

DEPARTMENT OF COMMERCE

Statement of Regulatory Priorities

Established in 1903, the Department of Commerce (Commerce or Department) is one of the oldest Cabinet-level agencies in the Federal Government. Commerce's mission is to create the conditions for economic growth and opportunity across all American communities by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which manage a diverse portfolio of programs and services ranging from trade promotion and economic development assistance to improved broadband access and the National Weather Service, and from standards development and statistical data production, including the decennial census, to patents and fisheries management. Across these varied activities, the Department seeks to provide a foundation for a more equitable, resilient, and globally competitive economy.

To fulfill its mission, Commerce works in partnership with businesses, educational institutions, community organizations, government agencies, and individuals to:

- **Innovate** by supporting the creation of new ideas through cutting-edge science and technology, from advances in nanotechnology to ocean exploration to broadband deployment, and by protecting American innovations through the patent and trademark system;
- Support **entrepreneurship and commercialization** by enabling community development and strengthening opportunities for minority and other underserved businesses and small businesses;
- Maintain U.S. economic **competitiveness** in the global marketplace by promoting exports and foreign direct investment, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;
- Provide effective management and **stewardship** of our nation's resources and assets to ensure sustainable economic opportunities; and

- Make informed policy decisions and enable better understanding of the economy and our communities by providing **timely, accessible, and accurate economic and demographic data**.

Commerce's Regulatory Plan tracks the most important regulations that the Department anticipates issuing to implement these policy and program priorities and foster sustainable and equitable growth. Of Commerce's 12 primary operating units, three bureaus — the National Oceanic and Atmospheric Administration (NOAA), the United States Patent and Trademark Office (USPTO), and the Bureau of Industry and Security (BIS) — issue the vast majority of the Department's regulations, and these three bureaus account for all the planned actions that are considered the Department's highest priority pre-regulatory or regulatory actions for FY 2024.

Consistent with Executive Order 14094, moreover, the Department and its bureaus routinely seek to inform their rulemaking with meaningful opportunities for public input. The efforts of NOAA, USPTO, and BIS to promote public engagement are discussed in their respective sections, below.

National Oceanic and Atmospheric Administration

NOAA's mission is built on three pillars: science, service, and stewardship – 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.

At its core, NOAA is a scientific agency. It observes, measures, monitors, and collects data from the depths of the ocean to the surface of the sun, and it does so following principles of scientific integrity. These data are turned into weather and climate models and forecasts that are then used for everything from local weather forecasts to predicting the movement of wildfire smoke to identifying the impacts of climate change on fisheries and living marine resources.

With respect to service, NOAA not only collects data but seeks to make it operational. By providing Federal, State, local, Tribal government partners, the private sector, and the public with actionable environmental information, NOAA can facilitate decision-making in the face of climate change. Such decisions can range from businesses planning the location of offices; insurance companies trying to

incorporate climate risk into their insurance policies; and municipalities looking to ensure that plans for construction of new housing developments will be resilient to the effects of climate change.

The final pillar of NOAA's mission is stewardship. NOAA seeks to conserve our lands, waters, and natural resources, protecting people and the environment now and for future generations. As part of Commerce, moreover, NOAA recognizes that economic growth must go hand-in-hand with environmental stewardship. For example, the nation's fisheries enhance the nation's productivity and long-term economic growth while ensuring sustainability. Similarly, national marine sanctuaries both protect important natural resources and are significant drivers of eco-tourism and local recreation.

Within NOAA, the National Marine Fisheries Services (NMFS) and the National Ocean Service (NOS) are the components that most often exercise regulatory authority to implement NOAA's mission. NMFS oversees the management and conservation of the nation's marine fisheries; protects marine mammals and Endangered Species Act (ESA)-listed marine and anadromous species; and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy.

Many of NOAA's rulemakings are issued pursuant to the following key statutes:

Magnuson-Stevens Fishery Conservation and Management Act

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3–200 nautical miles from shore). As itemized in the Unified Agenda, NOAA plans to take several hundred actions in FY 2024 under Magnuson-Stevens Act authority. With certain exceptions, rulemakings under the Magnuson-Stevens Act are usually initiated by the actions of eight regional Fishery Management Councils (Councils). The Magnuson-Stevens Act provides a robust public process for managing our nation's fisheries through the work of the Councils. Throughout the Council process, there is significant opportunity for public engagement, including participating on advisory panels, providing testimony at public hearings, and commenting on Council actions. These Councils are

comprised of representatives from the commercial and recreational fishing sectors, environmental groups, academia, and Federal and State government, and they are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for recommending implementing regulations for each managed fishery. This unique management system gives fishery managers the flexibility to use local level input to develop management strategies appropriate for each region's unique fisheries, challenges, and opportunities. FMPs address a variety of issues, including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. After considering the Councils' recommendations in light of the standards and requirements set forth in the Magnuson-Stevens Act and in other applicable laws, NOAA may issue regulations to implement the proposed FMPs and FMP amendments.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA) provides authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the intentional take of marine mammals. The MMPA allows, upon request and subsequent authorization, the incidental take of marine mammals by U.S. citizens who engage in a specified activity (e.g., oil and gas development, pile driving) within a specified geographic region. NMFS authorizes incidental take under the MMPA if it finds that the taking would be of small numbers, have no more than a "negligible impact" on those marine mammal species or stock, and would not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. NMFS also initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. In addition, the MMPA allows NMFS to permit the take or import of wild animals for scientific research or public display or to enhance the survival of a species or stock.

Endangered Species Act

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be "endangered" or "threatened," and the conservation of the ecosystems on which these species depend. NMFS and the Department of Interior's Fish and Wildlife Service (FWS) jointly

administer the provisions of the ESA: NMFS manages marine and several anadromous species, and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. NMFS rulemaking actions under the ESA are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing and revising critical habitat for any listed species. In addition, as indicated in the list of highlighted actions below, NMFS and FWS may also issue rules clarifying how particular provisions of the ESA will be implemented.

The National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

NOAA's Office of National Marine Sanctuaries (ONMS), within NOS, has responsibility for management of national marine sanctuaries. ONMS regulations, issued pursuant to NMSA, prohibit specific kinds of activities, describe and define the boundaries of the designated national marine sanctuaries, and set up a system of permits to allow the conduct of certain types of activities that would otherwise not be allowed.

These regulations can, among other things, regulate and restrict activities that may injure natural resources, including all extractive and destructive activities, consistent with community-specific needs and NMSA's purpose to "facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas." In FY 2024, NOAA is expected to have at least three regulatory actions under NMSA.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) was passed in 1972 to preserve, protect, and develop and, where possible, to restore and enhance the resources of the nation's coastal zone. The CZMA creates a voluntary state-federal partnership, where coastal states (States in, or bordering on, the Atlantic, Pacific or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes), may elect to develop comprehensive programs that meet federal approval standards. Currently, 34 of the 35 eligible entities are implementing a federally approved coastal management plan approved by the Secretary of Commerce.

NOAA's Regulatory Plan Actions

Of the numerous regulatory actions that NOAA is planning for this year, of which approximately 21 are expected to be determined to be significant rulemaking under E.O. 12866, there are four, described below, that the Department considers to be of particular importance.

1. Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act (0648-BG11): This proposed rule makes conforming amendments to regulations implementing various statutes amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015. The Act provides the authority to implement two new international agreements under the Antigua Convention and the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement, or PMSA) The PMSA is aimed at combating illegal, unreported and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and thereby closing seafood markets to IUU fish and fish products. This proposed rule would require the collection of certain information from foreign fishing vessels requesting permission to use U.S. ports. It will also include procedures to designate and publicize the ports to which foreign fishing vessels may seek entry and procedures for conducting inspections of these foreign vessels accessing U.S. ports. In addition, this proposed rule will identify and certify nations for IUU fishing and other adverse fishing activities, bycatch of protected living marine resources, and shark catch under the authority of the High Seas Driftnet Fishing Moratorium

Protection Act that need to be updated in light of amendments made by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.

2. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (0648-BI88):

This final rule makes changes to existing vessel speed regulations in an effort to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions and prevent the species' extinction. Vessel collisions are a leading cause of the species' decline and contributor to the ongoing Unusual Mortality Event (2017 - present). The North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. Following two decades of growth between 1990 and 2010, the species has been in decline over the past decade with a best population estimate of fewer than 350 individuals.

3. Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat (0648-BK47):

The Secretaries of Interior and Commerce share responsibility for implementing most of the provisions of the Endangered Species Act (ESA). Together, the Department of Interior's Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Services (collectively, the Services) have promulgated regulations that implement aspects of the listing and critical habitat designation provisions of section 4 of the ESA. Pursuant to the January 20, 2021 Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), the Services initiated a review of a 2019 rule that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. Following the review, the Services issued a proposed rule and now seek to finalize a rule that revises the regulations to clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.

4. Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency

Cooperation (0648-BK48): Pursuant to E.O. 13990, the Services also initiated a review of a 2019 rule that implemented the interagency consultation provisions in section 7 of the ESA. Following the review, the Services issued a proposed rule and now seek to finalize a rule that revises the regulations to further clarify and improve the interagency consultation process, while continuing to provide for the conservation of listed species.

The United States Patent and Trademark Office

The USPTO's mission is to foster innovation, competitiveness, and economic growth, domestically and abroad, by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide.

Major Programs and Activities

The USPTO is responsible for granting U.S. patents and registering trademarks. This system of secured property rights, which has its foundation in Article I, Section 8, Clause 8, of the Constitution (providing that Congress shall have the power to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries") has enabled American industry to flourish. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The continued demand for patents and trademarks underscores the importance to the U.S. economy of effective mechanisms to protect new ideas and investments in innovation, as well as the ingenuity of American inventors and entrepreneurs.

In addition to granting patents and trademarks, the USPTO advises the President of the United States, the Secretary of Commerce, and U.S. government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes strong and effective IP protection around the world. The USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements. It also

provides training, education, and capacity building programs designed to foster respect for IP and encourage the development of strong IP enforcement regimes by U.S. trading partners.

As part of its work, the USPTO administers regulations located at title 37 of the Code of Federal Regulations concerning its patent and trademark services and the other functions it performs. In the development of its regulations, the USPTO seeks to increase participation and engagement from members of the public affected by our regulations, including in the development of our regulatory priorities. During the past year, we have increased our engagement efforts to help inform our priorities to date, as well as future priorities. We have held public hearings, as well as published requests for comments, on several of our regulatory actions not only to better understand our stakeholders' needs, but to ensure robust and transparent engagement throughout the rulemaking process. For example, public hearings were held in two rulemakings where the USPTO will be setting and adjusting patent and trademark fees. See "Setting and Adjusting Patent Fees" (0651-AD64) and "Setting and Adjusting Trademark Fees" (0651-AD65). In addition, the USPTO published notices requesting comments on several rulemakings to inform the agency as it develops its proposals. See "Changes Under Consideration to Discretionary Institution Practices, Petition Word-count Limits, and Settlement Practices for America Invents Act Trial Proceedings Before the Patent Trial and Appeal Board" (0651-AD47); "Motion to Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board" (0651-AD50); "Changes to the Representation of Others in Design Patent Matters Before the United States Patent and Trademark Office" (0651-AD67), and "Rules Governing Pre-Issuance Internal Circulation and Review of Decisions Within the Patent Trial and Appeal Board" (0651-AD68). More information about the specific public engagement activity conducted by the USPTO for each of these rulemakings is found in their respective abstract. The USPTO is currently considering all public feedback as it develops its rulemakings. Throughout our engagement, the USPTO is ensuring that in the regulatory process, we hear from a wide array of members of the public to help the USPTO shape the provisions proposed in its proposed rule or ultimately implemented in the final rule.

Outlined below are the USPTO's most important upcoming regulatory actions for this year.

The USPTO's Regulatory Plan Actions

1. Setting and Adjusting Patent Fees (0651-AD64): This proposed rule would set and adjust Patent fee amounts to provide USPTO with sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts would provide USPTO with additional resources to decrease patent pendency and ensure robust and reliable patents are granted while continuing to promote access to the patent system for underresourced individuals. The proposed fee amounts reflect feedback received from members of the Patent Public Advisory Committee and the public, including organizations, practitioners, and independent inventors, during a public hearing held on May 18, 2023.

2. Setting and Adjusting Trademark Fees (0651-AD65): This proposed rule would set and adjust Trademark fee amounts to provide USPTO with sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts would provide USPTO with additional resources to ensure the integrity of the Trademark register and promote efficiency of processes while continuing to offer affordable options to stakeholders. The proposed fee amounts reflect feedback received from members of the Trademark Public Advisory Committee and the public, including organizations, practitioners, and small business owners, during a public hearing held on June 5, 2023.

Bureau of Industry and Security

BIS advances U.S. national security, foreign policy, and economic objectives by maintaining and strengthening adaptable, efficient, and effective export control and treaty compliance systems as well as by administering programs to prioritize certain contracts to promote the national defense and to protect and enhance the defense industrial base.

BIS Public Engagement

BIS seeks to increase participation and engagement from members of the public affected by our regulations, including in the development of our regulatory priorities. Within the regulatory process itself, BIS often requests public comments even when not legally required to do so. BIS's acceptance of comments submitted anonymously or accompanied by requests for protection of business confidential

information helps bolster public trust. For nearly all rules, even those that do not include requests for public comment, BIS obtains input from its Technical Advisory Committees (TACs), constituted under the Federal Advisory Committee Act. The TACs are composed of industry experts from a variety of fields. In addition to providing technical and compliance advice on draft rules, the TACs provide technical guidance on developing proposals to multilateral export control regimes, thereby supporting control policy development even prior to rulemaking.

BIS also engages with the public outside of the rulemaking process. BIS has an Office of Exporter Services (OExS), with a Division of Outreach and Educational Services and a Regulatory Policy Division, which support public compliance with and understanding of BIS regulations, including by interacting personally in meetings or on phone calls and responding to written inquiries. BIS itself puts on multiple training seminars per year, many of them outside of the Washington, D.C. area or online. In addition to these smaller seminars, BIS has a large annual conference (called “Update”), at which it provides an overview of changes to policies and regulations over the past year. The Update Conference involves review and discussion of large, complex regulatory concepts pertaining to BIS, inviting follow-on discussion and interaction from participants, which in turn informs BIS’s deliberations. Many BIS staffers also participate in seminars and conferences hosted by other government agencies or private partners. Public engagement is a vital part of BIS’s operations.

Major Programs and Activities

BIS administers four sets of regulations:

- The Export Administration Regulations (EAR) regulate exports and reexports to protect national security, foreign policy, and short supply interests. The EAR includes the Commerce Control List, which describes commodities, software, and technology that are subject to licensing requirements for specific reasons for control. The EAR also regulates U.S. persons’ participation in certain boycotts administered by foreign governments.
- The National Security Industrial Base Regulations provide for prioritization of certain contracts and allocations of resources to promote the national defense, require reporting of foreign

government-imposed offsets in defense sales, provide for surveys to assess the capabilities of the industrial base to support the national defense, and address the effect of imports on the defense industrial base.

- The Chemical Weapons Convention Regulations implement declaration, reporting, and on-site inspection requirements in the private sector necessary to meet United States treaty obligations under the Chemical Weapons Convention treaty.
- The Additional Protocol Regulations implement similar requirements for certain civil nuclear and nuclear-related items with respect to an agreement between the United States and the International Atomic Energy Agency.

BIS also has an enforcement component with nine offices covering the United States, as well as BIS export control officers stationed at several U.S. embassies and consulates abroad. BIS works with other U.S. Government agencies to promote coordinated U.S. Government efforts in export controls and other programs. BIS participates in U.S. Government efforts to strengthen multilateral export control regimes and promote effective export controls through cooperation with other governments.

In FY 2024, BIS plans to publish a number of proposed and final rules amending the EAR. These rules will cover a range of issues, including countering Russia's ongoing aggression against Ukraine and China's military modernization; imposing controls on military, intelligence, and security end uses and end users that are contrary to the national security or foreign policy interests of the United States, including human rights values; and increasing the effectiveness of U.S. actions by substantially aligning controls with ally and partner countries. BIS also continues to identify and propose controls for emerging and foundational technologies.

Outlined below are BIS's most important upcoming regulatory actions for this year.

BIS's Regulatory Plan Actions

1. Implementation of Additional Export Controls: Certain Advanced Computing and

Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use (0694-

AI94): The interim final rule (IFR), *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor End Use; Entity List Modification*, which went into effect on October 7, 2022, amended the EAR to implement controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. This interim final rule addresses comments received and makes changes to the original October 7 IFR in response to those comments related to advanced computing integrated circuits and computer commodities that contain such ICs.

2. Section 1758 Technology Export Controls on Instruments for the Automated Chemical

Synthesis of Peptides (0694-AI84): Section 1758 of the Export Control Reform Act of 2018 authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies essential to the national security of the United States. Certain instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS for evaluation as a Section 1758 emerging and foundational technology. This final rule implements controls for these automated peptide synthesizers.

3. Authorization of Certain "Items" to Entities on the Entity List in the Context of Specific

Standards Activities (0694-AI06): This final rule amends the EAR to authorize the release of specified items subject to the EAR without a license when that release occurs in the context of a "standards-related activity." BIS published an interim final rule in September 2022 that revised the terms used in the EAR to describe the actions permissible under the authorization rather than defining the organizations to which it applies. This final rule responds to comments received in response to the interim final rule.