

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 916 - Extension of Interim Regulations to Allow for Additional Extensions of Permit Deadlines Beyond Those Provided for in the Shoreline Municipal Code Due to COVID-19 Impacts
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Rachael Markle, Director, Planning and Community Development
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On July 27, 2020, the City Council adopted Ordinance No. 893, enacting interim regulations that provide relief for applicants by creating additional extensions of application and permit deadlines due to the economic and health impacts of COVID-19. The interim regulations became effective on August 4, 2020 and will expire on February 4, 2021 if not extended. The COVID-19 pandemic will likely continue to impact the ability of permit customers and Planning and Community Development Department (PCD) staff to process permit applications, which in turn, may cause delays for the commencement of development activities. On December 14, 2020, Council held the required public hearing and discussed proposed Ordinance No. 916. No public comments were received, and the Council placed the item on the January 11th consent agenda. Adoption of this Ordinance will extend these interim regulations as amended for another six months.

RESOURCE/FINANCIAL IMPACT:

Extension of the interim regulations adopted by Ordinance No. 893 has the potential to protect the time and financial investment of applicants and permit holders. Supporting the viability of permit applications, approved ready to issue permits and issued permits supports the greater economy and community with little or no impact on the City's resources.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 916 - Extension of Interim Regulations to Allow for Additional Extensions of Permit Deadlines Beyond Those Provided for in the Shoreline Municipal Code Due to COVID-19 Impacts.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

The COVID-19 pandemic has impacted the ability of permit customers and Planning and Community Development Department (PCD) staff to process permit applications, which in turn, has caused delays for the commencement of development activities. Recognizing the impacts this had on applicants, the City Manager enacted Temporary Emergency Order No. 6 on May 4, 2020, which suspended application and permit deadlines related to development, effective for approved permits and applications in process as of March 4, 2020.

On July 27, 2020, the City Council adopted Ordinance No. 893 (Attachment A) which rescinded the Temporary Emergency Order and replaced it with interim regulations that provide relief for applicants by creating additional extensions of application and permit deadlines due to the economic and health impacts of COVID-19. The staff report for this Council action can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2020/staffreport072720-7d.pdf>.

Interim Regulation Code Sections

An applicant has two primary deadlines – a deadline for responding to comments or information requests by City staff and a deadline for picking up an approved application.

- SMC Section 20.30.100(D) sets a 180-day deadline for applicants to pick up permits that are ready to issue; and
- SMC Section 20.30.110(C) sets a 90-day deadline for the applicant to respond to requests for additional information and review comment letters.

Each of these Code sections provides for one extension of the permit application deadlines, and Ordinance No 893 provides for a second extension of these application and permit deadlines. Additionally, while SMC Section 12.15 - Use of the ROW - contains the regulatory language for ROW permits, this section does not contain provisions for extension of ROW permit applications. Ordinance No. 893 also provides two extensions of ROW permit applications identical to the deadlines and number of extensions proposed for SMC 20.30.100(D) and 20.30.110(C).

On December 7, 2020, Council adopted the 2020 Batch Development Code amendments. An amendment in the 2020 Batch to SMC 20.30.110(C) provided for additional extensions for permit applications under review negating the need for such a provision as part of the interim regulations. Specifically, the SMC 20.30.110(C) now reads as follows:

If the applicant fails to provide the required information within 90 days of the date of the written notice that the application is incomplete, or a request for additional information is made, the application shall be deemed null and void. In this case the applicant may request a refund of the application fee minus the City's cost of processing. The Director may grant a 90-day extensions ~~on a one-time basis~~ if the applicant requests the extension in writing prior to the expiration date and documents that the failure to take a substantial step was due to circumstances

beyond the control of the applicant. ~~The applicant may request a refund of the application fee minus the City's cost of processing.~~

Proposed Ordinance No. 916 has been updated to reflect this change.

On December 14, 2020, Council held the required public hearing and discussed proposed Ordinance No. 916. Adoption of this Ordinance will extend these interim regulations as amended for another six months. The staff report for this Council meeting can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2020/staffreport121420-8b.pdf>.

DISCUSSION

As is noted above, Ordinance No. 893 will expire on February 4, 2021 unless extended by Council. Renewal of the interim regulations adopted by Ordinance No. 893 as updated in proposed Ordinance No. 916 to reflect the approved amendments to SMC 20.30.110(C) would allow for a continuation of a second extension for permit deadlines. Since COVID-19 is still a threat to our local health and economy, applicants may still benefit from having an additional opportunity to extend permits that are ready to issue.

Interim Regulations Authority and Process

The City Council adopted interim regulations to allow for additional extensions of permit application deadlines, pursuant to RCW 35A.63.220 and under the Growth Management Act (GMA) at RCW 36.70A.390. Under these statutory provisions, the City adopted Ordinance No. 893 without a public hearing and without review and recommendation by the Planning Commission. As required by State law, a public hearing for Ordinance No. 893 was held on August 10, 2020.

Interim regulations adopted under this section may be effective for not longer than six months but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. Interim regulations may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

Findings of Fact

Findings of Fact supporting the continued need for these interim regulations are as follows:

1. The COVID-19 pandemic continues to pose a threat to public health and the welfare of people living and working in Washington.
2. On February 29, 2020, Governor Inslee signed Proclamation 20-05 declaring a State of Emergency in all counties of the State of Washington.
3. On March 23, 2020, Governor Inslee issued Proclamation 20—25 “Stay Home – Stay Healthy,” that prohibits all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within limitations. Proclamation 20-

25 has been amended eight times since enactment and has been extended to December 14, 2020.

4. On April 29, 2020, Governor Inslee amended Proclamation 20-25. Proclamation 20-25.1 approved criteria for a limited Phase 1 statewide restart for construction activities. These provisions are still in place.
5. On May 4, 2020, version 20-25.3 updated Governor Inslee's Proclamation to include a four-phased approach to safely reopening the State and further expanded the list of permissible low risk Phase I activities.
6. On June 1, 2020, Proclamation 20-25 was amended for the 4th time to transition from the "Stay Home – Stay Healthy" restrictions to the "Safe Start-Stay Healthy" County by County Phased Reopening plan.
7. On July 2, 2020, due to the increased COVID-19 infection rates across the state, Governor Inslee ordered a freeze on all counties moving forward to a subsequent phase, and that freeze remains in place today.
8. On November 15, 2020 Governor Inslee amended Proclamations 20-05 and 20-25 with version 20-25.8 which rolled back the county by county phased reopening in response to a COVID-19 outbreak surge. The latest restrictions place limits on social gatherings, close indoor operations in restaurants, bars, entertainment venues, and fitness centers, and restrict occupancy in retail, grocery, professional services and other facilities until at least December 14, 2020. The specific health concerns and associated social distancing measures in place necessitating the need to extend the interim regulations as described in Ordinance No. 916 are articulated in Proclamation 20-25.8
https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.8.pdf.
9. Professional Services such as architectural, engineering and design services are required to mandate that employees work from home when possible and close offices to the public if possible. Any office that must remain open must limit occupancy to 25 percent of indoor occupancy limits.
10. Construction, permitting and inspection services are allowed to continue under the most recent Gubernatorial proclamation however, City Hall is closed to public and permitting services have been limited to on-line, phone, mail in and drop off services. Inspection services are limited and restricted in some cases to ensure safe social distancing. Additionally, all permit review staff are working remotely. This has created delays in processing and approving applications.
11. Council held the required public hearing to extend the interim regulations approved with Ordinance No. 893 on December 14, 2020 and discussed proposed Ordinance No. 916 (Attachment B). Ordinance No. 916 would extend the interim regulations to allow for additional extensions of permit application deadlines for another six months. There were no public comments made.

RESOURCE/FINANCIAL IMPACT

Extension of the interim regulations adopted by Ordinance No. 893 has the potential to protect the time and financial investment of applicants and permit holders. Supporting the viability of permit applications, approved ready to issue permits and issued permits supports the greater economy and community with little or no impact on the City's resources.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 916 - Extension of Interim Regulations to Allow for Additional Extensions of Permit Deadlines Beyond Those Provided for in the Shoreline Municipal Code Due to COVID-19 Impacts.

ATTACHMENTS

Attachment A – Ordinance No. 893 - Interim Regulations to Extend Application Deadlines

Attachment B – Proposed Ordinance No. 916 - Extension of Interim Regulations to Extend Permit Deadlines

ORDINANCE NO. 893

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
ADOPTING INTERIM REGULATIONS FOR THE EXTENSIONS OF
APPLICATION DEADLINE PERIODS IN RESPONSE TO THE COVID-19
PANDEMIC; PROVIDING FOR A DURATION OF SIX MONTHS; AND
SETTING A PUBLIC HEARING.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the State of Washington, and planning pursuant to the Growth Management Act, chapter 36.70A RCW; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City of Shoreline to adopt interim regulations with a duration of no more than six (6) months without review and recommendation by the Shoreline Planning Commission and without holding a public hearing; and

WHEREAS, on February 29, 2020, the Washington State Governor declared a State of Emergency in all counties. On March 4, 2020, the City Manager issued a Declaration of Local Public Health Emergency (“Declaration”). This Declaration was ratified by the City Council on March 16, 2020 by the passage of Resolution No. 454. During the first few weeks of March, Public Health – King County/Seattle and the Governor issued directions to close certain types of businesses, engage in social distancing protocols, and limit the size of gatherings to reduce the spread of COVID-19; and

WHEREAS, on March 23, 2020, the Washington State Governor issued the “Stay Home Stay Healthy” Proclamation 20-25, effectively closing all but those businesses deemed to be essential until at least April 6, 2020. On March 25, 2020, the Governor issued a memorandum providing guidance on construction, stating that “[I]n general, commercial and residential construction is not ... an essential activity” with three (3) exceptions – construction related to an essential facility; construction to further a public purpose of a public entity, including publicly-funded low-income housing; and repair construction to prevent spoliation or avoid damage at both non-essential businesses and residential structures; and

WHEREAS, the Washington State Governor has subsequently issued Proclamations and industry-specific guidance allowing most construction activities to occur subject to a COVID-19 exposure control, mitigation, and recovery plan; and

WHEREAS, these restrictions on most construction activities and non-essential businesses that support the industry, such as consultants and material suppliers, may have resulted in an inability for an applicant to timely respond to the City’s comment review letter or to pick up an approved application; and

WHEREAS, the establishment of interim regulations of six months in duration will provide applicants with additional time to act upon applications currently under review and/or approved applications awaiting issuance so as to prevent expiration of those applications during this time of economic downturn; and

WHEREAS, the expiration of applications can have significant financial impacts on the applicant as well as financial institutions or investors that have provided financing for a project and the City's tax revenue from the increase in property values; and

WHEREAS, interim regulations are exempt from SEPA review per WAC 197-11-800(19) Procedural Actions. If the City elects to replace these interim regulations with permanent regulations, SEPA review will be conducted at that time; and

WHEREAS, the City Council considered the interim regulations at its properly noticed July 20, 2020 regular meeting held virtually via Zoom and has determined that the use of the interim regulations is appropriate and necessary; and

WHEREAS, due to the current economic conditions resulting for COVID-19, it is in the best interests of the citizens of the City of Shoreline and its local economy to authorize the Director of Planning and Community Development and the Director of Public Works to temporarily grant extensions of the application deadlines to preclude expiration;

THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Adoption of Findings of Fact. The City Council hereby adopts the above Recitals as findings of fact to support the adoption of this Ordinance.

Section 2. Interim Regulations. These interim regulations relate to Type A, Type B, and Type C applications administered through Title 20 SMC and chapter 12.15 SMC that were valid on March 4, 2020:

- A. SMC 20.30.100(D) In addition to the one extension authorized by this provision, the Director of Planning and Community Development, or designee, is authorized to grant one additional extension of no more than 180 days, for a total possible extension period of 360 calendar days.
- B. SMC 20.30.110(C) In addition to the one extension authorized by this provision, the Director of Planning and Community Development, or designee, is authorized to grant one additional extension of no more than 90 days, for a total possible extension period of 180 calendar days.
- C. SMC 12.15.040(C) The Director of Public Works or designee is authorized to grant an applicant a right-of-way permit extension, in the same number and duration as provided for in Section 1(A) and Section 1(B) of this Ordinance.
- D. An applicant must submit a written request for extension providing justification related to the COVID-19 pandemic, Washington State Governor's Proclamation 20-25, as clarified or amended, or other related federal, state, or local governmental action. The request must be submitted to the City before the expiration of the application for which the extension is being sought.

- E. The applicable Director shall have the authority to grant an extension as provided in this Section for a period of time no more than that provided for in the applicable SMC provision. A Director may grant an extension for less time, may deny an extension in its entirety, or may shorten or revoke a temporary extension for good cause. The decision to approve, deny, shorten, or revoke an extension is a discretionary act and a final decision of the City subject to appeal under chapter 36.70C RCW Land Use Petition Act.
- F. Any temporary extension shall be calculated from the initial expiration date of the application. If a development has multiple applications with differing expiration dates, the later expiration date shall be used for the purpose of calculating these extension provisions.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing at 7:00 pm, or soon thereafter, on August 10, 2020, to take public testimony concerning the interim regulations. Pursuant to the Washington State Governor's Proclamation 20-28, as amended, and City Council Resolution No. 459, the public hearing will take place online using the Zoom Webinar platform.

Section 4. Directions to the City Clerk.

- A. **Public Hearing.** The City Clerk is hereby directed to establish a Zoom Webinar on August 10, 2020, and to post information on the City's website informing the public how to attend and/or participate in the public hearing.
- B. **Transmittal to the Department of Commerce.** The City Clerk is hereby directed to cause a certified copy of this Ordinance to be transmitted to the Washington State Department of Commerce as provided in RCW 36.70A.106.
- C. **Corrections by the City Clerk.** Upon approval of the City Attorney, the City Clerk is authorized to make necessary corrections to this Ordinance, including the correction of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.
- D. **Ordinance not to be Codified.** Because this Ordinance adopts interim regulations, the City Clerk shall not codify this Ordinance.

Section 5. Termination of Temporary Emergency Order No. 6. The City Council hereby terminates the City Manager's Temporary Emergency Order No. 6 as of 11:59 pm September 1, 2020.

Section 6. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 7. Publication, Effective Date, and Expiration. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect

five (5) days after its publication and shall be in effect for a period of six (6) months from its effective date. After which, these interim regulations shall automatically expire unless extended as provided by statute or otherwise superseded by action of the City Council, whichever occurs first.


PASSED BY THE CITY COUNCIL ON JULY 27, 2020



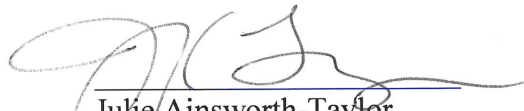
Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:



Jessica Simulcik Smith
City Clerk



Julie Ainsworth-Taylor
Assistant City Attorney

Date of Publication: July 30, 2020
Effective Date: August 4, 2020

ORDINANCE NO. 916

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
EXTENDING THE INTERIM REGULATIONS FOR THE EXTENSIONS
OF APPLICATION DEADLINE PERIODS IN RESPONSE TO THE
COVID-19 PANDEMIC ADOPTED BY ORDINANCE NO. 893;
PROVIDING FOR A DURATION OF SIX MONTHS.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the State of Washington, and planning pursuant to the Growth Management Act, chapter 36.70A RCW; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City of Shoreline to adopt interim regulations with a duration of no more than six (6) months without review and recommendation by the Shoreline Planning Commission and without holding a public hearing; and

WHEREAS, on July 27, 2020, due to substantial impacts from the COVID-19 pandemic which resulted in the Washington State Governor’s declaration of a State of Emergency, the City Manager’s Declaration of Local Public Health Emergency, the Washington State Governor’s “Stay Home Stay Healthy” Proclamation 20-25, and subsequent guidance relevant to the construction industry, the City Council adopted Ordinance No. 893, establishing interim regulations authorizing the extension of application deadline periods set forth in the Shoreline Municipal Code (SMC); and

WHEREAS, the interim regulations adopted by Ordinance No. 893 will expire on February 4, 2021 unless extended by the City Council; and

WHEREAS, despite public and private efforts to address the COVID-19 pandemic, Washington State, including King County, is experiencing a substantial increase in the spread of COVID-19; and

WHEREAS, such efforts include Proclamation 20-25.1, approving criteria for a limited Phase 1 statewide restart of construction activities; Proclamation 20-25.3, updating a four-phased approach to safely reopening the State and further expanding the list of permissible low risk Phase 1 activities; Proclamation 20-25.4 providing for a transition from the “Stay Home – Stay Healthy” restrictions to the “Safe Start-Stay Healthy” County by County Phased Reopening plan; however, due to the increased COVID-19 infection rates across the state, Governor Inslee ordered a freeze on all counties moving forward to a subsequent phase, and these restrictions remain in place; and

WHEREAS, on November 15, 2020 Governor Inslee issued Proclamation 20-25.8 which rolled back the phased reopening in response to a COVID-19 outbreak surge. The latest restrictions place limits on social gatherings, close indoor operations in restaurants, bars, entertainment venues, and fitness centers, and restrict occupancy in retail, grocery, professional services and other facilities until at least December 14, 2020; and

WHEREAS, these restrictions continue to impact the construction industry, including supporting consultants, by creating an inability for an applicant to timely respond to the City's comment review letter or to pick up an approved application; and

WHEREAS, while construction, permitting, and inspection services are allowed to continue under the most recent Gubernatorial proclamation, City Hall is closed to the public, and permitting services which have been limited to on-line, phone, mail in and drop off services. Inspection services are limited and restricted in some cases to ensure safe social distancing. Additionally, all permit review staff are working remotely. This has created delays in processing and approving applications; and

WHEREAS, the extension of the previously enacted interim regulations for an additional six month period will provide applicants with additional time to act upon applications currently under review, and/or approved applications awaiting issuance, so as to prevent expiration of those applications during this unprecedented time in the City's history; and

WHEREAS, interim regulations are exempt from SEPA review per WAC 197-11-800(19) Procedural Actions. If the City elects to replace these interim regulations with permanent regulations, if applicable, SEPA review will be conducted at that time; and

WHEREAS, the City Council considered the interim regulations at its properly noticed December 14, 2020 regular meeting, at which it held the statutorily required public hearing, held virtually via Zoom, determined that the extension of the interim regulations is appropriate and necessary; and

WHEREAS, due to the current economic conditions resulting from COVID-19, it is in the best interests of the citizens of the City of Shoreline and its local economy to authorize the Director of Planning and Community Development and the Director of Public Works to temporarily grant extensions of the application deadlines to preclude expiration;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Adoption of Findings of Fact. The City Council hereby adopts the above Recitals as findings of fact to support the adoption of this Ordinance and incorporates by reference the Recitals set forth in Ordinance No. 893.

Section 2. Interim Regulations. These interim regulations relate to Type A, Type B, and Type C applications administered through Title 20 SMC and chapter 12.15 SMC that were valid on March 4, 2020:

- A. SMC 20.30.100(D). In addition to the one extension authorized by this provision, the Director of Planning and Community Development, or designee, is authorized to grant one additional extension of no more than 180 days, for a total possible extension period of 360 calendar days.

- B. SMC 12.15.040(C). The Director of Public Works or designee is authorized to grant an applicant a right-of-way permit extension, in the same number and duration as provided for in Section 1(A) and Section 1(B) of this Ordinance.
- C. An applicant must submit a written request for extension providing justification related to the COVID-19 pandemic, Washington State Governor's Proclamation 20-25, as clarified or amended, or other related federal, state, or local governmental action. The request must be submitted to the City before the expiration of the application for which the extension is being sought.
- D. The applicable Director shall have the authority to grant an extension as provided in this Section for a period of time no more than that provided for in the applicable SMC provision. A Director may grant an extension for less time, may deny an extension in its entirety, or may shorten or revoke a temporary extension for good cause. The decision to approve, deny, shorten, or revoke an extension is a discretionary act and a final decision of the City subject to appeal under chapter 36.70C RCW Land Use Petition Act.
- E. Any temporary extension shall be calculated from the initial expiration date of the application. If a development has multiple applications with differing expiration dates, the later expiration date shall be used for the purpose of calculating these extension provisions.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the extension of the interim regulations on December 14, 2020. Pursuant to the Washington State Governor's Proclamation 20-28, as amended, and the City Council Resolution No. 459, the public hearing was held online using the Zoom Webinar platform.

Section 4. Directions to the City Clerk.

- A. **Transmittal to the Department of Commerce.** The City Clerk is hereby directed to cause a certified copy of this Ordinance to be transmitted to the Washington State Department of Commerce as provided in RCW 36.70A.106.
- B. **Corrections by the City Clerk.** Upon approval of the City Attorney, the City Clerk is authorized to make necessary corrections to this Ordinance, including the correction of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.
- C. **Ordinance not to be Codified.** Because this Ordinance adopts interim regulations, the City Clerk shall not codify this Ordinance.

Section 5. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 6. Publication, Effective Date, and Expiration. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five (5) days after its publication and shall be in effect for a period of six (6) months from its effective date. After which, these interim regulations shall automatically expire unless extended as provided by statute or otherwise superseded by action of the City Council, whichever occurs first.

PASSED BY THE CITY COUNCIL ON JANUARY 11, 2021.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie Ainsworth-Taylor, Assistant City Attorney
On behalf of Margaret King, City Attorney

Date of Publication: _____, 2021
Effective Date: _____, 2021

Date of Transmittal to Commerce: _____, 2021