passengers and employees at the airports and in the air? And how else might these agencies work together to collaborate to protect public health as our travelers venture out again? They are not going to go out if they do not have confidence.

Mr. SZABAT. Senator, thank you for the question.

And this is, indeed, an issue of our time. You are exactly correct. If we are going to reinstall a sense of confidence in the public for flying, the very first thing that we have to do is to demonstrate that it is safe to fly, not to make claims but to actually show that.

But to your specific question, yes. We are working very closely with the CDC and with the other public health agencies in the administration to develop the guidelines and requirements for the air carriers, for the airports, for the traveling public, and also in several levels to come up with common international standards for the resumption of international travel between the United States and other countries.

Senator ROSEN. Well, thank you.

I am going to also ask you, if you are confirmed, what other policies, what ideas do you have, what might you recommend based on the advice that you have received from medical and transportation efforts, particularly because many COVID-19 patients are asymptomatic. So what would you do in that regard? I think people are worried about the asymptomatic carriers.

Mr. SZABAT. Senator, again a great question.

The first and foremost thing in the transportation sphere is wherever you cannot social distance, people should be wearing face coverings. Secretary Chao has kind of made this a tenet of what we are doing in the Department in our discussions with other Federal agencies and also in our public-facing comments as well.

Just yesterday, you saw the association covering the largest air carriers in the United States carrying the bulk of the passengers. They have all agreed that they will set a common industry standard to require all passengers to wear face coverings. We encourage that. We encourage all other air carriers to follow that. And we will have the back of the air carriers, and, of course, their frontline employees, the flight attendants, will deliver that message to the passengers and are delivering that message both for the safety of the passengers and also for the safety of the crew.

Senator ROSEN. Thank you. I appreciate that.

I think I am just about done with my time, so I will yield back. Thank you.

The CHAIRMAN. Thank you very much, Senator Rosen.

Let me check with staff just a moment.

[Pause.]

The CHAIRMAN. Commissioner O'Rielly, this committee on a bipartisan basis sent to the Senate and to the House and to the President, the BROADBAND DATA Act. It has been signed into law by President Trump. This law requires the FCC to collect more precise, granular data from broadband providers so it can develop

more accurate broadband availability maps. Those maps are, of course, not developed yet since the law is so new on the statute. But the FCC's notice of proposed rulemaking for the new 5G Fund raises the possibility that it may begin distributing money to support the 5G deployment before the new maps are completed.

Commissioner O'Rielly, if confirmed, will you commit not to support moving forward with the 5G Fund until the FCC completes the new maps as required by statute?

Mr. O'RIELLY. I looked at the statute closely. I have serious concerns and have raised them regarding moving forward without new maps and would certainly want to listen to this committee and its views on the matter. And I certainly would be hesitant to move forward in any capacity without addressing the issue of mapping.

The CHAIRMAN. But you stop short of an absolute commitment?

Mr. O'RIELLY. Well, if you are saying that that was what your position is, since you were an author, then I would agree with you.

The CHAIRMAN. Well, OK.

Mr. O'RIELLY. Then yes.

The CHAIRMAN. All right. So we have moved from serious reservations to you would commit not to support moving forward until we get the maps.

Mr. O'RIELLY. Yes.

The CHAIRMAN. And when do you think we are going to be able to see those maps? When do you think this might be completed? And is there anything this committee or this Congress can do to assist that, Mr. Commissioner?

Mr. O'RIELLY. It is my understanding the Chairman has been advocating for additional funding for the issue, some amount of money that would help implement the mapping program needed. That would certainly be supportive from my viewpoint. I think we certainly could do some things in the meantime. We have staff that could certainly start work. So we should not be at zero right now. But I have to defer to the Chairman exactly where we are on the bigger picture.

The CHAIRMAN. OK. Well, it is a concern. I wish the Congress could move instantaneously. But we are fulfilling the Founders' desires for lawmaking to be slow and cumbersome, and we got it done and got it signed by the President. So I guess it is unfair for us having taken as long as the Congress takes to want to speed up the implementation. But we really do think the money should be distributed according to accurate maps, and that is why it passed on a bipartisan basis.

Let us talk about RDOF, Rural Digital Opportunity Fund, auction. Phase one of the auction is scheduled for October. There are some folks around the country, including in my home state of Mississippi, who would certainly like to move that auction earlier than October. We have received information from Chairman Pai that as much as we might like to do that, it is simply unworkable to do so.

Why is that the case, Commissioner O'Rielly?

Mr. O'RIELLY. I do not know what the Chairman provided you, but I would argue that we have difficulty running—I have made this case in this committee before. We cannot run two auctions at the same time. And so we have a full summer and fall already

scheduled, CBRS for July. The RDOF is in October, and then we have C band for December. And so they are planned out, and there is a timing in terms of the short forms and the long forms and everything that goes into schedulings.

I would say part of the difficulty with—and I appreciate that people would like to bypass the timing that we are talking about and expedite things. But what it does do is put some of these companies that would like to do this at the forefront and say we would like our money up front, and in doing so, they bypass the benefits of the auction process and the efficiencies that we get from that.

And then two, it potentially allows those entities to go into areas where there is already an existing competitor. And then to me overbuilding would be incredibly problematic given that we have such finite resources in this program.

The CHAIRMAN. Does an important part of this RDOF begin next month, July 2020?

Mr. O'RIELLY. There are pieces. We just did one in our last meeting. There are pieces coming up in terms of the—next week I think is the timing of some of the bidding—the final payments or payments are due—excuse me—next week. And so we will see where that stands.

The CHAIRMAN. If I could snap my fingers and pass a law today trying to speed up the auction, would there be notice and comment requirements that we would still have to fulfill?

Mr. O'RIELLY. Yes, and there are just so many steps to our auction process. If you want to throw the auction process away, which I would not recommend at all, that can help do some of those things. And that is the thing. There are so many things that we go through that are intentionally beneficial to our programs that need to take time. And getting to October—and the Chairman rushed really hard to get the timing right on this. So I appreciate what he has done.

Could it be expedited with the right incentives? Maybe you could pick up some time here, but I do not know. It might be more to expedite on the building side versus in terms of the auction side.

The CHAIRMAN. OK. Now you have really—I think you have hit on something there. Senator Capito has been patient, but I am going to come back to this after she and other members who have not been recognized take their round. But this point I will reserve for round three and recognize my friend from West Virginia.

**STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM WEST VIRGINIA**

Senator CAPITO. Thank you, Mr. Chairman, and thank all of you for being here today and for your willingness to serve.

Dr. Beck, we had a telephone conversation last week, and I found I did not get the clarity really in your answers that I was hoping we could get to. So I wanted to talk about your role in possible bureaucratic delays when it comes to PFAS. We talked about that. As I mentioned to you, this is a priority to me both out of respect for my state but also because we face challenges both in our industry but also in our military installations and for our future generations.

So I had received assurances—and I mentioned this to you—from then-EPA Administrator Scott Pruitt and then acting and now Administrator Andrew Wheeler that EPA would be advancing its PFAS action plan, and that would include an MCL, or maximum containment level, for PFAS in drinking water. The day of Mr. Wheeler's confirmation hearing, a politically timed press report stated that EPA and the administration actually had no plans to regulate PFAS in drinking water, which came as quite a shock to me.

The EPA has belatedly advanced its PFAS action plan and the regulatory process to examine MCL for PFOA and PFAS in no small part due to my and others' insistence that we get this done. But valuable time has been lost, almost a year, due to this inter-agency dithering. At every turn, your name has been implicated in the media in the slow walking of the Federal response.

So in the interest of time—and I know you have been asked some yes/no questions to this point. I have not been able to see the whole hearing, but I did see part of this. I would like to ask you some yes or no questions to outline your involvement in this area.

So, yes or no. During your time at the EPA's Office of Chemical Safety, were you consulted on the EPA's draft PFAS action plan?

Dr. BECK. Yes, but the Office of Chemical Safety and Pollution Prevention had a section in the PFAS action plan.

Senator CAPITO. OK. So was it your view then that PFAS should be examined for potential regulation when you were in that office?

Dr. BECK. Yes—

Senator CAPITO. Yes.

Dr. BECK.—chemistry across many offices.

Senator CAPITO. OK. So in that capacity, were you consulted on the promulgation of an MCL for PFAS, including PFOA and PFAS?

Dr. BECK. No. That was the Office of Water. That was not something from the Office of Chemical Safety and Pollution Prevention.

Senator CAPITO. So those are two separate offices that were dealing with the same substance, but Water was dealing with the—

Dr. BECK. MCL.

Senator CAPITO.—MCL.

Once you moved over to the NEC, did you handle oversight of interagency coordination on any PFAS policies? Yes or no.

Dr. BECK. No, I did not handle oversight. I assisted with some coordination of information across agencies.

Senator CAPITO. So did you work with the PFAS action plan in that capacity?

Dr. BECK. Only in the sense that if EPA had information they wanted to share with the interagency, we facilitated those discussions.

Senator CAPITO. And did that include setting an MCL for drinking water out of the Office of Water? Are you familiar with that?

Dr. BECK. Yes. The MCL, since it is a regulatory determination, was handled by OMB in the Office of OIRA. So I did not coordinate that.

Senator CAPITO. So basically kind of what you are telling me on the answers to the two questions on MCL is you have not had any involvement on setting an MCL for PFAS at all?

Dr. BECK. I am not a decisionmaker in the Office of Water, and that is where those decisions are being made.

Senator CAPITO. Did you advocate for slowing or halting the interagency review of the EPA's action plan in your role at the NEC?

Dr. BECK. No.

Senator CAPITO. Did you oppose setting an MCL for PFAS while at the NEC?

Dr. BECK. I was not a decisionmaker at the NEC. So that was not something I commented on.

Senator CAPITO. So if you have had no role in this slow policy response, which has been your response to this point, why do you think your name is continually implicated in this slowing of the regulatory agenda even well before your consideration before this nomination became public?

Dr. BECK. I could only speculate. My speculation is that because I spent some time in industry, in addition to my time in government, they want to—I do not know. I think there is a concern that I spent time in industry so they want to say that industry is holding things up. But in my case, that has not been the case because I am not, for instance, a decisionmaker on the MCL. I am not a decision-maker on the Super Fund standard.

Senator CAPITO. But you were in a position at your Office of Chemical Safety to, obviously, have PFAS directly in your portfolio. Correct?

Dr. BECK. Through the new chemical program, yes.

Senator CAPITO. And what was your involvement in that?

Dr. BECK. Making sure that the new chemicals program runs effectively to review and evaluate new chemicals before they come to the market.

Senator CAPITO. So were you reviewing at that point the legacy chemicals of these original chemicals?

Dr. BECK. So currently the new chemicals program reviews new chemicals when they come in. So the legacy PFAS are not part of the new chemicals review.

Senator CAPITO. They are not.

Dr. BECK. I am sorry. It is confusing.

Senator CAPITO. Yes, that is confusing.

Dr. BECK. There is a new chemicals program and an existing chemicals program.

Senator CAPITO. So if you have a new chemical that comes from a legacy chemical that possibly caused damage, which we know these have, they would come in under the existing chemical protocol?

Dr. BECK. Yes, because it would be a breakdown product of an existing chemical. Yes.

Senator CAPITO. All right. Thank you.

The CHAIRMAN. Thank you, Senator Capito.

Senator Sullivan.

**STATEMENT OF HON. DAN SULLIVAN,
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN. Thank you, Mr. Chairman.

And there are so many nominees who have so many important issues before them that deal with my state that I could take 50 minutes here, but I am going to try and be succinct, which is not one of my strong suits, but I will try anyway.

Mr. Walsh, I really appreciated the issues that you and I talked about yesterday and just want to get your commitment on the record here. I pretty much got it yesterday, but I just want to do it for the official record. The NOAA hiring issue, the migration of people, scientists who work for NOAA, a great agency, but who have Alaska-oriented missions almost exclusively and are in other states. Can you work with me on that issue and also the issue of 100 vacancies that we have in Alaska and we need to get those filled soon?

Mr. WALSH. Yes. Thank you, Senator. I can make that commitment. I look forward to working with you and your staff on those issues.

Senator SULLIVAN. Excellent.

And then the fish surveys, as we talked about yesterday, a huge issue in my state. I am very disappointed that—you know, look, we all got to be careful with regard to the pandemic and COVID-19, but it cannot be used by Federal agencies to say we are not going to do the work. The surveys are super important to my state. I think they are important to most Americans. Can I get your commitment to work with me on making sure that we have robust surveys for our fishing fleet next year?

Mr. WALSH. Yes, Senator. I appreciated our conversation yesterday. I have already begun making some inquiries, and I look forward to getting back to you in the near term.

Senator SULLIVAN. Excellent. Thank you.

And then the home-porting of the NOAA vessel Fairweather in Ketchikan. I think my state, my legislature, the people of Alaska have bent over backward on that one. We would like to close the deal on that finally, working together with NOAA and contributing our own resources as a state. Can I get your commitment to work with me on that one as well?

Mr. WALSH. Yes, Senator. I look forward to working with you.

Senator SULLIVAN. And then finally, the very illegal Russian embargo of seafood for not just Alaskan exporters but all Americans. The Russians have embargoed any seafood exports from America into Russia since 2014, and we let their seafood in and it is dominating. It is ridiculous. We got to change it. As the President has been focused on promoting and Secretary Ross has been promoting American seafood exports, can I get your commitment to work with my office and this committee to take a hard look at this very unfair, non-reciprocal approach that is really hurting the fishermen of the great State of Alaska, but really Mississippi, everywhere?

Mr. WALSH. Yes, Senator.

Senator SULLIVAN. Great. Thank you. I really appreciate that. I look forward to strongly supporting your nomination.

Mr. Szabat, I appreciated our discussion on the phone as well. I am also a strong supporter of yours. I do want to get your commitment in this hearing to work with my office and this committee on the issue of Alaska aviation safety and maybe even looking at the establishment of a safety office or an Alaska FAA Czar.

You saw the NTSB report where, once again, it says that the fatality rates in the great State of Alaska are much too high and we need a strategy with the FAA to address that.

Can I get your commitment to work with this committee, the FAA, and the Department of Transportation on addressing, which is really a matter of life and death issue for my state?

Mr. SZABAT. Senator, yes, you have my commitment.

Senator SULLIVAN. Great. I appreciate that very much and I look forward to working with you not only on that but on roads. You know, every now and then, you have one of my Senate colleagues, unfortunately usually from the other side of the aisle, who cares all about roads in my state and essentially wants to stop building roads in my state because radical extreme environmental groups do not like roads in Alaska. It is ridiculous. I wish my Senate colleague could focus more on Massachusetts and New Mexico and other places like that, take care of their own states, not my state.

But I need you to help me build roads. Can you help me build roads in the great State of Alaska? Every other state gets to build roads, but my state, for some reason, does not. You got radical guys on the other side saying do not build roads in Alaska. Can you help my state build roads?

Mr. SZABAT. Senator, yes, we can help your state build roads.

Senator SULLIVAN. A strong commitment on that, please.

Mr. SZABAT. Yes, Senator.

Senator SULLIVAN. Thanks.

And then finally, Mr. O'Rielly, I am very strongly supportive of your re-nomination to be the Commissioner. And again, I appreciated our discussion yesterday.

I would like to just get your honest assessment of what has happened, unfortunately, with the current Chairman of the FCC where they clawed back, no transparency, opaqueness with regard to the Universal Services Fund, telehealth programs in my state. Our state was the state that invented that. And yet, we have a Chairman of the FCC that seems hell-bent on collapsing that system in Alaska.

Can I get your views on whether you think that has been fair, whether you think that has been transparent, whether you think that has actually helped the people of my state, but also ways in which we can improve that going forward perhaps with a new Chairman?

Mr. O'RIELLY. So you got a lot there about my good friend, the Chairman.

But to your point, I was not exactly fully supportive of the actions the Commission took. I did not have all the——

Senator SULLIVAN. Do you think they were fair? Do you think they were transparent? Do you think the rules are even still understood by industry?

Mr. O'RIELLY. No.

Senator SULLIVAN. It is unbelievable.

Mr. O'RIELLY. Yes.

Senator SULLIVAN. Unbelievable. We have two years going, the Chairman made commitments to me on expediting appellate reviews. That has been ignored. They have made stuff up as they have gone along. It is really harming not just the people who de-

liver but some of the most needy people in America from some of the most, you know, economically disadvantaged communities in the country, and they do not seem to get it. But I would like you to comment, what we can do about it.

Mr. O'RIELLY. Well, I have seen personally the benefits of telehealth in your state, and they should be the model. I have written a blog about this particular topic. It should be the model for the rest of the United States and how efficiently they were able to offer the services. I think there should be an opportunity to resolve any past disputes with the providers in Alaska.

Senator SULLIVAN. In an expeditious manner. Correct?

Mr. O'RIELLY. Absolutely.

Senator SULLIVAN. Not two and a half years of opaqueness and rope-a-doping my state.

Mr. O'RIELLY. Those words are yours, not mine, but I understand the point you are making. It should be done expeditiously.

Senator SULLIVAN. Well, I look forward to working with you and all of you.

And thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. O'Rielly, those questions were coming so rapid fire from my friend from Alaska. You may want to supplement those on the record.

Senator SULLIVAN. We welcome that too.

The CHAIRMAN. Thank you so much, Senator.

Let us get back to where I think you were getting to on the RDOF fund, the Rural Digital Opportunity Fund.

Mr. O'RIELLY. And can I correct one thing I said before? I apologize to the timing. I said we are getting close to a deadline. I have the CBRS deadline of June 19 on my head. The short form for RDOF phase one is July 1. It opens up the short window, and that runs two weeks to July 15. So I apologize confusing the two issues. We are two weeks away. The short form does have financial information.

The CHAIRMAN. So the process with regard to the forms really begins next month.

Mr. O'RIELLY. July 1 we will open up the window. Right.

The CHAIRMAN. OK. So I think the point you were trying to get to, though, Mr. Commissioner, is that it is not so much when the auction is but when the deployment of high-speed fixed broadband networks in rural America occurs. And so I am going to pick up where we left off there.

Once the auction is done—this is phase one of the auction, and there are other phases. But I was disappointed to learn recently how time-consuming the buildout of the actual networks would be once the auction is over. Can you discuss that?

Mr. O'RIELLY. Well, the buildouts—you know, we have milestones in our rules in terms of how much and how quickly you are to build out to be able to continue to receive funding or if there are penalty obligations. We have tried to match them up with what we think that a provider can actually do. There are certainly some that are able to move faster and get their buildout done quicker.

The CHAIRMAN. OK. Well, just give us an idea, though, Commissioner O'Rielly, about the time-frame because I do not want to

raise the expectations of the consumer, raise the expectations of the public.

Mr. O'RIELLY. The program, as I remember—it is a 6-year total buildout. You have time to get to all the areas within the winning portions in 6 years. You have milestones to meet in terms of percentages along the way to get there. It is a 10-year funding. I will be corrected, I am sure, by my good staff, but I believe it is a 6-year buildout. There may be a mechanism and a way to expedite some of that buildout time, and that would be something I would be happy to work with you on.

The CHAIRMAN. You know, I think there is, but I think you have answered correctly under what we have now and how much we have now. I think members of the public are going to be disappointed at the 10-year period and the 6-year buildout.

Mr. O'RIELLY. Let me give you an example of an issue. So I was reading—Mississippi—the neighbor gentleman, Mr. Prissley, was talking about a pilot program from the co-op in Mississippi that they are going to try. And then his point was that if they found that it was beneficial, their buildout would be 4 to 6 years to get fiber. So it does take a while physically to get out the broadband to consumers, but there may be a way to shorten that window.

The CHAIRMAN. OK. Well, I think there is.

Mr. O'RIELLY. OK.

The CHAIRMAN. And I may have a proposal. I think this is going to require more resources. But frankly, this is the important aspect of it. The auction in October, the process of which has already sort of begun, is apparently what we are saddled with. But once the phase one auction occurs, I think we can help you with some extra funds and some incentive from the administration on a bipartisan basis to move this ahead. So I hope you will work with us there and the rest of the Commission on a bipartisan basis. I think you will be interested in some ideas that we have.

Go ahead and say what you would like to say about that, and then we will move on to one other topic.

Mr. O'RIELLY. I would say I certainly commit to you. Absolutely.

The CHAIRMAN. Good, good, because we need to move it faster once the auction is over. The build-out is the key.

But Senator Cantwell I think realized she was about to get into a lengthy process on asking about Ligado, and so I think that is probably worth talking about. And perhaps Mr. Szabat had made a comment, but Commissioner O'Rielly and Mr. Walsh had not. So I am going to let both of you comment on this, and this may be an opportunity to do what we have had a frustration about in other forums and that is hear both sides sitting at the same table.

Bands like 24 gigahertz and spectrum assigned to Ligado have generated high profile disputes within the administration at the highest levels, you know, cabinet secretaries on different sides of this issue.

In order to achieve widespread 5G deployment, the FCC will likely have to continue to seek ways to increase spectrum efficiency and reallocate spectrum to federal and non-federal spectrum uses.

So let us begin with you, Commissioner O'Rielly. Talk about what you have done on a 5 to 0 vote with regard to Ligado. And what assurance can you give us that this is not going to interfere

with GPS? And that those entities that have had to change their equipment and undergo an expenditure there will be made whole by the amended use of the spectrum by Ligado.

Mr. O'RIELLY. Well, I appreciate the views of my good friend, Mr. Szabat. We actually—the Commission—have to balance all those points, which I think he said. We have to balance all of the record and all of the different concerns. We do not advocate on behalf of one equity.

And I think what the Commission did in Ligado—and though I was not the lead voice or the lead supporter of the issue—I think the Commission put forward a license modification that is well defended by the record that is presented of a 17-year legal battle. And I think—I believe by reading the document, it provides sufficient protections on the front end, in the middle, and at the end to address the concerns that have been raised.

I was concerned about the hearing that I watched on this issue in a different committee when they started talking about what bands or what protections were needed for what pieces, and they were far outside of the GPS licenses where they thought the protection was needed. And that is a concern for me because that is not what the licenses provide for. And so what Ligado was trying to do was defended by the record and supported by the information that we made a vote on. We have difficulty finding commonality on a lot of issues, but here we were able to do so.

The CHAIRMAN. OK. Is this going to interfere with GPS or not?

Mr. O'RIELLY. I do not believe, based on the recommendations that have been provided in the material that it will lead to interference with GPS to the degree that it would cause a harmful interference. I do think that the mitigation tools that we put in the item will be helpful if absolutely necessary. So I think it is a situation where we addressed it up front and in the middle and at the end. And so the end has a number of mechanisms, including Ligado doing street drives to make sure, to do sensing to see if it causes interference.

The CHAIRMAN. And at that point then, would we know who would be entitled to compensation from Ligado for any expenditures that would need to be made?

Mr. O'RIELLY. The item does go through that issue in terms of who would be eligible, and we would have to see exactly who—if it were to come to case, which I hope not to be the case—if it were to come to that case, we would have to see who—for lack of a better word, whose ox is being gored. I do not think that is going to be a circumstance that is going to happen, but we would have to see when the information and data is presented.

The CHAIRMAN. Mr. Walsh, would you like to comment on this issue?

Mr. WALSH. Certainly. Our NTIA has long expressed the widely held view across the Executive Branch that Ligado's proposed terrestrial operations in historically satellite spectrum bands pose an unacceptable risk to the critical GPS service that is relied upon for our national defense, homeland security, aviation safety, public safety, and economic growth.

NTIA in May did file two petitions with the FCC requesting a stay and reconsideration of the decision to conditionally grant

Ligado's applications. NTIA's positions at a high level contend on behalf of the Executive Branch that Ligado's prospective operations threaten to harm Federal Government users of GPS, along with a variety of other public and private stakeholders.

The CHAIRMAN. How will that harm manifest itself?

Mr. WALSH. I am sorry. I missed that, Senator.

The CHAIRMAN. How will the harm occur? What will the harm be?

Mr. WALSH. Interference, Senator.

The CHAIRMAN. OK.

Well, let me ask you both. I am sitting here in this room today and I hear the air conditioning whirring a little bit. I think all of you can do that. I am told that is interference, but according to the FCC, we are still able to have this hearing and it is not harmful interference. Mr. Walsh, am I getting somewhere in the distinction between interference and harmful interference? I will let you go first and then the Commissioner after that.

Mr. WALSH. Certainly, Senator, there is a distinction between interference and harmful interference. It is NTIA's—on behalf of the Executive Branch, NTIA has filed their petition stating that there is harmful interference.

The CHAIRMAN. OK. So in practical terms so the listening public can know what we are talking about, what would that be? Who would be a user and what would be the harmful interference, and how would that affect the user and the American public?

Mr. WALSH. Senator, most of that is set forth in the petition. I would be happy to take that question for the record and give you a detailed, technical answer.

The CHAIRMAN. Oh, dear. OK. And I realize I did not notice both of you that we would get into a back and forth on that.

Commissioner O'Rielly, what response would you have to that?

Mr. O'RIELLY. Two parts.

One, you are absolutely right on the harmful interference.

Two, I am not sure that my fellow colleague at the table is right to say that NTIA has been uniformly opposed to the situation. My conversations with multiple people suggest that NTIA has had a different viewpoint over the time period, and it was not until the dismissal of an Administrator that the position was as it is now.

But to your point, I would say if harmful interference is demonstrated, then the item has a requirement actually a kill switch, that the Ligado system be turned off.

The CHAIRMAN. How would that occur? Let us let the public know what we are talking about. This may be the first time some of our listeners have even heard this.

Mr. O'RIELLY. Sure.

The CHAIRMAN. You have got somebody using GPS and it is a very important part of our economy.

Mr. O'RIELLY. And it is likely the device itself will likely either have data missing, you know, not receptive, or the information will be inaccurate.

The CHAIRMAN. At what point will we know this?

Mr. O'RIELLY. We should know—you know, assuming that Ligado actually does develop into something, which is something for the markets to determine, but if it does develop into what their

plans say they would like to do, we should know fairly soon the practical implications. We believe that the data represented and presented does not lead to that situation, but when it gets to sort of the real-world circumstances, we will know pretty quickly given all of the user community who has been so outraged by this issue. There is not one of them that is not going to put their hands up and say I have got a problem.

The CHAIRMAN. Would this be done in a test run at the outset there, or could someone be using GPS and be in a life-threatening situation and the harmful interference occur at that point and risk life or limb?

Mr. O'RIELLY. Well, I think coming operational will be part of the last phase, which I talked about, all of the different mitigation tools that we have, including the kill switch.

The CHAIRMAN. So that is part of the rollout before it is ever—

Mr. O'RIELLY. The rollout is going to be the turning on the system, and you will know. You should know fairly quickly whether there is an ongoing issue.

The CHAIRMAN. Well, I am going to let all three of you—OK, Mr. Szabat, do you want to weigh in? Because I was not here when Senator Cantwell asked the question. So I will let you respond if you would care to join in.

Mr. SZABAT. Thank you, Senator Wicker.

The CHAIRMAN. And, Dr. Beck, I am going to leave you off the hook on this one.

Dr. BECK. Thank you very much.

The CHAIRMAN. Mr. Szabat.

Mr. SZABAT. Thank you, Senator, and I will try to be brief.

From our testing, we see certainly that there is harmful interference in at least three sub-categories of GPS use: hyper vision surveying, anything space-based, and the timing sector. So banks, locks and dams, a whole subsector of the economy depends on accurate timing. These things are most sensitive and would be most interfered with most often and at the most harmful level from Ligado's proposed deployment strategy.

At a middle level are what I call the general navigation, you know, GPS in cars, general aviation. There would be interference, and that may or may not be harmful interference depending on how close they get to a transmitter, which again by plan could be 433 meters apart, and how close and how often they are in conjunction with these transmitters.

And then finally, there are the areas that Ligado, to their credit, has protected in their plan. So we believe that cellular services and certified commercial aviation services by our testing would not receive harmful interference.

The CHAIRMAN. OK. Well, what about, though, these first things you mentioned? What about this guard band that is part of the unanimous proposal of the FCC? Does that not help in those three situations that you mentioned initially?

Mr. SZABAT. Senator, thank you.

We believe it helps but not enough. The challenge, as Mr. O'Rielly has pointed out, is when GPS was deployed, it took advantage of the adjacent quiet sector, which was used for satellite communications. And so the most sensitive, the most accurate GPS re-

ceivers receive signals from all over that adjacent sector, which is now proposed to be sold to Ligado for them to use for broadband. So even with the guard band, those—and ironically it is the most expensive, most accurate of our GPS systems would, we believe, not be able to operate.

The CHAIRMAN. So give me then of these first instances you mentioned—give us an example in practical terms that even I could understand what might happen that you are objecting to.

Mr. SZABAT. So on the most sensitive side—I will just use a common example. On the most sensitive side, you have surveying equipment that are used by companies, by government agencies, and in the best case, they would be jammed so you would get no signal. In the worst case, there would be interference. And so they would be coming back to say, you know, this pipeline is located here or this road curve should be built here, and instead it would be giving a false signal. It would be off by some number of meters or hundreds of meters.

The CHAIRMAN. Now, would we be able to determine that fairly early in the process?

Mr. SZABAT. That I do not know, and I would defer back to the engineers and technical experts.

The CHAIRMAN. Well, Commissioner O’Rielly, what about that example? We finally got a real concrete example here, surveying equipment.

Mr. O’RIELLY. Right. If harmful interference is causing the issues to surveying, that is what I mentioned the mitigation techniques are intended to resolve fairly instantaneous to turning on the system. I think the difficulty is that our experts did not agree with the Department of Transportation’s testing methodology, and they think that they have properly set both the power limits and the guard band to preserve the surrounding GPS.

I think my colleague at this table anyway makes the point that they have taken advantage of neighboring spectrum bands—

The CHAIRMAN. Yes. I did pick up on that.

Mr. O’RIELLY.—that are not part of their license. And that is a problem. And we are trying to address spectrum efficiency with what is our responsibility.

The CHAIRMAN. Mr. Walsh and Mr. Szabat, is there a way to work this out? Is there a way for the experts—as you said, Mr. Szabat, the technical expertise—to get together and work this out? Because we need the 5G. And I will let you go first, Mr. Walsh. Is there a way for people of good will on both sides to sit down and resolve this?

Mr. WALSH. I would hope so, Senator, but I will say that the position of the Executive Branch on this, as articulated by NTIA in its petition, was uniform. There are critical military applications in GPS. So there is a lot to be done, but we are always willing to work with our colleagues.

The CHAIRMAN. Mr. Szabat.

Mr. SZABAT. And, Senator, I would add I am an optimist, but I regret to say in this case I believe that physics stand between the people of good will. I do not see a way in which anything approaching the Ligado proposal can succeed without interference with GPS. So in this case, again, I mentioned at the very beginning to Senator

Cantwell's question I do not envy the position that FCC is in because at the end of the day, there is going to be a winner or a loser. We are either going to have more broadband at the expense of GPS, or we are going to protect GPS at the expense of a fourth broadband system.

The CHAIRMAN. Mr. Walsh, what would the military implications be? What would be an example?

Mr. WALSH. I would be hesitant to speak about that here at this—

The CHAIRMAN. And, again, I have sprung this on you.

Somebody has got to wind this up. Mr. O'Rielly, it is 2 to 1. So I will give you the last word.

Mr. O'RIELLY. And they are still outmatched. Right?

[Laughter.]

Mr. O'RIELLY. But to your point, look it, I cannot commit the Commission's resources. I am merely a Commissioner. But if there is a way to resolve this issue, if necessary, then I would think that would be advantageous. After 17 years of working on this matter, I think the Commission came to a reasonable outcome that is highly defensible.

I look forward to reading NTIA's petition, which I have not done so yet. I will read the petition to see if it presents new data or evidence that the Commission should consider as required under our rules for a recon petition.

I would like to believe that we can move forward, and we have done so in a very thoughtful manner. The Office of Engineering and Technology is highly regarded at the FCC. There are many times that I would like to turn them in a direction and go further, and they will stop me as well. So their recommendation on a landing spot for this item comes with heavy weight in my opinion.

The CHAIRMAN. Well, thanks to all five of you.

And I am required by the Committee to ask one final question. To all of our nominees—and I will need a yes or no answer—if confirmed, will you pledge to work collaboratively with this committee and provide thorough and timely responses to our requests for information as we work together to address important policy issues?

Mr. Szabat?

Mr. SZABAT. Yes.

The CHAIRMAN. Commissioner O'Rielly?

Mr. O'RIELLY. Yes.

The CHAIRMAN. Dr. Beck?

Dr. BECK. Yes.

The CHAIRMAN. Mr. Walsh?

Mr. WALSH. Yes.

The CHAIRMAN. And Ms. Toman?

Ms. TOMAN. Yes.

The CHAIRMAN. Thank you very much.

And let me consult with staff.

[Pause.]

The CHAIRMAN. Let me also state that the hearing record will remain open for two weeks. And you three gentlemen who have commented on Ligado may very much want to supplement your answers. The hearing record will remain open for two weeks. During this time, Senators are asked to submit any questions for the

record with the final submission deadline being close of business on Tuesday, June 30, 2020. The Committee asks the witnesses that upon your receipt of any questions for the record, you submit your written answers to the Committee as soon as possible, but no later than close of business on Tuesday, July 14, 2020.

And with that and with the thanks of the entire Committee, this hearing is adjourned.

[Whereupon, at 4:50 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROY BLUNT TO HON. JOEL SZABAT

Question. Mr. Szabat, I want to bring to your attention a project that I have long championed and a project that is incredibly important to rural communities in Missouri. North Central Missouri is facing a critical water shortage which would have a devastating impact on the lives of families, farmers, and business owners in the region.

The East Locust Creek Watershed project, which has been in the making over the last 20 years, is a joint partnership with Federal partners, the North Central Missouri Regional Water Commission (NCMRWC), and the Missouri Department of Natural Resources to establish a multi-purpose reservoir with the primary purpose of providing an abundant source of low-cost and safe water for residents in 10 rural counties in North Central Missouri.

This project is multifaceted and encompasses several agencies at the Federal level including the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and Rural Development, the U.S. Army Corps of Engineers, and the Department of Transportation. Last year, the Department of Transportation awarded a \$13.5 million Better Utilizing Investments to Leverage Development (BUILD) grant for the East Locust Creek Reservoir Project to relocate roads surrounding the reservoir and install road safety improvements. I understand there are ongoing interagency discussions with DOT regarding the finalization of this BUILD grant. Can I receive a commit from you that, if confirmed, you will work to help expedite the interagency clearance of this critical infrastructure grant and utilize all flexibilities to ensure that this grant gets the necessary work implemented on the ground?

Answer. Yes.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SHELLEY MOORE CAPITO TO HON. JOEL SZABAT

Question. Emerging technologies—such as tunneling, hyperloop, and autonomous vehicles—represent a giant leap forward for the future of transportation in the United States. In January, I commended Secretary Chao and the Department of Transportation (DOT) for establishing the Non-Traditional and Emerging Transportation Technology (NETT) Council. The NETT Council plays a critical role in providing guidance and leadership when resolving regulatory gaps that may impede the deployment of new technology. I believe that it is important to foster a regulatory environment that encourages and promotes new and innovative transportation technologies. Mr. Szabat, if confirmed, in your role as Under Secretary of Transportation Policy do you commit to the continuing the Non-Traditional and Emerging Transportation Technology (NETT) Council and their work on identifying the resolving regulatory gaps that may impede the deployment of new technology? If confirmed, what steps do you see that are needed at DOT in order to foster an environment that promotes innovative technologies rather than stifling or impeding them?

Answer. Yes, I am committed to the important, continuing work of the NETT Council. One of the most important things we can do as a Department is to continue to listen to stakeholders on how the Department can best serve innovators. To that effect, the Department will establish a framework for innovators to engage with the NETT Council and continue to explore what sorts of resources innovators may find most helpful as they navigate the Department's authorities and regulations.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RON JOHNSON TO
HON. JOEL SZABAT

Question. Section 514 of the FY 2018 Coast Guard Authorization Act directed the Department of Transportation to establish requirements for a land-based, resilient, and reliable alternative timing system and to provide Congress an implementation plan for such a system. Both efforts were expected to be completed by June of 2019. This date recognized the economic and national security significance of fielding a viable timing signal in the event of a GPS disruption. We are now a year late. Can you commit to providing these deliverables, based on the Department's recent testing and finding, to the committee by July 31, 2020?

Answer. I whole-heartedly agree on the importance of identifying and deploying resilient and reliable back-up position, navigation and timing systems to protect our economic security, as well as transportation safety, from the damage that would occur if GPS were effectively disrupted. It will be my highest priority to move forward with our deliverables. I hesitate to commit to a fixed date only because it is preferable to move forward with a whole-of-government plan, given the many equities that must be protected, rather than a report from a single Department.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO
HON. JOEL SZABAT

Equity in Transportation. During the last Administration, the Department of Transportation undertook several activities designed to address transportation equity, including establishing the Transportation Equity Advisory Committee to provide comprehensive and inclusive advice to the Secretary to advance the principles of providing transportation opportunity and access to everyone. The Department also instituted a Local Labor Hiring Pilot Program to ensure that infrastructure investments in minority communities resulted in job creation within those communities. Unfortunately, this Administration ended both of those initiatives, with the pilot program disbanded before it could collect or analyze data to determine the program's impact.

Question 1. What is the Department of Transportation doing to ensure equity in transportation opportunity and access?

Answer. Transportation should be an avenue that eases social equality and upward economic mobility, not an obstacle. It should be accessible for all.

One of the lessons we have learned during this pandemic is that new transportation technologies can be used to meet our most pressing needs. We want to harness the power of this innovation to enhance quality of life for all Americans.

Disability advocates often remark that "technology is the great equalizer." The Department has implemented accessible transportation initiatives that aim to harness the equalizing power of technology to improve mobility for people with disabilities. At the October 2019 Access and Mobility for All Summit, Secretary Chao announced almost \$50 million in new initiatives as part of the Complete Trip Portfolio to develop and deploy innovations in technology and further interagency partnerships to improve mobility. This includes \$3.5 million for the Federal Transit Administration's Mobility for All Pilot Program, \$40 million for the Complete Trip—ITS4US Deployment Program, and \$5 million for the Inclusive Design Challenge.

We are prioritizing accessibility because 25.5 million Americans have disabilities that make traveling outside the home difficult, according to the 2017 National Household Travel Survey. While access to critical services, including medical care, is always vital, the pandemic has underscored the importance of meeting transportation needs. It is critical that people with disabilities have access to the transportation they need to get to workplaces, the doctor, the grocery store, and all the destinations they need and want to get to as the Nation recovers.

This month we celebrate the 30th anniversary of the passage of the Americans with Disabilities Act. The spirit of the ADA was to ensure the full participation of people with disabilities in all aspects of community life. This landmark civil rights law has led to major improvements in transit systems across the country; however, there are still barriers that we need to address, such as access to on-demand, accessible transportation services. As we celebrate many accomplishments stemming from the ADA over the past three decades, we have an opportunity to build on its success.

Perhaps one of the opportunities we're most hopeful about is automated vehicles. To help us all plan for the future of automation with the goal of developing truly inclusive approaches to passenger vehicles, the Department launched the Inclusive Design Challenge on April 21. The Inclusive Design Challenge is a prize competition

that rewards innovative ideas and design solutions to enable people with disabilities to use automated vehicles independently. By using a prize competition format, DOT seeks to draw attention to the topic of passenger vehicle accessibility; encourage new cross-disciplinary collaborations; incentivize the development of new approaches and technologies to improve mobility; and tap into the creativity and knowledge of the disability community, researchers, advocates, manufacturers, and entrepreneurs.

Our Federal partners at the Department of Labor are examining how accessible AVs can bridge transportation gaps and connect people with disabilities to jobs. This is more important now than ever as states, businesses and jobs reopen and the economy revs up. We partnered with DOL to host a series of 4 listening sessions with our Federal partners, AV companies, disability advocates, and researchers to gather information on this topic, and learned a lot about the transportation and accessibility needs of the disability community. There is a report with all the findings on the Office of Disability Employment Policy's website at dol.gov/odep. We listed this report as a resource for teams that are participating in the Inclusive Design Challenge.

We believe that technology innovation holds the promise to make our lives better, so we are investing in solutions that can be used to make them work for all of us. We will be announcing some new projects in our accessibility initiative on July 30 at a virtual event we are planning to celebrate the 30th Anniversary of the ADA and we hope you can join us!

Freight Policy. I am concerned that the Department of Transportation is not making freight policy a priority. It has been nearly five years since the enactment of the FAST Act, which required the Department to create a national strategic freight plan and develop a national freight network. However, it was not until earlier this year that the Department began requesting input from the public on a freight plan.

Question 1. Does the Department need additional resources to focus on freight policy?

Answer. No. At the direction of Secretary Chao, the Department has added Policy staff in the last year, several of whom are focused on the freight portfolio. I recognize that developing a truly intermodal national freight plan, and identifying the national network, are of crucial importance. The main reason for our prior delay was the need to allow every State to complete its State Freight Plan and provide additional opportunities for public input.

Question 2. When will the national strategic freight plan and the national freight network be finalized?

Answer. The Department is working to complete the National Freight Strategic Plan by later this year. In December, the Department requested information from States, local governments, and other stakeholders to inform the development of the national freight strategy. The completion of the National Freight Strategic Plan will directly lead into the identification of the National Multimodal Freight Network.

Executive Branch Concerns with FCC's Ligado Decision. The Departments of Commerce and Transportation (along with the entirety of the executive branch) believe that the Federal Communications Commission's ("FCC's") recent approval of Ligado's terrestrial wireless plans threatens the Nation's global positioning system ("GPS") on which the safety and security of everything from civil aviation to military operations to weather forecasting rely. The FCC rejected the executive branch's concerns and related technical studies both from the government and the private sector showing that the precision and effectiveness of GPS could be impaired. Instead, the FCC relied on competing technical studies (some of which were funded by Ligado), and its own conclusion that the government studies measured the wrong things, to allow Ligado to move forward with its plans. Yet in its decision to allow Ligado to move forward, the FCC acknowledged that its "analysis [in the order] should not be construed to say there is no potential for harmful interference to any GPS device currently in operation in the marketplace."

Question 1. Did the FCC quantify the number of receivers that would be negatively impacted by its decision, or analyze the impact of its decision on the risk this interference could cause to safety of life or property?

Answer. Not to my knowledge. One of the primary concerns of the Department of Transportation, discussed in the Executive Branch's reconsideration petition to the FCC, is that FCC's Ligado decision does not account for the significant damage Ligado's deployment would impose on the broad swathes of the economy that rely on position, navigation and timing devices. Nor can we see that the FCC sufficiently accounted for the impact of its decision upon emergency response systems and other applications used to promote transportation safety and efficiency.

Question 2. Did the Department of Transportation or Commerce provide data in its study on the percentage of GPS receivers that would suffer interference from Ligado's terrestrial operations at the power levels recently authorized by the FCC? Did the FCC ask for such information?

Answer. Yes. The Department of Transportation conducted engineering studies that identified what interference would do to a range of different types of receivers. For each type, the Department identified interference up to total 'loss-of-lock' at the thresholds of 10 percent, 50 percent, and 90 percent of the types of receivers tested (high precision, timing, general location and navigation, general aviation, space-based, and cellular). This data is included in the DOT GPS Adjacent Band Compatibility Assessment Final Report and was provided to the FCC when the report was published in April 2018.

Question 3. Do you agree that in high-profile spectrum decisions, particularly ones which create potential risk to safety of life, that it is in the greater public interest to reach consensus among and between the FCC and the expert Federal agencies on aviation, transportation safety, and national defense?

Answer. Yes. In the reconsideration petition and stay request in the Ligado proceeding, DOT and the rest of the Executive Branch have called upon the FCC to pause its decisionmaking process and revisit the important issues involved here. DOT remains ready to work with FCC, other agencies, and other stakeholders to address the critical national interests at stake.

The Jones Act. The Jones Act is one of the foundational American maritime laws, supporting 650,000 jobs in the U.S. and generating \$150 billion in economic activity. Secretary Chao has been a vocal proponent of the Jones Act as Secretary of Transportation.

Question 1. In your role as Assistant Secretary for Policy, will you also take steps to ensure the continuation of the Jones Act?

Answer. Yes

Airline Passenger Consumer Protections. In the 2016 Federal Aviation Administration (FAA) reauthorization, Congress specifically directed DOT to promulgate a rule requiring refunds for delayed checked baggage. The rule is now almost three years overdue, and consumers continue to lose thousands of dollars every day that DOT ignores its statutory mandate to protect consumers.¹ Similarly, in the 2018 FAA reauthorization, DOT was directed to require airlines to refund ancillary fees for products and services that are not delivered.² This requirement is almost one year overdue and, again, DOT has taken no action to protect consumers.

Question 1. When will DOT complete the delayed checked baggage refund rule and the ancillary fee refund rule?

Answer. The Department is scheduled to issue this month the Notice of Proposed Rulemaking (NPRM) on refunds for delayed checked baggage fees and ancillary service fees. More specifically, the NPRM would require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner as provided by the FAA Extension, Safety and Security Act of 2016. The NPRM would also require airlines to promptly provide a refund to a passenger of any ancillary fees paid for services that the passenger did not receive, as provided by the FAA Reauthorization Act of 2018. The rulemaking schedule is available in the Administration's Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions.

FAA Information Regarding the 737 MAX Crashes. Following the two crashes of Boeing 737 MAX aircraft in Indonesia and Ethiopia, Members of Congress, including myself and members of the Commerce Committee, have made repeated requests for information from the Federal Aviation Administration regarding that agency's decision to certify the model as a 737 derivative. Specifically, these parties have requested un-redacted versions of the Transport Airplane Risk Assessment Methodology (TARAM) and any risk analyses or other assessments conducted prior to and after the Lion Air and Ethiopian Airlines crashes. To date, we have not received a satisfactory reply from the FAA or DOT.

¹FAA Extension, Safety, and Security Act of 2016, sec. 2305, P.L. 114-21 (July 15, 2016) (stating that the "Secretary of Transportation shall issue final regulations" requiring air carriers to refund fees for delayed checked baggage no later than July 16, 2017).

²FAA Reauthorization Act of 2018, sec. 421, P.L. 115-254 (Oct. 5, 2018) (stating that the "Secretary of Transportation shall promulgate regulations that require each covered air carrier to promptly provide a refund to a passenger of any ancillary fees paid for services related to air travel that the passenger does not receive" not later than Oct. 6, 2019).

Question 1. When will DOT and the FAA comply with the Congressional requests for information regarding the FAA's certification activities for the 737 MAX, including any TARAMs, risk analyses, or similar assessments?

Answer. FAA provided the unredacted TARAM in response to the Committee's request prior to Administrator Dickson's hearing on June 17, 2020. A copy of the TARAM is attached for your reference. FAA has and will continue to provide documents and information in response to requests from the Committee.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. EDWARD MARKEY TO
HON. JOEL SZABAT

Question 1. As you know, our dependence on GPS for Positioning, Navigation, and Timing (PNT) is a single point of failure for critical infrastructure. To address this security concern, Congress passed and the President signed the *National Timing Resilience and Security Act of 2018*, which I sponsored. The law requires the Department of Transportation (DOT) to provide for the establishment, sustainment, and operation of a backup timing signal for GPS. The statute further establishes an implementation deadline of no later than two years from the date of the law's enactment.

If confirmed, will you devote and prioritize sufficient administrative and leadership resources to implementing the *National Timing Resilience and Security Act*?

Answer. Yes.

Question 2. Although the DOT is currently behind on its interim implementation deadlines, are you committed, and is the DOT prepared, to ensuring the overall law is executed as written and fully implemented by Congress's statutory deadline at the end of this year? If not, why not? And if not by the end of this year, what is the DOT's schedule for having the backup system in operation?

Answer. Both the Department and I are committed to executing the overall law as written, insofar as it is in our power to do so. If there is a delay in putting a backup system in operation, it will be because the importance of GPS cuts across every sector of the economy, and the development and deployment of a backup deserves a coordinated whole-of-government response.

Question 3. After the attacks of September 11, 2001, the DOT immediately initiated steps to protect the security of airline passengers and aviation workers. By contrast, during the COVID-19 crisis, the DOT has stepped back and left questions about how to protect the health of passengers and employees up to a patchwork quilt of inconsistent and often conflicting policies introduced by individual airlines, airports, and states.

Do you believe the DOT has the authority to set baseline health and safety standards for airlines and airports? If no: What authority would it need? If yes: What specific steps will DOT take to set such standards, especially as more restrictions are being lifted and airline travel is slowly increasing?

Answer. The Department of Transportation, specifically the FAA, unequivocally has the authority to set safety standards for airlines and airports. Across the Department, safety is our primary mission. Both before and during the spread of COVID-19, our position has been consistent: directions and guidance for aircraft safety will come from FAA; directions and guidance for contagious diseases best comes from the medical professionals and public health experts at NIH, CDC and elsewhere in HHS.

Question 4. To address the patchwork of policies for air travel, I have introduced the *Ensuring Health Safety in the Skies Act* (S.3681). This legislation instructs the Departments of Transportation, Health and Human Services, and Homeland Security to establish a joint task force—advised by aviation, security and public health experts—that will develop recommended requirements, plans, and guidelines to ensure safe and healthy air travel during and after the coronavirus pandemic. Do you support the goals of my legislation?

Answer. Yes, I support the goals of ensuring safe and healthy air travel.

Question 5. In an op-ed in *USA Today* in May, the Secretary of Transportation wrote about the importance of airlines following Federal requirements to provide refunds to consumers when their flights are canceled or substantially changed. The Secretary went on to write: "Many Americans, who canceled their reservations based on COVID-19 health concerns, are seeking refunds for the non-refundable tickets they purchased but could not use . . . They deserve fair treatment." However, subsequent reports indicate that the problem persists and consumers are not receiving refunds for unused airline tickets.

Is it unfair for the airlines to deny travelers refunds when they proactively cancel their own ticket due to concerns around COVID-19?

Answer. Secretary Chao has been vocal about the urgent need to refund airline passengers, including passengers who choose not to travel due to safety or health concerns related to the COVID-19 public health emergency. However, under current law, passengers who purchase a non-refundable ticket on a flight that is still being operated without a significant change, but would like to change or cancel their reservation, are generally not entitled to a refund or a travel voucher for future use on the airline. This is true even if the passenger wishes to change or cancel due to concerns related to the COVID-19 public health emergency. Although not required, many airlines are providing travel credits or vouchers that can be used for future travel for those passengers electing to cancel their travel due to health or safety concerns related to COVID-19. The Department strongly encourages airlines to do even more and offer passengers the option of a refund, instead of a voucher, as many consumers may be under enormous financial strain given the COVID-19 public health emergency.

Question 6. What does the DOT consider “fair” treatment when it comes to airline refunds?

Answer. Airlines have an obligation to provide a refund to a ticketed passenger when the carrier cancels or significantly changes the passenger’s flight, and the passenger chooses not to accept an alternative offered by the carrier. The Department considers a practice of offering a refund to a ticketed passenger when an airline cancels a flight or significantly changes the passenger’s flight to be “fair” treatment of passengers.

Question 7. If the DOT finds that airlines are not treating consumers fairly, what steps will the agency take to address these refund issues?

Answer. Given the unprecedented impact of the COVID-19 public health emergency on the aviation industry, the Department’s Office of Aviation Consumer Protection is exercising its enforcement discretion and first providing carriers and ticket agents an opportunity to become compliant. However, the Office of Aviation Consumer Protection will take enforcement action as necessary and appropriate. Enforcement action may include, for example, seeking corrective actions through warning letters, issuing consent orders (which may include fines), or filing an enforcement proceeding in front of an Administrative Law Judge.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CORY GARDNER TO
DR. NANCY B. BECK

Question. PFAS is a serious issue in Colorado for communities like Colorado Springs where water has been contaminated through years of PFAS exposure. I have worked with my colleagues on both sides of the aisle to address the risks posed by these harmful chemicals including introducing legislation to limit PFAS use, supporting efforts to provide resources for PFAS cleanup, and advocating for additional research dollars toward studying harmful effects of PFAS chemicals. Do you believe that PFAS chemicals, including PFOA and PFOS, pose any hazardous risks to human health? Do you believe the Federal government has an important role to play in protecting the public from exposure to harmful chemicals? If confirmed, how do you intend to use the Consumer Product Safety Commission’s authorities in law to keep my Colorado constituents safe from hazardous products?

Answer. PFAS chemicals pose hazardous risks to human health, and I do strongly believe that the Federal government has a very important role to play in protecting the public from harmful exposures.

I have spent my career committed to promoting public safety through policies supported by objective and transparent scientific analysis. If confirmed to serve on the Commission, I would make it a priority to ensure that CPSC takes appropriate and timely action to protect the public from risks, including from PFAS. Specifically, I would ask the Commission to inventory known and suspected consumer products containing PFAS. I would then work collaboratively with the CPSC staff experts and other Commissioners to make sure the Commission is guided by the scientific information, the data, and our legal obligations to make timely decisions to ensure that robust protections are put in place to protect the public, including our most vulnerable populations.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO
MICHAEL J. WALSH, JR.

The Pacific Salmon Treaty is a Federal obligation to Canada. Alaska has repeatedly taken harvest reductions through the Pacific Salmon Treaty process, and worked hard to accommodate ESA concerns. FY20 appropriations provided \$35.2 million dollars (an additional \$20 million above FY19) to NOAA/NMFS for Pacific Salmon Treaty-related work. Of that, NMFS has proposed to allocate 92 percent of that money to themselves for ESA priorities.

Additionally, even with this huge amount of money going to ESA obligations, Wild Fish Conservancy has sued on ESA violations perceived to originate from Southeast Alaska salmon fisheries. Under NOAA's current approach, failing to supply adequate funding does not reflect the terms agreed to by both countries under the Pacific Salmon Treaty, nor does it meet the funding commitments of the Biological Opinion prepared by the NMFS West Coast Region.

Question 1. Why has NOAA continually not included Pacific Salmon Treaty obligation funding in their budget, instead relying on alternative sources, to meet requirements that are clearly a Federal responsibility for ESA, and which the United States has agreed to?

Answer. The President's FY 2021 Budget requests \$16.2 million to implement the Pacific Salmon Treaty. This represents an increase of \$5.0 million from FY 2020 President's Request. This increase reflects NOAA and the Department's efforts to prioritize Pacific Salmon Treaty requirements within the Administration's FY 2021 Budget Request. NMFS will continue to support the ongoing Pacific Salmon Treaty implementation and provide personnel support to the Pacific Salmon Commission's technical committees, as well as a broad range of salmon stock assessment and fishery monitoring programs that produce information required to implement Pacific Salmon Treaty provisions.

Question 2. How does the large amount of PCSRF funding allocated to Pacific Northwest relate to meeting the Pacific Salmon Treaty obligations? Why are other sources of funding, such as those appropriated by state governments, or appropriated through the Pacific Coastal Salmon Recover Fund (PCSRF) not accounted for in the United States Pacific Salmon Treaty obligations?

Answer. Contributions from these other sources, such as the Pacific Coastal Salmon Recovery Fund and recent funding by Washington State to increase hatchery production of Chinook salmon for Southern Resident killer whale prey, may contribute to the anticipated benefits of the conservation program considered as part of the action and environmental baseline evaluated in the following three biological opinions.

In April 2019, NMFS completed a biological opinion on the delegation of management authority to Alaska for some Southeast Alaska fisheries. In May 2020, NMFS completed two additional biological opinions on the 2020 Pacific Fishery Management Council ocean salmon fisheries, and on the 2020 Puget Sound salmon fisheries. The Southeast Alaska biological opinion evaluated the effects of discretionary domestic actions associated with implementing the new Pacific Salmon Treaty agreement on species listed under the Endangered Species Act as well as a conservation program for threatened Puget Sound Chinook salmon and endangered Southern Resident killer whales. This conservation program includes conservation hatcheries for critical Puget Sound Chinook salmon stocks, hatchery production for increased prey for SRKW, as well as habitat improvements. The conservation program was also evaluated as part of the environmental baseline in NMFS' subsequent biological opinions on the Pacific Fishery Management Council ocean salmon fisheries, and the Puget Sound salmon fisheries. NMFS took considerable care to apply consistent approaches and the best available science in each of these three biological opinions.

Whether a given activity contributes to the conservation program will be evaluated on a case-by-case basis. These other sources of funding would be applied in addition to any congressionally appropriated funds for Pacific Salmon Treaty implementation.

Question 3. Why are these programmatic funding actions included in the Southeast Alaska Biological Opinion, but not in any of the Pacific Northwest Biological Opinions?

Answer. The 2020 Pacific Fisheries Management Council ocean salmon fisheries and the 2020 Puget Sound salmon fisheries biological opinions considered the conservation program and its anticipated benefits to Puget Sound Chinook salmon and Southern Resident killer whales as part of the environmental baseline. While these consultations considered the conservation program as a whole (as opposed to focusing on specific funding details), the two May 2020 biological opinions did examine

additional details on Federal and state funding appropriated in FY 2020, criteria for selecting projects, and specifics of hatchery and habitat projects where currently available. NMFS believes Alaska and the southern states and tribes have a unity of interest in implementing the proposed actions in all three biological opinions to sustain fisheries coastwide consistent with the 2019 Pacific Salmon Treaty agreement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO
MARY A. TOMAN

Question 1. The economy is measured by the data collected by BEA and the ongoing Census. The current year has created many challenges in collecting data in a timely manner across all sectors and in conducting the decennial census because of COVID. How will you instill in the public, and stakeholders, confidence in the data being collected?

Answer. If confirmed, I look forward to working with BEA and the Census Bureau to ensure that timely and accurate data collection continues. Both agencies have made adjustments because of COVID-19. We must ensure that technology and methodologies continue to be adapted to maintain accuracy during the current public health emergency. I would look forward to working with you and your staff in a cooperative effort so that we instill in the public, and stakeholders, confidence in the data collected.

Question 2. The components of the DOC that you will oversee are vital to the Nation's economy and representation in Congress. Data integrity is crucial. What do you feel are the greatest risks to security of the information collected by BEA and Census and how will you address them if confirmed?

Answer. Yes, data integrity is crucial, and the public is increasingly aware of both the value of data and the risks to data security. It is paramount that risks such as cybersecurity issues are identified and mitigated. The Census Bureau is bound by Title 13 of the U.S. Code, which is fundamental to the collection and security of data. If confirmed, I will work hard to help explain and reassure our fellow Americans that they can trust us to safeguard their personal information. I would look forward to working in partnership with you and your staff on these issues.

