

## Attachment —Additional Questions for the Record

### **The Honorable Cathy McMorris Rodgers**

1. Secretary Raimondo: The committee would like to better understand what the policy is for the department relative to employees performing duties in person versus remote.
  - a. How many hours a week are employees required to work in person versus remote?

**Response:** Since March 2022, the Department has operated under a baseline telework best practice of employees being regularly scheduled to report to the traditional worksite at least three days per week. In September 2024, some organizations within the Department that were previously granted variations from this baseline for mission-driven reasons will return to the baseline of reporting to the traditional worksite at least three days per week. The Department defines remote work as an arrangement under which the employee, after receiving approval from their bureau or operating unit, may perform the duties of their position at an alternative worksite without the requirement to report to an agency worksite at least twice per pay period; in general, these employees primarily perform their duties at their residence. In contrast, an employee who regularly reports to an agency worksite at least twice per pay period and also performs their duties from an alternate worksite (in a hybrid manner) is considered a teleworker and their time spent working at their alternative worksite is referred to as telework. The Department's policy has two types of telework: routine telework and situational telework. Routine telework occurs as part of an ongoing, regular schedule. Situational telework occurs on a case-by-case basis. Department employees<sup>1</sup> are generally eligible to engage in either routine or situational telework, depending on their circumstances and job duties, unless they are excluded for defined performance-related reasons.

In addition to its teleworkers and remote workers, the Department employs many mobile workers. Mobile workers, such as NOAA Fisheries Consumer Safety Officers and the US Census Bureau Enumerators, perform duties in geographic locations outside the local commuting area of any of the Department's duty stations. Due to the nature of their duties, they do not have a traditional agency worksite. These employees spend the majority of their time visiting customer sites or performing field work. When not working in the field, they use their residence as their duty station and are not expected to report to an agency worksite. Unlike remote workers, mobile work is a condition of employment; it is not a voluntary arrangement and cannot be terminated at the employee's discretion.

The Department also notes that many of the Department's employees work under conditions of employment established in legally-binding collective bargaining agreements with the Department's employees' unions. Employees working under legally-binding collective bargaining agreements may be covered under remote and telework policies that differ from those that apply to the rest of the Department's workforce.

- b. Does the Agency have any data showing what the most efficient method of working is? In person, remote, or a hybrid environment?

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<sup>1</sup> This does not include employees of the United States Patent and Trademark Office (USPTO) and the NOAA Commissioned Officer Corps, which are covered under different policies.

**Response:** Department's performance standards and expectations do not change based on the employee's teleworking status. The Department and its Bureaus have maintained a high level of performance while operating in maximum telework and hybrid postures. Indeed, in Fiscal Year 2023, the Department met or exceeded 81 percent of its key performance indicators (KPI), which measure the Department's progress towards achieving the 5 goals and 23 objectives of its Strategic Plan.

- c. How many employees with the Department of Commerce are working on premises?

**Response:** The Department employs nearly 50,000 individuals in hundreds of duty stations across the country and around the world. Based on available payroll data for July 2024, approximately 26,000 employees complete at least some of their work hours in person at a traditional agency worksite.

- d. On average, how many people work in person on premises on any given day?

**Response:** As of July 2024, Department employees complete approximately 64% of all work hours in person (when excluding the USPTO, Bureau of Economic Analysis (BEA), and Census Bureau).

USPTO continues to operate Congressionally authorized telework/remote work programs, including the Telework Enhancement Act Program, which allows USPTO to recruit and retain examiners and legal professionals across the country while saving the government money through the elimination of the use of relocation incentives, travel expenses, and transportation and commuting costs. BEA and Census Bureau Headquarters employees work at the Suitland Federal Center, which has been undergoing major renovation. As a result of this renovation, BEA and Census Headquarters employees have not been able to report to their workspaces in accordance with Departmental policy. The Department's facility which houses BEA and Census Bureau Headquarters at the Suitland Federal Center will be reopening in phases over the course of the next several months.

## The Honorable Jeff Duncan

1. How effective has the U.S.-China Commercial Issues Working Group been in addressing trade and investment concerns since its establishment in August 2023?

**Response:** The first Vice-Ministerial meeting of the CIWG was led by Under Secretary Marisa Lago with her MOFCOM counterpart in Alexandria, VA on April 4th.

During the meeting, U/S Lago addressed commercial and market access issues impacting U.S. companies and workers, such as cross-border data flows and regulatory transparency. She also raised concerns regarding growing overcapacity in a range of Chinese industrial sectors that impact U.S. workers and businesses.

In addition, specific areas of potential cooperation and further engagement were identified including on healthcare trade promotion, government procurement of medical devices, expanded services to U.S. companies in new regions in China, engagement on clean and environmental technologies, individual company issues, and expanded subnational engagement in trade promotion.

2. Following the latest U.S.- China Commercial Issues Working Group meeting in April,

how will the Department of Commerce (DoC) prioritize and operationalize the identified areas of cooperation, such as expanded services to U.S. companies in new regions in China, technical exchanges of trade remedies authorities, and expanded subnational engagement in trade promotion?

**Response:** The U.S. Department of Commerce's Commercial Issues Working Group has helped to open several areas of U.S.-China cooperation. Through the planned expansion of the MOU with China's China Council for Promotion of International Trade (CCPIT), the U.S. Foreign Commercial Service will have broader access to and awareness of trade opportunities in China for U.S. exporters. Specific trade opportunities are still being assessed, but second and third-tier cities in China are home to millions of consumers and the MOU with CCPIT will allow for increased outreach to these areas beyond what the Commercial Service can currently provide.

On sub-national engagement, representatives from the International Trade Administration have participated in events such as California-China Business Forum held in May 2024, that showcased export opportunities for U.S. firms, especially small and medium-sized enterprises.

3. With the de minimis exemption allowing duty-free entry for goods under \$800, how is the Working Group addressing concerns about Chinese companies like Temu and Shein exploiting this exemption to import low-quality and forced-labor goods, while still facilitating legitimate e-commerce trade?

**Response:** The Commercial Issues Working Group is focused on addressing market access and trade promotion for U.S. companies seeking export opportunities in China. Separately, the Department of Commerce agrees that abuse of the de minimis exemption and the exportation of Chinese forced labor goods into the U.S. are serious problems that need to be addressed. The Department is a voting member of the Forced Labor Enforcement Task Force, which monitors the enforcement of the prohibition on importing goods made wholly, or in part, with forced labor into the United States. As a member of the FLETF, the Department of Commerce supports the enforcement of the Uyghur Forced Labor Prevention Act to prevent forced-labor goods from China (especially the Xinjiang Uyghur Autonomous Region) from entering the U.S. market. Over the last ten years, the number of shipments entering the United States claiming the de minimis exemption has increased significantly, from approximately 140 million a year to over one billion a year. This exponential increase in de minimis shipments makes it more challenging to enforce U.S. trade laws, health and safety requirements, intellectual property rights, consumer protection rules, and to block illicit synthetic drugs such as fentanyl and synthetic drug raw materials and machinery from entering the country.

The Department of Homeland Security (DHS) has been working closely with the Department, the interagency, and the trade community to improve risk management in the e-commerce environment through the operation of two pilot programs, which allow for the electronic collection of data on de minimis imports, improving U.S. Customs and Border Protection (CBP)'s targeting and ability to detect non-compliant packages. While de minimis shipments are only 1.3 percent of the total value of U.S. imports, the huge volume of low-value shipments (roughly half are textile and apparel products) has the U.S. textile industry, labor unions, police organizations and others raising concerns about its impact. The Department is actively engaging with our interagency partners regarding improved enforcement, regulatory, and statutory solutions to address these concerns. As a result of the interagency efforts, on September 13, the Biden-Harris Administration announced actions to enforce our laws and protect American consumers, workers, and businesses by addressing the significant increased abuse of the de minimis exemption, in particular, by China-founded e-commerce platforms, and strengthening efforts to target and block shipments that violate U.S. laws.

4. I know the Administration, specifically the DoC, has prioritized establishing a stronger

domestic solar power industry. At the same time, the DoC has found a number of Chinese companies circumventing our trade laws.

- a. What have been the consequences for those violations?

**Response:** Remedial duties have been in place on solar cells from China since 2012, when Commerce found that imports of solar cells from China were being unfairly priced and subsidized. These duties are annually reviewed by Commerce.

Between February 2022 and August 2023, Commerce conducted a circumvention inquiry on whether Chinese solar producers were shipping solar products through countries in Southeast Asia (Cambodia, Malaysia, Thailand, and Vietnam) and completing minor processing to avoid paying these duties based on a request filed by Auxin Solar Inc., an American solar company. On August 18, 2023, Commerce announced final affirmative determinations of circumvention with respect to certain companies in each of these countries and outlined the certification requirements for imports. Imports from companies in Cambodia, Malaysia, Thailand, and Vietnam will be subject to applicable duties unless they can certify that they are not circumventing Commerce's AD/CVD orders on solar cells from China.

On June 6, 2024, after termination of the Presidential Proclamation temporarily halting collection of AD and CVD duties for solar products from certain Southeast Asian countries, U.S. Customs and Border Protection began collecting cash deposits on imports of solar cells that are subject to Commerce's trade remedy actions.

For additional information, please see Commerce's [Solar Proclamation FAQ page](#).

- b. If there have not been any consequences, please explain why not.

**Response:** N/A

5. I have been told that China has been dumping unprecedented amounts of solar products into our domestic market. Such dumping can undermine U.S.-based companies trying to establish a domestic manufacturing capability as prices are driven artificially low.
  - a. Is it correct that the dumping is occurring in an unprecedented nature?

**Response:** Since remedial duties were placed on solar cells from China in 2012 and on solar products from China in 2015, imports directly from China have declined. These orders remain in force and are subject to annual administrative reviews.

However, China was found to be circumventing our AD/CVD orders on solar cells from China by shipping products through third countries before sending to the U.S. for importation. Since Commerce announced the affirmative final determination of circumvention through four southeast Asian countries in August of 2023, the AD/CVD orders on solar cells from China are now applied to those imports as well.

Commerce's International Trade Administration's Enforcement and Compliance unit (E&C) is fully committed to our mission of defending U.S. industry, including the U.S. solar industry, against illicit trade practices like unfair pricing and government subsidies by administering U.S. trade remedy laws to ensure that domestic industries can compete on a level playing field.

To that end, Commerce remains vigilant against dumping and unfair subsidization of imports of solar cells into the U.S. market. On May 14, 2024, Commerce initiated antidumping (AD) and countervailing duty (CVD) investigations on imports of crystalline silicon photovoltaic cells (solar cells) from Cambodia, Malaysia,

Thailand, and Vietnam. Commerce's decisions to initiate AD and CVD investigations on imports of solar cells and modules from multiple trading partners were made after careful consideration of the information available. As part of these proceedings, Commerce will be investigating allegations that exporters in these four countries received subsidies from the Chinese government (including Chinese state-owned enterprises).

By law, AD/CVD relief is not discretionary. Commerce is required to initiate AD/CVD investigations when a petition is properly filed that meets all statutory requirements and is supported by the U.S. domestic industry, as was the case for these ongoing investigations on solar cells and modules. Commerce is currently scheduled to announce the preliminary determinations in the CVD and AD investigations on October 1 and November 29, 2024, respectively.

- b. Is it your understanding that this is to drive prices artificially low, thus impairing domestic production to succeed?

**Response:** Unfairly priced products can cause injury to the domestic industry, including our domestic solar industry, by, among other things, suppressing the competitive price domestic firms can charge. When the domestic industry suspects these unfair trade practices are occurring, they can petition the Department of Commerce to investigate this behavior and seek relief from unfairly traded imports. Trade remedies ensure that domestic companies can compete fairly in the marketplace, without the distortions caused by unfairly priced and subsidized goods. Antidumping and countervailing duty laws are in place to ensure that domestic companies do not have to compete with these unfairly traded goods and can continue to succeed in the U.S. market.

- c. Does the Administration have data that documents to what extent this is occurring?

**Response:** Commerce maintains an administrative record of all antidumping and countervailing duty proceedings. These records contain information relating to unfair trade practices by foreign importers, including dumping. China was found to be unfairly pricing and unfairly subsidizing imports of solar cells since 2012 and solar products since 2015. Commerce officials have conducted annual investigations since that time to determine the amount of dumping and subsidization that is still occurring. Information on the amount of dumping and subsidization and the corresponding data can be found at [access.trade.gov](https://access.trade.gov), referring to case numbers A-570-979 and C-570-980 for solar cells from China and A-570-010 and C-570-011 for solar products from China.

6. In addition, I'm aware the Inflation Reduction Act (IRA) made manufacturing tax credits available to the very same Chinese companies that may be circumventing our trade laws and engaging in such dumping.

- a. Is it correct that the same companies involved in these actions are also receiving funds via IRA?

**Response:** Commerce is tracking publicly announced investments in the domestic solar supply chain. We defer to the Treasury Department concerning Advanced Manufacturing Production Credits (Internal Revenue Code, Sec. 45X) and Advanced Energy Product Credits (Internal Revenue Code, Sec. 48C), as established under the Inflation Reduction Act.

- b. Are there other forms of support these same companies are receiving funded by U.S. taxpayers?

**Response:** Commerce only has direct insight into the grantees from Commerce grant programs established

under the IRA, all of which reside within the National Ocean and Atmospheric Administration (NOAA), which has not provided funding to Chinese grantees.

- c. I am certainly concerned if US tax dollars end up in the hands of solar companies backed by the CCP. Can you provide details on how you are dedicating resources to enforce various laws that you are charged with administering so China is not able to ignore restrictions or exploit loopholes?

**Response:** Commerce continues to work with U.S Customs and Border Protection to enforce our antidumping and countervailing duty orders at the border to ensure that any foreign company subject to existing AD/CVD orders pay the imposed duty rate specific to that underlying investigation.

## The Honorable Neal Dunn

1. The National Institute of Standards and Technology recently published a Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights<sup>1</sup> in which the agency proposes, for the first time since the enactment of the Bayh Dole Act in 1980, to use the Act's march in authority as a mechanism for price control.

The Bayh-Dole Act has consistently achieved its legislative purpose of being a stimulus for commercialization of federally funded inventions; studies show that it has contributed between \$631 billion and \$1.9 trillion to U.S. industry gross output, has catalyzed the formation of 17,000 startup businesses, and supported between 2.4 and 6.5 million jobs in the United States over the past 25 years alone.<sup>2</sup>

- a. According to the authors of the Act, Senators Birch Bayh and Bob Dole, march in authority was only intended to ensure that federally funded inventions wouldn't be left on the library shelf, not as a mechanism for price control. In 2002, they wrote, "The law makes no reference to a reasonable price that should be dictated by the government. This omission was intentional; the primary purpose of the act was to entice the private sector to seek public-private research collaboration rather than focusing on its own proprietary research."<sup>3</sup> In fact, every administration, including

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<sup>1</sup> (NIST-2023-0008), 88 Fed. Reg. 85593.

<sup>2</sup> Pressman, et al., Economic Contributions of University/Nonprofit Inventions in the United States: 1996-2020, available at [https://autm.net/AUTM/media/About-Tech-Transfer/Documents/BIO-AUTM-Economic-Contributions-of-University-Nonprofit-Inventions\\_14JUN2022.pdf](https://autm.net/AUTM/media/About-Tech-Transfer/Documents/BIO-AUTM-Economic-Contributions-of-University-Nonprofit-Inventions_14JUN2022.pdf); see also <https://autm.net/AUTM/media/Surveys-Tools/Documents/AUTM-Infographic-22-for-uploading.pdf>.

<sup>3</sup> Sens. Birch Bayh and Robert Dole, Our Law Helps Patients Get New Drugs Sooner, Wash. Post (Apr. 11, 2002).

the Biden administration, has denied petitions to exercise march in as a price control mechanism.

- i. Why is this administration abandoning 44 years of well understood law and policy?

**Response:** The Bayh-Dole Act is a cornerstone of our innovation system in the U.S., which carefully balances the interests of the taxpayer, government, and the private sector. The Department is committed to providing clarity and consistency in order to maintain that successful balance. It is important to note that Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights includes price as one of many factors that an agency may choose to consider when deciding whether to exercise march-in rights. To date, no federal agency has exercised the right to march in. It is also important to note that the draft framework is not a rulemaking and is not binding, nor is it final. It is voluntary guidance to assist federal agencies with decisions regarding march-in rights.

- ii. Bayh Dole affects federal investments across agencies and technologies, including the small businesses participating in the SBIR-STTR program. Has your agency evaluated the impact on government licensing on these technologies.

**Response:** The Department remains committed to driving U.S. industrial competitiveness, including by helping small and medium-sized businesses thrive. The draft guidance framework is not a rule, and is intended to help agencies, as they consider the statutory criteria, balance the rights of innovators with the interests of U.S. taxpayers. The guidance framework encourages analysis that examines the totality of circumstances, including whether the action would harm innovation. The Department would be interested in the results of studies on the impact of the draft framework.

- iii. Although this is being touted as a means to control drug prices, in fact very few commercially available drugs would be subject to march in, because federally funded research is only part of the puzzle leading to a final product. Patents licensed under the Bayh-Dole Act or directly owned by the government were found to constitute only 2.6% of all patents listed in the Orange Book for 197 top-selling drugs from the years 2013-2017. Approximately two-thirds of these patents do not claim the drug substance, but instead are directed to formulations or methods of using the drug.<sup>4</sup>

**Response:** N/A

- iv. The most recent march in petition, which this administration denied, involved a drug called Xtandi. The federal grants for the initial research resulted in three patents amounting to \$500,000, while the private partners invested an additional \$2.2 billion to develop and win FDA approval and bring the drug to market.
  - a. Do you think by leveraging a modest federal grant into billions of dollars of private investment and a drug that successfully treats cancer taxpayers received good value for their initial investment?

**Response:** See response below.

- b. You have a background in the investment world. Would you advise

private investors to put up that kind of money, knowing that there would be a 90% risk of failure, if the reward for success was government confiscation of the rights to the invention they had paid to license?

**Response:** The Bayh-Dole Act is a pillar of the U.S. innovation system, promoting commercialization of new technologies while ensuring that the American people benefit from federally funded research. It was designed to facilitate the commercialization of inventions developed with public funds by according the recipient of those funds the right to retain ownership and seek patents on those inventions. The Department intends to help provide clarity and consistency in federal decision-making around the exercise of march-in rights; the draft framework does not compel any funding agency to exercise those rights. Instead, the draft framework encourages analysis that examines the totality of circumstances, including whether the action would harm innovation.

- v. Has your Agency evaluated prior march in petitions in light of this guidance? How would it have altered the outcome in those cases and why? If not, why not?

**Response:** The draft guidance framework is intended to help agencies, as they consider the statutory criteria, balance the rights of innovators with the interests of U.S. taxpayers. The guidance framework encourages analysis that examines the totality of circumstances, including whether the action would harm innovation. To date, no federal agency has exercised the right to march-in. The ultimate decision of whether to exercise march-in rights lies with the funding agency, not the Department of Commerce.

- vi. The Association of American Universities (AAU), Association of Public and Land-grant Universities (APLU), the Association of American Medical Colleges (AAMC), the American Council on Education (ACE), AUTM, and COGR filed joint comments opposing the draft framework in which they stated “American innovation, economic competitiveness, and national economic security are best served by protecting and enhancing the robustness of the American academic research and technology transfer ecosystem in the

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<sup>4</sup> Genia Long, Federal government-interest patent disclosures for recent top-selling drugs, *J. Med. Econ.* 22:12, 1261-1267 (2019).



U.S. Unnecessary, vague, and unwarranted changes to the Bayh-Dole Act and its implementation cannot be allowed to harm one of the greatest public policy achievements in U.S. history. We urge NIST to withdraw and definitively rescind this unnecessary framework.” Are you concerned that turning the Bayh Dole Act into a price regulation mechanism will undermine the goals of the Act without benefiting consumers?

**Response:** The draft guidance framework is not a rule, and is intended to help agencies, as they consider the statutory criteria, and balance the rights of innovators with the interests of U.S. taxpayers while further strengthening the federal R&D ecosystem. The draft framework encourages a thorough, context-driven analysis that examines the totality of circumstances including consistency with the policy and objectives of the Bayh-Dole Act.

## The Honorable Debbie Lesko

1. Secretary, you are implementing the CHIPS Program, the roots of which began under the Trump Administration, who realized to reshore semiconductor manufacturing, the US would have to offer incentives to overcome the regulatory burdens and costs of manufacturing in the United States. While Congress created an incentive, unfortunately, red-tape and government bureaucracy remain. My colleague, Rep. Kiggans, introduced the Building CHIPS for America Act to prevent the litigious and lengthy federal NEPA review process from slowing down these CHIPS facilities. TSMC is investing over \$65 billion to build three advanced semiconductor facilities in my district in Phoenix, AZ. I’ve expressed my concerns several times that the NEPA process could threaten the 6,500 jobs in my district.
  - a. In face of rising threats and competition abroad, what would happen if projects like TSMC's AZ facility become the subject of lawsuits under NEPA. How would litigation directly impact a facility that has been a recipient of grant funding? Would the facility have to close during the litigation process?

**Response:** The CHIPS Incentives Program is imperative for our national security, including economic security. The Department of Commerce is committed to building a reliable and resilient semiconductor industry that protects America’s technological leadership for the coming decades and creates thousands of good-paying jobs across the country.

As we implement the CHIPS program, we are committed to transparency and accountability, including in the environmental review process under laws such as NEPA. Accordingly, we have put together a world-class team that is dedicated both to taking a hard look at the potential environmental impacts of CHIPS projects and to proceeding expeditiously. We also have made clear to our CHIPS applicants that they must come forward and provide the information the Department needs to conduct reviews that satisfy NEPA’s requirements. These steps are an effort by the Department to meet the goals of the CHIPS program in a timely manner while simultaneously avoiding potential litigation related to funded projects, the impact of which would depend on any number of case-specific factors. We are not able to comment on any specific pending CHIPS applications at this time.

## The Honorable Russ Fulcher

1. Building off our discussion during the hearing, we know the U.S. and China don't play by the same set of environmental and labor rules when it comes to critical minerals exploration, extraction, and production efforts. In your report from 2020, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals," ([https://www.commerce.gov/sites/default/files/2020-01/Critical Minerals Strategy Final.pdf](https://www.commerce.gov/sites/default/files/2020-01/Critical%20Minerals%20Strategy%20Final.pdf)) you note two important recommendations: "Develop an interagency methodology to periodically assess market trends" and "establish a National Critical Minerals and Supply Chains Council." Besides Commerce, you properly label DoD, DOE, and DOI as participants. Can you provide me with an update on progress you've made? I note that land management agencies pulled together on the mining of Antimony, due to the Defense Logistics Agency pushing permitting progress through the Defense Production Act. But, that can't become a catch all due to national security not always applying. Are there things we can do in Congress when it comes to department and agency coordination to help ensure we are more efficient? For example, does Commerce get hampered by the extensively long permitting process due to the inability of federal land management agencies to move in a more timely manner?

**Response:** The Department recognizes the concerns about permitting timelines, and is committed to addressing mineral supply chain issues to meet our national climate, infrastructure, and global competitiveness goals. At the same time, the American public must have confidence that the minerals and materials used in our electric vehicle batteries, smartphones, solar panels, and other technology are sourced under responsible social, environmental, and labor standards—and that the Federal government wisely stewards our shared natural resources for both Americans today and future generations. To meet rapidly increasing demand for minerals, the United States, in coordination with our global partners, must rapidly and dramatically increase responsible mineral production. We must also learn from the lessons of the past and ensure that our actions do not come at the expense of human health or workplace safety; Tribal consultation or community engagement; or the air, water, and other crucial resources upon which we all depend. We are engaged with our interagency partners, including the Permitting Council, to find solutions that balance the interests of stakeholders, Tribal Nations, and the environment in order for the United States to build a resilient domestic supply of critical minerals.

One of the pillars of the Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals is the establishment of a National Critical Minerals and Supply Chains Council through the Federal Advisory Committee Act (FACA) to seek advice on the metal and non-metallic sectors of U.S. industry producers and primary processors.

In 2022, the FACA-compliant Industry Trade Advisory Committee on Critical Minerals and Nonferrous Metals (ITAC 5) was established. The committee is comprised of 18 members and provides advice to the Secretary and the U.S. Trade Representative.

2. Considering Wi-Fi originated in the U.S., that American companies lead the global market, and that American consumers predominantly use Wi-Fi, the U.S. has a vested interest in promoting that technology. At the recent World Radiocommunication Conference (WRC) – as you know, a conference organized by the International

Telecommunication Union (ITU) every few years to review and revise rules governing the use of the radio-frequency spectrum as well as geostationary and non-geostationary satellite orbits – China and Russia actively attempted to obstruct the advancement of Wi-Fi, to the benefit of companies like Huawei. I think emphasizing America’s strengths by advocating for spectrum access regimes in future bands that support American technology and innovations is the most effective strategy against China’s preference for its state-backed enterprises. How can NTIA and the Department of Commerce foster continued commitment to technology frameworks that advance American interests, including in the 7-8 GHz band being studied in the National Spectrum Strategy? Are NTIA and the Department of Commerce engaging with other Federal agencies in this effort?

**Response:** To maintain U.S. global wireless leadership, the Department of Commerce (Department) and the National Telecommunications and Information Administration (NTIA) are focused on frameworks that advance American interests by ensuring that there is sufficient spectrum for the private sector to spur wireless innovation and by ensuring that federal agencies have the spectrum necessary to carry out their missions. Internationally, the Department, through the NTIA, engages with the Federal Communications Commission (FCC) and the Department of State to ensure proper coordination of any issues and will escalate problems as required to ensure federal positions and equities are represented and protected. NTIA’s update of its Memorandum of Understanding (MOU) with the FCC, the Presidential Memorandum on Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy (NSS), and the NSS itself also provide improved structures for reaching consensus.

The NSS Implementation plan—released in March 2024—provides a roadmap detailing, among other things, the timeline, milestones and responsible agencies for in-depth study of over 2,700 megahertz of spectrum—including key mid-band spectrum in the 7/8 GHz band—for potential new uses by both the private sector and federal agencies. NTIA has established Spectrum Study Groups, which will govern and oversee the groups conducting the technical work. NTIA has changed the Spectrum Pipeline Plan process for how federal agencies obtain funding from the Spectrum Relocation Fund (SRF)—what is commonly referred to as “pipeline” funding—for their studies to address the breadth and complexity of the NSS band studies. We are using this SRF process for both the Lower 3 GHz band and the 7/8 GHz band studies. At least 10 federal agencies are seeking funding. Distribution of the pipeline funds to the agencies, anticipated to occur Fall 2024, will trigger a two-year countdown to complete the band studies and then issue reports. Importantly, the study process will also include an opportunity for stakeholder engagement. NTIA has established a multistakeholder forum for non-Federal stakeholders to engage with the Federal agencies conducting the studies, and hosted the first public multistakeholder meeting on August 23rd.

3. Has NTIA heard from smaller providers about this potential issue? Is NTIA planning to work with States on project sizes and how best to maximize deployment of fiber while also allowing the need for alternative technologies? Small broadband providers have expressed growing concern with how states, subject to NTIA approval, may define the minimum area that any provider must apply to serve. They are worried that how a potential project area is structured may affect small company participation and ultimately impact rural broadband buildout. This could discourage small rural providers from participating in the BEAD program.

**Response:** NTIA is in regular dialogue with providers of all sizes regarding implementation of the Broadband Equity, Access, and Deployment (BEAD) Program. With respect to project size and design, specifically, NTIA has provided extensive technical assistance (including one-on-one meetings) on subgrantee selection design and project areas. Consistent with the BEAD Program Notice of Funding Opportunity (NOFO), NTIA

has provided states with flexibility to determine how best to structure project sizes. NTIA has also provided Eligible Entities with recommendations and support to understand the programmatic impact of project area decisions. Additionally, NTIA required all Eligible Entities to post for public comment their Initial Proposals, which include the definition of project areas, to ensure providers, communities, local governments, and other interested parties had the opportunity to provide input.

4. How has NTIA been working with States to implement a scoring criterion that mixes the use of matching funds with other more qualitative factors? I am concerned that excessive weighting on the provision of matching funds in BEAD scoring will deter applications for the BEAD Program. This is a once in a lifetime investment and we should ensure that these funds are used efficiently. Currently, the rules favor applicants who supply their own matching funds.

**Response:** In each Eligible Entity’s Initial Proposal, the Eligible Entity must provide its scoring rubric, which balances multiple program goals. The BEAD Program NOFO establishes primary scoring criteria and secondary scoring criteria. However, the BEAD Program NOFO also allows Eligible Entities flexibility to add additional secondary scoring criteria as well as discretion regarding implementation of the required criteria.

The “Minimal BEAD Program Outlay” criterion is intended to enhance the reach of the BEAD program, both by promoting efficient use of funds and by stretching the funds to ensure that all Americans get connected. While “Minimal BEAD Program Outlay” is a required scoring criterion, so are affordability and speed to deployment, among others. NTIA will defer to the decisions of the Eligible Entity regarding its proposed scoring rubric, as long as its proposal conforms to the BEAD Program NOFO and the underlying statute.

5. Congress passed the Broadband DATA Act to collect, update, and establish the National Broadband Map. The FCC’s broadband maps have come a long way from census block data. However, small rural providers continue to express concern over the state of the FCC’s National Broadband Map. Has NTIA worked with the FCC to make corrections to the National Broadband Map to reflect the conditions more accurately on the ground?

**Response:** The Infrastructure Investment and Jobs Act (IIJA) directed NTIA to allocate BEAD Program funding across states, territories and the District of Columbia using data from the Federal Communications Commission’s (FCC’s) National Broadband Map. The FCC’s National Broadband Map is a significant improvement over prior efforts to map broadband availability, and for the first time ever, the FCC has created a map with location-specific data. On June 26, 2023, President Biden announced each Eligible Entity’s BEAD Program funding allocation based on that data. Prior to this allocation, NTIA engaged with the FCC and external stakeholders, including providers, to enhance the National Broadband Map’s accuracy. At the current stage of BEAD Program implementation, Eligible Entities have a significant role to play in determining whether a particular location or community anchor institution is eligible for BEAD Program funds, including whether a particular location is unserved or underserved. NTIA’s BEAD Program NOFO requires that each Eligible Entity submit an Initial Proposal describing, among other things, a BEAD Program “challenge process” under which a unit of local government, nonprofit organization, or broadband service provider may challenge a determination made by the Eligible Entity in the Initial Proposal as to whether a particular location or community anchor institution is eligible for BEAD Program funds, including whether a particular location is unserved or underserved. This process is critical to ensuring BEAD Program funds are spent effectively as we work toward our shared goal of Internet for All.

## The Honorable Kat Cammack

1. Could you shed light on how the Department is working to secure American leadership on blockchain and other emerging technologies?
  - a. Are there ways for Congress or the Department to help tech startups advance emerging technology here at home?

**Response:** The Department is committed to accelerating the development, commercialization, and deployment of critical and emerging technologies, including through efforts supporting small-and medium sized businesses and startups. As new technologies develop and evolve, the Department's National Institute of Standards and Technology (NIST) provides measurement research and services that are central to U.S. innovation and industrial competitiveness, productivity, trade, national security, and public safety. NIST directly supports industry-led standards development, in support of domestic and international priorities, including critical and emerging technology areas. For example, NIST researchers have written fundamental papers surveying aspects of blockchain and distributed ledger technologies (DLT), including token design and management and stablecoins, among others. NIST continues to investigate use cases and applications of blockchain and DLT, as well as research protocols, security guarantees, and cryptographic mechanisms that are foundational to blockchain technologies and implementation. The Department also led the drafting of a competitiveness framework for digital assets, pursuant to Executive Order 14067, *Ensuring Responsible Development of Digital Assets*, which emphasized the importance of efforts to support R&D in digital assets and their underlying technologies. Research outcomes from the Department's efforts will aid industry in implementing blockchain in many different systems, to include manufacturing supply chains, data registries, digital identification, and records management.

It is critical that industry, including tech startups, are supported and continue to be included in the research and standards development process for critical and emerging technology areas. Standards underpin every aspect of our daily lives. The standards leadership and expertise provided by NIST is an essential element of the U.S.'s effort to lead in the emerging technologies that will define the 21st century economy.

2. One of the guiding principles of the Bureau of Industry and Security (BIS) is to adapt to changing global conditions and challenges. How can AI assist the BIS in adapting to global conditions while protecting the security of the U.S.?
  - a. How key has the BIS been in countering China's technological rise through its policy of military-civil fusion?

**Response:** The Commerce Department's Bureau of Industry and Security (BIS) strategically uses export controls to respond to national security and/or foreign policy concerns. BIS has long maintained controls on the People's Republic of China (PRC) for military, spacecraft, and multilaterally-controlled dual-use items, as well as certain predominantly commercial items if used by military end-users or in military end-uses. As advanced dual-use technology has grown increasingly central to national security, and in recognition of the military-civil fusion strategy adopted by the PRC, BIS has adopted aggressive, innovative export controls. Some of these controls target crucial advanced technology and apply to a broad class of users. Others target specific users' access to a broad spectrum of technology, giving the U.S. government control over these users' access to items with BIS's jurisdiction. For example, in October 2022, BIS implemented strategic, country-wide controls on certain force-multiplying technologies that could fuel advancements in military or WMD

capabilities, as well as enable human rights violations. Specifically, BIS instituted country-wide controls on advanced computing chips needed to power military artificial intelligence (AI) and supercomputing applications, as well as semiconductor manufacturing equipment essential to producing advanced chips. These actions profoundly re-shaped the PRC's access to and development of key technologies for military or WMD applications.

In addition, BIS has used the Entity List to backstop the country-wide controls by imposing license requirements on lower-level technologies for specific entities within the PRC. From 2018-2023, BIS has more than tripled the number of PRC entities on the Entity List, moving from 218 in 2018 to 787 by the end of last year. That figure has increased to over 850 PRC entities on the Entity List, restricting their access to items subject to BIS's regulatory jurisdiction. Over 370 of them have been added during the Biden-Harris Administration. BIS has not hesitated to add large PRC businesses with global operations—like Huawei, SMIC, and their affiliates—to the Entity List. It even applied a Foreign Direct Product Rule (FDPR) to Huawei, extending license requirements to items produced in foreign countries using certain U.S. technology, software, or equipment. These changes exponentially increased license applications and decisions for PRC entities on the Entity List, giving the U.S. government unprecedented control over and insight into these entities' access to U.S. technology and foreign-produced items controlled through the FDPR.

In assessing the risks of exporting dual-use technology, BIS also assesses the national security risk of undermining domestic innovation or eroding the U.S. industrial base. Our national security stems from a foundation of private sector innovation, and continued U.S. military pre-eminence requires continued innovation in private industry. Export controls are not export bans; rather, they allow the U.S. government to impose a license requirement that gives the us the *opportunity* to control what items flow to a destination or end user. This approach recognizes that U.S. interests are sometimes better advanced by allowing an export than by barring it. Where a comparable good is available abroad, unilaterally restricting its export from the United States may have little strategic value and could risk eroding the U.S. industrial base and private sector innovation.

BIS has become a government leader on numerous national security issues—from countering U.S. foreign adversaries such as the PRC and Russia, to securing critical technology supply chains, and safeguarding the development of AI—and regulatory changes and world events of the past two decades have significantly increased the volume of export license applications and the complexity of export licensing decisions. However, BIS's annual appropriations have been flat—\$191 million—over the last two fiscal years (FY 2023 and 2024). BIS requires significant investment in IT modernization in order to achieve maximum mission impact.

Additional resources for IT modernization, as requested in the 2025 Budget, would allow BIS to transform its operations and better enable BIS to support its ever-expanding mission, including addressing the threat posed by the PRC. Specifically, BIS would work to: 1) Secure and enhance BIS's infrastructure to protect against constant and evolving cyberattacks; 2) Standardize export license decision making by automating basic analyses and empowering licensing officers with deskside, “decision ready” data to resolve more complex issues; 3) Manage BIS customer relationships based on key countries or technologies (e.g., the PRC, chips) to better understand industry behavior and improve compliance through data driven outreach; 4) Receive alerts indicating suspicious trade flows (“virtual patrol”) by using supply chain analysis tools and datasets and merging them with existing BIS and partner data; 5) Automate licensing and export data against U.S. government and private-sector data to identify derogatory information and diversionary actors; 6) Quickly analyze large amounts of complex documentation, such as files submitted with export license applications and export data theft reports provided to BIS's Cyber Investigations unit; 7) Publish interactive dashboards, public datasets, and statistical analyses in a data portal that demonstrates the impact of export control policy on global supply chains and U.S. national security; and other capability enhancements that would put BIS in a stronger position to prevent sensitive U.S. technologies from getting into the hands of the PRC's military, intelligence,

security services, or other parties that can divert or otherwise use sensitive U.S. technologies to undermine or erode U.S. technological leadership, enable human rights abuses, or engage in other activities that are contrary to our interests and values. BIS is committed to working with Congress to secure additional funding for these critical IT modernization investments.

Once these critical updates are in place, BIS can move towards using AI to improve our ability to assess and adapt to global conditions while protecting the security of the United States. AI brings promise to BIS's mission. It has the potential to transform licensing, enforcement, and broader analysis efforts across the Bureau, enabling us to come to more informed decisions faster. For a small organization at the center of national security policymaking, AI adoption would allow analysts and agents to manage and execute their responsibilities at today's pace, where export control policy, implementation, and enforcement have all grown in complexity and urgency. Incorporating AI into everyday operations, however, comes with several challenges. Prior to the adoption of AI capabilities, several legacy BIS systems require significant updates, as highlighted above. Addressing the issues with these underlying systems will allow us to ensure interoperability between data sources and IT systems, thereby increasing the effectiveness of any AI system.

3. What is NTIA's plan for successfully completing the goals of the BEAD program if not enough providers apply for funding to serve costly and challenging locations?

**Response:** In each Eligible Entity's Initial Proposal, the Eligible Entity must provide its scoring rubric, which balances multiple program goals. The BEAD Program NOFO establishes primary scoring criteria and secondary scoring criteria. However, the BEAD Program NOFO also allows Eligible Entities flexibility to add additional secondary scoring criteria as well as discretion regarding implementation of the required criteria.

The "Minimal BEAD Program Outlay" criterion is intended to enhance the reach of the BEAD program, both by promoting efficient use of funds and by stretching the funds to ensure that all Americans get connected. While "Minimal BEAD Program Outlay" is a required scoring criterion, so are affordability and speed to deployment, among others. NTIA will defer to the decisions of the Eligible Entity regarding its proposed scoring rubric, as long as its proposal conforms to the BEAD Program NOFO and the underlying statute.

## The Honorable John Joyce

1. Representative Buddy Carter recently sent a letter with concerns about the designation of the Chumash Heritage National Marine Sanctuary and its impact on the existing and future subsea cable infrastructure within the boundaries of the proposed sanctuary. In your response, you note the designation is under final review at OIRA.
  - a. What assurances has NOAA provided you that the agency has conducted a meaningful cost-benefit analysis, as required by OIRA, to determine whether the proposed National Chumash Sanctuary impacts the deployment of submarine cables, which are so critical to our national and economic security?

**Response:** NOAA considered submarine fiber optic cables throughout its analysis for the proposed Chumash Heritage National Marine Sanctuary. Both the Cost-Benefit Analysis and the NEPA analysis, which was released on September 6th, concluded that the proposed sanctuary would not have a

significant adverse impact on fiber optic cables within the sanctuary because there are permit mechanisms that can allow submarine fiber optic cable installation, maintenance, and operation. While the proposed sanctuary regulations would generally prohibit disturbance of the submerged lands, new submarine cable construction could be allowed if permitted through the NOAA Office of National Marine Sanctuary authorization process. This process ensures seafloor disturbances and other impacts on sanctuary resources are minimized. NOAA has experience successfully permitting fiber optic cables via these approval mechanisms through several national marine sanctuaries. For example, NOAA has approved construction of fiber optic cables within other national marine sanctuaries by authorizing a USACE permit.

Furthermore, on August 16, 2024, NOAA announced that it is modifying the special use permit (SUP) category for the continued presence of commercial submarine cables on or within a national marine sanctuary's submerged lands so that, for a two-year period, the SUP category does not apply to commercial submarine cables in any new sanctuaries designated after August 16, 2024. *See* 89 Fed. Reg. 66689. This two-year pause will afford NOAA time to consider revisions to its 2011 policy and permitting guidance for submarine cables in sanctuaries through a public process, allowing telecommunications companies and others to suggest other ways to streamline the overall permitting process.

b. Has NTIA weighed in as the principal advisor on telecommunications issues?

**Response:** Undersea cables play a critical role in broadband infrastructure, and NTIA has conferred with NOAA on its proposed designation of the Chumash Heritage National Marine Sanctuary. Staff for NTIA and NOAA met earlier this year to discuss telecommunications cables in the sanctuary region, NOAA's permitting processes for subsea telecommunications cables, and how the proposed sanctuary could co-exist with the telecommunications industry. The National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.) governs designation and management of national marine sanctuaries and requires NOAA to facilitate all public and private uses of the resources of these marine areas to the extent compatible with the primary objective of resource protection. The Act further requires that any sanctuary designation will not terminate or grant the Secretary the right to terminate, among other things, any valid lease, permit, or license in existence on the date of designation of a national marine sanctuary. NTIA continues to work with NOAA regarding this and other sanctuary designations.

As stated above, NOAA has recently modified the SUP category for the continued presence of commercial submarine cables on or within a national marine sanctuary's submerged lands so that, for a two-year period, the SUP category does not apply to commercial submarine cables in any new sanctuaries designated after August 16, 2024. During this two-year pause, NOAA intends to work on revising its 2011 policy and permitting guidance for submarine cables in sanctuaries through a public process, allowing telecommunications companies and others to suggest other ways to streamline the overall permitting process. For cables in sanctuaries existing before August 16, 2024, NOAA will continue working closely with other federal and state agencies to integrate national marine sanctuary review processes and input into existing requirements so as to help streamline the overall process as much as possible.

2. As you know, subsea cables play a critical role in our nation's connectivity and global economic competitiveness. The planning, laying and maintaining of these cables takes years and billions of dollars in investment. Making this more difficult could (and will) drive companies to land their cables in other parts of North America.
  - a. What are you doing to ensure the Department's rules don't dissuade investment in the U.S. subsea cable ecosystem that is critical for both our national and economic security?



**Response:** Through sanctuary designations, NOAA strives to balance resource protection with allowing and managing compatible uses, including submarine cables and associated infrastructure. Various permitting mechanisms enable NOAA to approve the construction and operation of subsea cable while stipulating appropriate measures to avoid or mitigate harm to sanctuary resources. We will continue to apply the best available science and community input to address current and emerging threats to the ecosystem and cultural heritage of national marine sanctuaries while maintaining ecosystem services that are essential for the thriving coastal, national, and international economies.

Additionally, on August 16, 2024, NOAA announced that it is modifying the special use permit (SUP) category for the continued presence of commercial submarine cables on or within a national marine sanctuary's submerged lands so that, for a two-year period, the SUP category does not apply to commercial submarine cables in any new sanctuaries designated after August 16, 2024. *See* 89 Fed. Reg. 66689. This two-year pause will afford NOAA time to consider revisions to its 2011 policy and permitting guidance for submarine cables in sanctuaries through a public process, allowing telecommunications companies and others to suggest other ways to streamline the overall permitting process.

3. I have significant reservations with NOAA's North Atlantic Right Whale Vessel Speed rule. Since NOAA, the largest part of Commerce, started the rule making process, it has received thousands upon thousands of comments. Many of those speak to the negative cost impact the proposed rule would have.
  - a. Would you be willing to say that the economic impact would be significantly more than \$47 million?

**Response:** In July 2022, NMFS published the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis for its proposed "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule." This draft report evaluated the costs and benefits of the proposed amendments to the current speed rule to reduce risk to North Atlantic right whales from lethal collisions with vessels in U.S. waters.

The draft report estimated the direct costs to vessel operators from the proposed changes to the speed rule. We estimated that approximately 15,899 vessels would be potentially affected along the U.S. Atlantic coast from Maine to Florida, resulting in up to 121,061 additional transit hours annually across all vessel types, size classes, and regions. The total estimated annual costs associated with the proposed rule are \$46,216,122, of which \$16,323,113 (35%) would be borne by the shipping industry.

We received over 90,000 comments during the public comment period, including comments that echo concerns, such as the number of boaters potentially impacted, and economic impacts along the East Coast. We appreciate the extensive public comments received and have thoroughly reviewed and considered them. We have updated the economic analysis associated with the final rule. The final rule to modify North Atlantic right whale vessel speed regulations was submitted to the White House Office of Information and Regulatory Affairs, part of the Office of Management and Budget (OMB). Because the rulemaking process is ongoing, we are unable to comment further on any changes made to the proposed rule.

- b. Has anyone at Department of Commerce revisited that estimate?

**Response:** The final rule to modify North Atlantic right whale vessel speed regulations is with the White House Office of Information and Regulatory Affairs, part of the Office of Management and Budget (OMB), following careful consideration of the nearly 90,000 comments received during the 90-day comment period. We have updated the economic analysis associated with the final rule. We cannot speak to the contents of the final economic assessment associated with this action at this time.

- c. If the impact is as high as the more likely estimates in the billions, would this rule be an appropriate way to protect the North Atlantic Right Whale? Especially in light of technological solutions that could provide a better solution.

**Response:** While there are a variety of existing technologies that allow for limited tracking of individual right whales under certain circumstances and for short periods of time (e.g., aerial surveys, passive acoustic monitoring, telemetry tagging), there is currently no proven technology or suite of technologies, that would allow for continuous tracking all right whales under all environmental conditions. While tagging of individual right whales can provide near-real time tracking information, it is extremely challenging logistically, dangerous for both researchers and potentially the whales, and current tags and those under development are likely to only stay attached to whales for up to several months. Other monitoring methods, such as aerial surveys and near real-time passive acoustic monitoring, can provide episodic information on the location of individual whales under certain circumstances (e.g., for vocalizing whales, in calm seas). But, even together, these methods are not suitable for complete, large-scale tracking of all individual right whales across their North American range. Finally, tracking whales, while important in and of itself, does not reduce vessel strike risk without commensurate management action.

NOAA strongly believes that technology-based tools will be important in the future to help further reduce vessel strike risk. To accelerate this work, we are dedicating \$82 million of IRA funding over the next four years for right whale conservation, \$20 million of which is specifically to reduce vessel strike risk by developing, evaluating and ultimately implementing detection and avoidance technology.

## The Honorable Robin Kelly

1. Secretary Raimondo, thank you for taking the time to testify at the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Innovation, Data, and Commerce hearing entitled, “The Fiscal Year 2025 Department of Commerce Budget”. Please accept these questions for the record.

- a. Secretary Raimondo, the proposed rule regarding Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities notes that the Department received comments about whether the proposed rule would interfere with ongoing negotiations to open the flow of data between foreign countries and the United States. The proposed rule also states that the Department's proposed rule is consistent with national and international obligations. Can you please provide the Committee with all the related analysis the Department conducted on this question? In addition, please provide the Committee with analysis of whether the proposed rule would create a conflict of law for US companies with the European Union's General Data Protection Regulation (GDPR), including whether any coordination and outreach was conducted with representatives of the European Union prior to publication of the rule, and if so, a summary of that feedback.

**Response:** The proposed rule in question, published in January 2024, solicited comments on the proposed implementation of provisions of two Executive orders (E.O.). E.O. 13984 of January 19, 2021, "Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities," authorizes the Secretary of Commerce (Secretary) to, among other things, propose regulations (1) requiring U.S. Infrastructure as a Service (IaaS) providers of IaaS products to verify the identity of their foreign customers, (2) establishing standards and procedures for granting exemptions to such requirements, and (3) authorizing the imposition of special measures to deter foreign malicious cyber actors' use of U.S. IaaS products. E.O. 14110 of October 30, 2023, "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," further directs the Secretary to propose regulations requiring each U.S. IaaS provider to submit a report to the Secretary when a foreign person transacts with that provider or its foreign resellers to train a large Artificial Intelligence (AI) model with potential capabilities that could be used in malicious cyber-enabled activity.

As part of the rulemaking process, the Department issued an advance notice of proposed rulemaking on September 24, 2021, wherein the Department specifically asked the public to comment on the impact that any proposed regulations might have on data protection and security, especially considering the European Union General Data Protection Regulation (GDPR). Many commenters encouraged the Department to propose regulations that would enable U.S. law enforcement officials to gain access to data stored by domain name registries and registrars that has proven more difficult since the enactment of the GDPR. Others focused on ensuring that the processing of customers' data to carry out the provisions of any proposed regulation would be consistent with the GDPR. Still others requested that any proposed regulation not frustrate ongoing negotiations to open the flow of data between foreign countries and the United States. The Department carefully considered these comments and the requirements under the GDPR in its development of a notice of proposed rulemaking (NPRM) that was published in January 2024. The Department sought public comment on all aspects of the NPRM and received and publicly posted the nearly 500 comments received during the notice and comment period, which closed on April 29, 2024. The Department is currently assessing next steps and carefully considering all feedback and recommendations.

The Department aims to ensure that the rule effectively mitigates the risk of abuse to U.S. cloud infrastructure by malicious foreign actors without placing an undue burden on industry or unduly interfering with international data sharing.

The Department has sought to ensure these proposed regulations are consistent with national and international obligations that might limit U.S. persons' compliance, either because the specific information requested is not protected, because certain information is not collected by any government body, or because the need for data collection falls into relevant exemptions. Also, the Department remains engaged in dialog with our foreign partners regarding this and other rulemakings and is committed to continuing international cooperation.

- b. Secretary Raimondo, the proposed rule Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities includes several estimates regarding the potential cost associated with potential private sector implementation of the rule's requirements. Please provide the Committee with a detailed description of the process used to determine those estimates, including any internal or external data sources used, any stakeholder outreach or engagement, any literature review or independent studies used or consulted as part of the estimation process, including any related to the Infrastructure as a Service (IAAS) sector, or existing financial sector Customer Identification or Know Your Customer requirements.

Thank you for taking the time to address these important questions.

**Response:** The Department considered publicly available information and resources to prepare the regulatory impact analysis for the proposed rule in question. Although the public provided limited comments on the cost burden of potential regulations on IaaS providers in response to the advance notice of proposed rulemaking issued in 2021, commenters offered a variety of comments on the regulatory impact analysis during the comment period for the notice of proposed rulemaking published in January 2024. The Department appreciates public responses on this topic and all other aspects of the proposed rule and will seek to refine the cost analysis as appropriate in any further rulemaking on the implementation of IaaS-related authorities.

The Department did not receive public comments from industry that specifically outlined the predicted cost burdens for a specific company to comply with the proposed rule, but we did receive many general comments on the rule. Industry members and associations highlighted what they consider to be high-burden requirements in the proposed rule. The Department is carefully considering all stakeholder input as we develop a final rule. The Department will also carefully consider the specific comments we received on the regulatory impact analysis as we seek to issue a final rule and will make any necessary updates to the analysis.

## The Honorable Lisa Blunt Rochester

1. I appreciate your continued attention to supply chain resiliency and agree that our supply chains should be proactive, not reactive. That is why I have led supply chain resiliency efforts and am so proud that my bill, the Promoting Resilient Supply Chains Act, which I lead with my colleague, Dr. Bucshon, passed the House of Representatives last month.
  - a. Can you describe the economic impact of recent supply chain disruptions, such as COVID-19, Russia's invasion of Ukraine, or the blockage of the Suez Canal?

**Response:** Over the past four years, the ITA's Industry & Analysis business unit has closely tracked supply chain disruptions, including those caused by the COVID-19 pandemic and Russia's full-scale invasion of Ukraine, as well as more recent disruptions such as Houthi attacks on commercial vessels in the Suez Canal/Red Sea and the drought at the Panama Canal.

These frequent disruptions revealed the U.S. economy's vulnerability to supply chain risks. While each particular logistics disruption has unique impacts, we have seen that they often result in increased costs and shipping times. Many U.S. businesses experienced supply chain disruptions related to the Covid-19 pandemic. The pandemic exacerbated supply chain uncertainty and led to long delays and congestion at our nation's ports, shortages of key equipment such as shipping

containers, across-the-board labor shortages, and an increase in inbound container shipping rates, among many other challenges.

Recently, we have witnessed an increase in shipping prices, largely due to these shipping disruptions around the Red Sea, as well as other disruptions in the Panama Canal, and an earlier peak holiday shipping season as retailers and others shift their orders forward to hedge against potential disruptions. Coming out of the pandemic, the U.S. government, in coordination with the private sector, has worked to build resilience against potential disruptions in shipping. For example, the Supply Chain Disruptions Task Force has helped coordinate a whole-of-government approach to supply chain disruptions, including the Baltimore bridge collapse. In addition, due to investments made in supply chain resilience, we were anticipating an increase in shipping capacity which has partially mitigated the impact of the Red Sea disruptions.

- b. Why is it critical for companies to prioritize supply chain resiliency when they make logistical decisions?

**Response:** Companies that prioritize supply chain resilience in their logistical decision making are positioning themselves for long-term sustainable success. Such companies will better understand where they, and their suppliers, face vulnerabilities from market or geopolitical factors, which in turn can threaten economic competitiveness and national security. Proactively strengthening supply chains in turn supports U.S. economic competitiveness, jobs, and communities.

Supply chain resiliency and transportation and logistics go hand-in-hand. The transportation and logistics services that ensure the smooth ability of goods to flow into, through, and out of the United States are critical to resilient supply chains. These services are the means by which critical goods are transported from manufacturer to consumer. They are also the means by which U.S. companies are able to compete in the global market.

Recent supply chain disruptions have demonstrated just how deeply interconnected and interdependent each of our supply chain actors are, how our industries and our economy can be impacted by major world crises, and the importance to companies of prioritizing supply chain resiliency when considering logistical decisions.

- c. Can you provide examples of some of the supply chain weaknesses and risks ITA has been proactively monitoring and working to address?

**Response:** The Industry and Analysis unit within the International Trade Administration has long been central to U.S. supply chain work because of its breadth of sectoral expertise; its unique understanding of the opportunities and challenges facing U.S. companies; its daily connectivity to U.S. industry; and its economic analysis and modeling capabilities. For instance, the Industry and Analysis unit was the first team in the U.S. Government to sound the alarm on competitiveness in the semiconductor supply chain and spring into action. The team subsequently mapped out chokepoints, created an early warning system for industry to provide alerts of potential disruptions, and, in the face of severe shortages, connected industry leaders with semiconductor suppliers to encourage solutions. The team also set to work supporting investment to strengthen the supply chain and helped secure critical U.S. investments, such as those by Taiwan semiconductor companies totaling \$34 billion and supporting more than 20,000 U.S. jobs. And those investments in semiconductors have only grown, thanks to the CHIPS and Science Act.

Last year, the Department of Commerce established what the White House called a “first-of-its-kind” Supply Chain Center within the Industry & Analysis unit to integrate industry expertise and data analytics to develop innovative supply chain risk assessment tools, coordinate deep-dive analyses on select critical supply chains,

and drive targeted actions to increase resilience and address foreign dependency vulnerabilities. The Center aims to be the analytic engine for supply chain resilience policy by helping the U.S. Government be more proactive in getting ahead of supply chain challenges and strategic in setting priorities for action based on data-driven risk analysis.

As part of this work, the Center is pioneering new data-driven tools and creating playbooks to assess supply chain vulnerabilities in specific sectors, including for emerging technologies. The Supply Chain Exposure Tool provides a common operating picture of risks that enables focused, evidence-based conversations and actions with international partners. The Center is also building a risk assessment tool, the SCALE tool, that utilizes a comprehensive set of indicators to assess current or prospective supply chain vulnerabilities across the U.S. economy, with an emphasis on risks to national security, including economic security, most relevant to the U.S. Government.

Additionally, Industry & Analysis is providing action-oriented analyses on a wide variety of trade and supply chain related issues, including the impact of global supply chain disruptions, tariff actions, and unfair trade practices by the People's Republic of China. We are supporting industry resilience to supply chain or geopolitical shocks and working with foreign governments to mitigate international supply chain challenges. We are also supporting work targeting tens of billions of dollars of export opportunities for U.S. industry and inward investment to the United States as part of strengthening high-priority supply chains.

- d. Are there additional supports or tools you need from Congress to promote supply chain resiliency?

**Response:** Industry expertise, and the ability to look across sectors, is vital to supporting domestic manufacturing and job growth and addressing attempts by adversaries to weaponize supply chains. For these reasons, the singular industry depth and connectivity of the Industry and Analysis business unit at Commerce has never been more central—or more needed—to protecting and advancing U.S. economic competitiveness and national security.

To meet both these growing demands and U.S. economic and national security needs, these efforts require resources. The President's FY25 Budget Request for the International Trade Administration is \$645.5 million. This includes \$12 million to sustain and support I&A's supply chain resiliency efforts. This support is needed to improve crisis response and anticipate future constraints in key sectors so that the U.S. Government can proactively strengthen critical supply chains. Unfortunately, the House FY25 mark only provides the International Trade Administration \$558 million, which is \$53 million (9%) below the FY24 enacted level and \$87.5 million below the President's Budget Request. Without new funding we will be unable to sustain or scale this important work.

As Congress works to finalize the FY25 appropriation bills in the coming months, we ask that you please consider how important it is for U.S. national security to support and fully fund these functions.

2. Artificial intelligence literacy is an issue I believe is critically important, and under-discussed. That is why I introduced the AI Literacy Act, which would direct NTIA to include AI literacy in its implementation of Digital Equity Act programs.

- a. Can you provide an update on Digital Equity Act implementation?

**Response:** Using \$60 million made available under the National Telecommunications and Information Administration's (NTIA's) State Digital Equity Planning Grant Program, all 56 States and Territories developed their own Digital Equity Plans. NTIA has accepted all State and Territory Digital Equity Plans. In March 2024, NTIA launched its Digital Equity Capacity Grant Program, making available approximately \$811 million in additional funding. For this program, NTIA received applications from all 56 States and Territories. NTIA is now reviewing those applications and has started to make initial awards. With these funds, States and Territories will implement their accepted Digital Equity Plans. In addition, on July 24, 2024, NTIA launched the Digital Equity Competitive Grant Program, making available nearly \$1 billion in additional funds for digital equity. Eligible applicants under this program include political subdivisions of states, such as city and county governments; Native entities including Indian Tribes, Alaska Native entities, or Native Hawaiian organizations; certain nonprofits; community anchor institutions; local educational agencies; and workforce development organizations. Consistent with the Digital Equity Act, United States Territories are eligible to apply for funding under a separate set-aside of \$7,500,000. This set aside is only for U.S. Territories, whereas organizational entities in the U.S. Territories can apply to the general pool of funding. NTIA will make awards for the Digital Equity Competitive Grant Program on a rolling basis after applications are received and reviewed.

- b. Is NTIA planning to consider AI literacy as a part of digital literacy?

**Response:** Yes. Artificial intelligence (AI) literacy is one of many aspects of digital literacy and digital inclusion activities that may be eligible for Digital Equity Act funding. Under the Digital Equity Capacity Grant Program, States and Territories may fund AI literacy projects, if those projects are part of their accepted Digital Equity Plans. Under the Digital Equity Competitive Grant Program, AI literacy activities also may be proposed as projects to be considered for funding, consistent with the underlying statute and the program's Notice of Funding Opportunity.

3. The Department of Commerce, under your leadership, has been an innovator in workforce development and training. I agree with you that workforce development and economic development cannot be separated.
  - a. What are the biggest challenges in ensuring critical industries related to supply chains and emerging technologies have enough properly trained workers to meet our evolving needs?

**Response:** President Biden's Investing in America Agenda marks a long-needed reset. Workers are at the center of the Biden-Harris Administration's investments to revitalize manufacturing and build innovation economies in communities across the country. We need hundreds of thousands of Americans for new quality jobs:

- Manufacturing cutting-edge microchips and building the start-of-the-art fabs needed for us to lead in this sector so vital to our national security.
- Extending affordable, high-speed internet to every community.
- Making communities resilient to the effects of climate change.

- Developing and growing innovative industries in the 31 regions across our country designated as Tech Hubs.

These jobs and the investments behind them are core to our nation's economic wellbeing and national security. And failing to develop a diverse, skilled workforce and connecting them to those jobs is the single biggest risk to our success.

We must grapple with two, seemingly contradictory, realities to mitigate the risks. First, skilled workers have never been in higher demand. Second, there are many talented Americans that lack access to the training opportunities and support services needed to access those jobs.

So, here's the truth: if we don't invest in America's workforce and in the quality of jobs, it doesn't matter how much we invest. We will not succeed.

The Biden-Harris Administration has strategically invested in workers and engaged businesses as partners in workforce development. The Department of Commerce has created multiple programs that directly link our national security and economic needs with intentional investments in workers. We have transformed the role of the Department of Commerce from being a voice in workforce policy to a major actor, to the tune of more than \$1.9 billion dollars in workforce investments. These complement and align with the investments of the Department of Labor which administers the national public workforce system, including state and local workforce boards and American Job Centers, connecting employers with the workers they need and workers with the good jobs they need. The Departments worked together to establish the Good Jobs Principles, recognizing the importance of incorporating these principles into our initiatives, including incentivizing equity and good jobs in competitive grant funding opportunities and providing technical assistance through the workforce system to promote Good Jobs.