

part 9 by making the following correcting amendments:

#### Title 42—Public Health

### PART 9—STANDARDS OF CARE FOR CHIMPANZEES HELD IN THE FEDERALLY SUPPORTED SANCTUARY SYSTEM

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 42 U.S.C. 216, 287a–3a.

#### § 9.2 [Amended]

■ 2. Amend § 9.2 by:

■ a. In the definition of “National Primate Research Center (NPRC)” removing the phrase “National Center for Research Resources” and adding, in its place, the phrase “Office of Research Infrastructure Programs (ORIP) within the Division of Program Coordination, Planning and Strategic Initiatives (DPCPSI),” removing the date “June 2007” and adding, in its place, the date “2015”; and removing the word “eight” and adding, in its place, the word “seven”.

■ b. In the definition of “Sanctuary Contractor” by removing the phrase “NCR/NIH” and adding, in its place the phrase “ORIP/DPCPSI/NIH.”

■ c. In the definition of “Sanctuary of federally supported chimpanzee system” by removing the phrase “NCR/NIH/HHS” and adding, in its place, the phrase “ORIP/DPCPSI/NIH/HHS.”

#### § 9.3 [Amended]

■ 3. Amend § 9.3 by:

■ a. In paragraph (a)(2)(ix) removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI.”

■ b. In paragraph (a)(8) removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI/NIH.”

■ c. In paragraph (b)(2) removing the phrase “NCR/NIH” and adding, in its place, the phrase ORIP/DPCPSI/NIH.”

#### § 9.4 [Amended]

■ 4. In § 9.4, amend paragraph (a) by removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI”, and removing the number “1” in the “1 Democracy Plaza” address and adding, in its place, the word “One” to read “One Democracy Plaza”.

#### § 9.5 [Amended]

■ 5. Amend § 9.5 by:

■ a. In paragraph (c)(4) removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI/NIH.”

■ b. In paragraph (d)(2) removing the phrase “NCR/NIH” and adding, in its place, the phrase ORIP/DPCPSI/NIH.”

■ c. In paragraph (e) removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI/NIH.”

#### § 9.6 [Amended]

■ 6. In § 9.6, amend paragraph (d)(2) by removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI.”

#### § 9.9 [Amended]

■ 7. In § 9.9, amend paragraph (a) by removing the phrase “NCR/NIH” and adding, in its place, “ORIP/DPCPSI/NIH.”

#### § 9.12 [Amended]

■ 8. Amend § 9.12 by:

■ a. In paragraph (a) removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI”; removing the phrase “NCR/NIH/HHS” and adding, in its place, the phrase ORIP/DPCPSI/NIH/HHS”; and removing the phrase “NIH/NCR/NIH Project Officer” and adding, in its place, the phrase “ORIP/DPCPSI/NIH Project Officer.”

■ b. In paragraph (b) removing the phrase “NCR/NIH/HHS” and adding, in its place, “ORIP/DPCPSI/NIH/HHS”; removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI”; and removing the phrase “NCR/NIH” and adding, in its place, the phrase “ORIP/DPCPSI/NIH.”

Dated: July 21, 2020.

**Francis S. Collins,**

*Director, National Institutes of Health.*

**Alex M. Azar II,**

*Secretary, Health and Human Services.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA–2020–0086]

RIN 2127–AM26

### Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule responds to an “emergency petition” submitted by the Alliance of

Automotive Innovation (Alliance) regarding the phase-in and compliance requirements of Federal Motor Vehicle Safety Standard No. 141 (FMVSS 141), “Minimum sound for hybrid and electric vehicles.” The petition details the challenges manufacturers have encountered in complying with FMVSS 141 due to disruptions in the supply chain caused by the Coronavirus Disease 2019 (COVID–19) public health emergency. The petition requests three changes to the phase-in and compliance requirements of FMVSS 141. After considering the concerns raised in the petition, NHTSA has decided to grant the petition, in part, by electing to defer the phase-in and compliance dates by six months. NHTSA is denying the request for an alternative performance option during the phase-in period.

**DATES:** *Effective date:* The amendments made in this rule are effective August 28, 2020.

*Comment date:* You should submit your comments early enough to ensure that the docket receives them not later than September 16, 2020.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail: Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading under Rulemaking Notices and Analyses regarding documents submitted to the Agency’s dockets.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov) or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call, Mr. Michael Pyne, NHTSA Office of Crash Avoidance Standards, at (202) 366–4171.

For legal issues, you may call Mr. Paul Connet, Office of the Chief Counsel, at (202) 366–5547, facsimile (202) 366–5547.

The mailing address for these officials at the National Highway Traffic Safety Administration: 1200 New Jersey Avenue SW, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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**I. Executive Summary**

Pursuant to the Pedestrian Safety Enhancement Act of 2010 (PSEA), NHTSA published a final rule on December 14, 2016, establishing a new Federal motor vehicle safety standard setting minimum sound level requirements for low-speed operation of hybrid and electric light vehicles.<sup>1</sup> The minimum sound requirements provide a means for blind and other pedestrians, as well as bicyclists and other road users, to detect the presence of vehicles that do not naturally produce sounds like vehicles with internal combustion engines, thereby reducing the risk that these “quiet” vehicles will be involved in low-speed pedestrian crashes.

The phase-in requirement for FMVSS 141, as modified by the 2018 rule issued in response to several petitions for reconsideration, began on September 1, 2019, with full compliance slated to begin on September 1, 2020. However, halfway through the phase-in period, the COVID–19 public health emergency began, leading to significant public health and economic effects. The automotive industry in the U.S. was especially afflicted by the shutdowns as vehicle production came to a halt. Automotive supply chains were decimated with production of parts similarly halted.<sup>2 3</sup> The disruptions in

the global supply chains prevented manufacturers from acquiring new parts, implementing vehicle redesigns, and manufacturing automobiles.<sup>4</sup> While production has resumed to a certain extent, manufacturers continue to experience ongoing difficulties in acquiring parts and returning production to full volume.<sup>5</sup>

This interim final rule responds to an emergency petition submitted by the Alliance resulting from the COVID–19 public health emergency. After considering the issues raised in the Alliance petition, the Agency agrees that the unprecedented disruptions to automotive manufacturing caused by the public health emergency make compliance with the phase-in schedule for FMVSS 141 impracticable and warrant appropriate regulatory relief. The Agency is granting two of petitioner’s requests, in part, by deferring the compliance dates for the phase-in schedule and full compliance by six months. The Agency is declining to adopt petitioner’s third request for an alternative phase-in performance requirement. The Agency is seeking comment on all three of the petitioner’s requests and the Agency’s response.

**II. Background on FMVSS 141**

In January 2011, Congress passed the PSEA directing NHTSA to undertake a rulemaking to create a new safety standard requiring hybrid and electric vehicles (HEV) to have a minimum sound level to help pedestrians—especially those with impaired eyesight—detect those vehicles. The PSEA stipulated that the alert sound should not require either driver or pedestrian activation, and that the sound be reasonably detectable by

nearby pedestrians. The PSEA also directed the Agency to establish a phase-in schedule for compliance, with full compliance beginning the September 1st of the calendar year that begins three years after the date on which the final rule is issued. NHTSA published a final rule on December 14, 2016, establishing FMVSS 141, “Minimum Sound Requirements for Hybrid and Electric Vehicles.”<sup>6</sup> The final rule fulfilled NHTSA’s obligations under the PSEA to set minimum sound requirements that increase the detectability of HEVs.

After the 2016 final rule was published, NHTSA received timely petitions for reconsideration from three sources. NHTSA determined that, collectively, the petitioners had made six discrete requests. On February 26, 2018, the Agency issued a final rule in response to those petitions for reconsideration which granted five of the requests, including: (1) Postponing the compliance schedule by one year to better align with the PSEA; (2) allowing similar make/model vehicles to be equipped with different hardware; (3) allowing alert sounds to vary by trim level or model series rather than just by make/model; (4) limiting the compliance criteria for the sameness requirement to only the digital sound file and digital processing algorithm; and (5) permitting, in limited circumstances, the alteration of factory-equipped sounds during vehicle repair and recalls.<sup>7</sup> The final rule denied a request to change the cross-over speed, which is the speed above which the pedestrian alert sound is allowed to turn off.<sup>8</sup>

The current phase-in period, as established in the Agency’s 2018 response to the petitions for reconsideration, began on September 1, 2019, with full compliance required beginning September 1, 2020. Under the phase-in and full compliance schedules, 50 percent of light HEVs manufactured between September 1, 2019 and August 31, 2020, and all light HEVs manufactured on or after September 1, 2020 must comply with the FMVSS 141.

<sup>6</sup> 81 FR 90416. See also NHTSA’s February 26, 2018 final rule responding to petitions for reconsideration of that rule (83 FR 8182) (discussed below).

<sup>7</sup> *Id.*

<sup>8</sup> Another request, to allow vehicles to be manufactured with a suite of driver-selectable pedestrian alert sounds, resulted in the Agency publishing a notice of proposed rulemaking (NPRM) on September 17, 2019, undertaking rulemaking on the request. 84 FR 48866. The Agency is developing the next steps in that rulemaking.

<sup>3</sup> See, “Original Equipment Suppliers Association Automotive Supplier Barometer™ Q2 2020, Supply Chain and Globalization,” June 2, 2020.

<sup>4</sup> See Letter for the Record, “The State of Transportation and Critical Infrastructure Examining the Impact of the COVID–19 Pandemic,” from President and CEO Bill Long, Motor and Equipment Manufacturers Association (MEMA), June 3, 2020, to Chairman Roger Wicker and Senator Maria Cantwell, Committee on Commerce, Science & Transportation. (“Since suppliers are responsible for two-thirds of the value of a new vehicle, the deployment and commercialization of these technologies are dependent on the health of the supplier industry. Continuing to provide the U.S. consumer with increasingly cleaner, safer vehicles will require extensive, long-term financial commitments from the entire industry. If the supplier industry falters or fails, the entire automotive industry will suffer, ultimately harming the competitiveness of the U.S. automotive industry.”)

<sup>5</sup> See generally, Victoria Johns, *Ford facing shutdowns in US because of engine shortage*, Automotive Logistics, <https://www.automotivelogistics.media/coronavirus/ford-facing-shutdowns-in-us-because-of-engine-shortage/40879.article>.

<sup>1</sup> 81 FR 90416.

<sup>2</sup> See, Letter from MEMA members to the Secretary of Treasury Steven Mnuchin (“A recent industry survey indicated that 21 percent of the supplier respondents have eight weeks or fewer before declaring insolvency”), May 20, 2020.

### III. Alliance Petition

On April 29, 2020, the Alliance submitted an “emergency petition” seeking relief from certain FMVSS 141 compliance requirements. The petitioner states in its petition that, until the end of February, every HEV manufacturer had a credible and achievable plan for meeting the phase-in requirements of FMVSS 141 by August 31, 2020, and all were on target for 100 percent compliance beginning September 1, 2020. However, the petitioner states, the public health emergency upended these compliance plans. The petitioner states that on the date of its petition (April 29), “every manufacturing plant in the United States is idle, due to the Coronavirus pandemic. And, production restart plans are forming, but the industry is very uncertain about how long it will take to restore pre-pandemic production levels.” The petitioner states its industry’s highest priority is the health and safety of its workers and its customers and neighbors, and health and safety will guide its decisions about the pace of reopening offices and resuming production in its plants. According to the petitioner, many suppliers are shuttered with uncertain plans for production and shipping due to the national health emergency and that this disruption in the supply chain has “adversely affected manufacturer’s plans for compliance with the FMVSS 141 phase-in.”

The petition requests that the Agency take three actions:

(a) Defer the current phase-in period (September 1, 2019 through August 31, 2020) to September 1, 2020 through August 31, 2021;

(b) Defer the beginning of full compliance to September 1, 2021; and

(c) Simplify the performance requirements during the phase-in period.

In support of its three requests, the petitioner describes the toll the national emergency has exacted on the automobile manufacturing industry. The petitioner asserts that every manufacturing plant in the United States abruptly closed earlier into the pandemic, and there remains a lingering concern about how long it will take the industry to restore pre-pandemic levels of production in the wake of the severe and unprecedented disruptions in the supply chain. The petitioner states that the hardships caused by plant closures have hindered manufacturers’ ability to produce FMVSS 141 compliant vehicles. The petitioner also maintains that the closure of test labs in some jurisdictions has complicated the ability

of some manufacturers to complete certification tests needed to fully support self-certification of compliance.

The petitioner states that the phase-in requirement is especially difficult for some manufacturers to meet because of how they designed their compliance plans. The petitioner explains that several manufacturers planned to meet the 50 percent fleetwide phase-in requirement by producing compliant vehicles during the second half of the production year. With plants shuttered, manufacturers are now unable to produce enough FMVSS 141 compliant vehicles to counterbalance the volume of pre-FMVSS 141 hybrid and electric vehicles manufactured during the first half of the production year to meet the phase-in requirement.

The petitioner also states that the national health emergency has led some manufacturers to reassess the financial plans they had in place for development of HEVs. The petitioner explains that these manufacturers have been unable to amortize the tooling of several pre-FMVSS 141 vehicle lines fully due to production disruptions, and need more time to produce these vehicles to recover their investment costs. The petitioner believes that manufacturers may be challenged further by the expected lowered demand for hybrid and electric vehicles due to the fall of oil prices.

Regarding its suggested alternative phase-in performance option, the petitioner contends that its option, in essence, “simplifies the performance requirements . . . [to] require only that an HEV/EV vehicle emit sound.” The petitioner states that the suggested performance standard would allow manufacturers to reach a higher phase-in percentage. The petitioner states it “is prepared to support an increase in the required phase-in percentage from 50% to 75% during the production period beginning September 1, 2020 and ending August 31, 2021,” if NHTSA agrees to permit the petitioner’s suggested performance standard during the phase-in period.

### IV. Agency Response

After considering the information provided in the petition and assessing the ongoing hardships stemming from the public health emergency, the Agency has decided to grant, in part, the petitioner’s requests to delay the phase-in and full compliance dates. The Agency is not adopting the petitioner’s request for an alternative phase-in performance standard in this interim final rule.

In general, the Agency has determined that disruptions to the auto industry

caused by the COVID–19 public health emergency were unforeseeable and have rendered otherwise valid compliance plans impracticable and potentially even impossible. The difficulties caused by the COVID–19 public health emergency continue to hinder production. These disruptions justify providing some delay for the compliance period, but the Agency believes that six months is more appropriate than one year. While the Agency has determined that a six-month delay is appropriate and justified, the information provided by the petitioner in support of an alternative performance standard is not sufficient to support changes to the standard established in the 2016 final rule. That said, the Agency is requesting comment on these decisions and has provided an expedited comment period to allow commenters to provide information that the Agency could address before the expiration of the new phase-in period.

#### *a. Phase-In Deferment*

The current phase-in schedule (S9) requires that, for HEVs to which FMVSS 141 applies that are manufactured on or after September 1, 2019 and before September 1, 2020, the quantity of HEVs complying with the standard must be not less than 50 percent of one or both of the following: (1) A manufacturer’s total production of hybrid and electric vehicles produced on and after September 1, 2019, and before September 1, 2020; or (2) a manufacturer’s average annual production of hybrid and electric vehicles on and after September 1, 2016, and before September 1, 2019. As noted in the Alliance’s petition, FMVSS 141 permitted manufacturers to employ different compliance strategies to reach the phase-in requirement, including strategies that backloaded the production of compliant vehicles into the second half of the year.

The level of disruption to automobile production caused by the COVID–19 public health emergency has been unprecedented and was completely unforeseeable when manufacturers established their compliance plans. The effects of the COVID–19 public health emergency have rendered impracticable implementation of what were valid compliance strategies to meet the schedule established for FMVSS 141. Those manufacturers who planned to produce compliant vehicles in the second half of the phase-in period using newer model year vehicles are unable to produce sufficient quantities of compliant vehicles to recover from the

lost production time to meet the 50 percent phase-in threshold.<sup>9</sup>

The shutdown in testing facilities during the COVID-19 public health emergency has made it difficult for some manufacturers to test their vehicles for compliance as they had planned. NHTSA believes manufacturers should be provided more time to test and assess the compliance of their vehicles adequately, and implement potential design and manufacturing changes, since manufacturers often rely on internal pre-production testing to verify that vehicles meet performance targets.

The Agency concludes that the disruptions to production and testing were due to forces beyond the control of manufacturers and that holding manufacturers accountable for these unavoidable circumstances would be unreasonable and contrary to the National Traffic and Motor Vehicle Safety Act (Safety Act). The Safety Act requires Federal motor vehicle safety standards to be practicable.<sup>10</sup> The hardships created by the COVID-19 public health emergency have made meeting the current phase-in requirements impossible for some manufacturers. While manufacturers were able to resume production to some extent in recent months, that production has been limited and continues to be affected by supply chain disruptions. Accordingly, the standard is no longer practicable for the effective dates that had been established, which is contrary to the Safety Act requirements for the FMVSS.

Refusing to amend the compliance dates would also be counterproductive to the nation's recovery effort. On May 19, 2020, the President issued Executive Order 13924, "Regulatory Relief to Support Economic Recovery," (the Order) as part of the country's ongoing recovery effort in response to the national COVID-19 public health emergency. The Order directs agencies

<sup>9</sup> To illustrate, a manufacturer intending to build 10 hybrid vehicles each month over the course of the production year for a total of 120 vehicles would need to build at least 60 compliant vehicles during the year to meet the phase-in requirement described by FMVSS 141 S.9.1(b). If the manufacturer spends the first 6 months building 60 model year 2019 vehicles that did not meet FMVSS 141 because it anticipated launching a compliant 2020 model year vehicle in the second half of the phase-in schedule, the manufacturer would need to manufacture vehicles at full capacity for the remainder of the year to produce the requisite 60 compliant vehicles. If production stopped for a single month, the maximum quantity of compliant vehicles a manufacturer could produce during the year would drop to 50, falling below the phase-in threshold.

<sup>10</sup> 49 U.S.C. 30111(a). NHTSA also must consider whether a standard is reasonable when prescribing an FMVSS. *Id.* at 30111(b)(3).

to address the current economic emergency by using, to the fullest extent possible, available emergency authorities to support the economic response to the COVID-19 outbreak. It also directs agencies to provide relief through rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery or by issuing new proposed rules as necessary.

The Agency believes that changing the compliance dates is consistent with the Order's directive and will assist with the recovery. Extending the phase-in date prevents manufacturers from either ceasing production of vehicles that do not conform to FMVSS 141 or falling into non-compliance. The extension affords manufacturers the opportunity to continue production of pre-FMVSS 141 vehicles for a brief period. This encourages manufacturers to resume production of more vehicle lines and, as a consequence, more quickly return their workforce to the assembly lines. Consumers, who have experienced economic hardships from the COVID-19 public health emergency, would also benefit from extension of the effective dates because these pre-FMVSS 141 vehicles present additional HEV choices.

Accordingly, the Agency agrees that the phase-in period should be deferred. The Agency believes that a six-month deferment strikes a reasonable balance between regulatory relief and the goal of implementing FMVSS 141 as reasonably possible. Moving the phase-in start date back six months "resets" production volumes for compliance purposes and allows manufacturers to restart their compliance plans. This six-month extension also provides additional time for supply chains to recover, and for manufacturers to reopen plants and reevaluate strategies for FMVSS 141 compliance. While the petitioner requested a one-year extension, the petitioner did not provide supporting data or information justifying such a deferment. At this stage, therefore, NHTSA is not convinced that a year-long deferment is warranted to provide adequate relief. However, as part of this interim final rule, the Agency is requesting comment on whether to provide the full year requested by petitioners.

The new phase-in period will begin March 1, 2020, and end February 28, 2021. For manufacturers that intend to meet the phase-in requirement based on their previous three-year production volumes, the average fleet size will remain the average the annual production volumes of hybrid and

electric vehicles from September 1, 2016 to August 31, 2019.<sup>11</sup> The Agency is not changing the required 50 percent phase-in percentage.

#### *b. Full Compliance Delay*

The Agency has also decided to grant the petitioner's request, in part, to defer full compliance with FMVSS 141, but is allowing for six months instead of the requested year. The aforementioned reasons for deferring the phase-in period are applicable to the full compliance deadline. The Agency considered retaining the current full compliance date and only amending the phase-in period. However, as with the phase-in schedule, manufacturers had established plans leading to full compliance for vehicles produced on and after September 1, 2020. The COVID-19 public health emergency has rendered those plans impracticable, not only for the phase-in schedule, but also for vehicles for the coming year, since the disruptions to manufacturing, supply chains, and testing have continued. To the extent that production has resumed, that production has been limited and continues to be affected by the public health emergency, both regarding a manufacturer's own capacity and its reliance upon a global supply chain for needed parts and equipment. Further, challenges in accessing testing facilities continue, which may make it difficult for some manufacturers to exercise reasonable care in certifying that their vehicles are compliant. Thus, the Agency has determined that the continuing effects of the COVID-19 public health emergency have rendered the full compliance mandate for vehicles manufactured after September 1, 2020 impracticable. To address this practical impossibility, NHTSA is deferring the date for full compliance to March 1, 2021.

The Agency believes that the six-month deferment strikes a reasonable balance between providing necessary regulatory relief and implementing FMVSS 141 as quickly as possible. An additional six months provides time for supply chains to take into account the effects of the public health emergency, and for manufacturers to reevaluate strategies for meeting FMVSS 141. While the petitioner requested a year-

<sup>11</sup> NHTSA is keeping these dates out of simplicity, as doing so avoids manufacturers and NHTSA's enforcement office having to track down older data and parsing it into mid-year increments to determine compliance requirements. As the cut-off date for determining the three-year production average preceded the national emergency, the required compliance production volume for 9.1(b) should be unaffected.

long deferment of the final compliance date, it did not provide data or information justifying such an extension. NHTSA is not convinced that a year-long deferment is warranted to provide adequate relief, particularly since manufacturers would have been in position to be in full compliance by September 1, 2020 prior to the public health emergency.

A six-month deferment will set the new full compliance date approximately one year after the onset of the disruptions caused by COVID-19. Those six months should provide manufacturers sufficient time to resume planned operations and to set new production schedules. A six-month deferment also encourages manufacturers to prioritize achieving fully-compliant vehicles more rapidly than one twice as long, thus encouraging the production of HEVs that meet FMVSS 141. However, as part of this interim final rule, the Agency is requesting comment on whether to provide the full year requested by petitioners.

### *c. Alternative Phase-In Option*

The Agency is not adopting petitioner's request for an alternative performance standard during the phase-in period in this interim final rule for several reasons.

First, the Agency believes that deferring the phase-in period will provide sufficient relief to manufacturers. An additional six months gives manufacturers time to reestablish supply chains. Furthermore, deferring the phase-in period fully addresses the unique hardships to meet the 50 percent phase-in threshold caused by production disruptions, since the phase-in requirement only applies to vehicles manufactured during the phase-in period.

Second, the Agency has concerns about the efficacy of petitioner's proposed alternative. The Agency considered a similar alternative during the original rulemaking establishing FMVSS 141, and found that it inadequately specified the frequency content of sounds, such that many sounds meeting the alternative could be undetectable. The alternative also was found to allow many sounds that are less robust and thus more susceptible to being masked by surrounding ambient sounds.<sup>12</sup>

Finally, the Agency finds that the Alliance's petition lacks a sufficient justification for the alternative phase-in compliance option. The petition does not explain why a simplified

performance requirement eases the burdens caused by the COVID-19 public health emergency.

For these reasons, the Agency does not agree to the third request and is not incorporating the petitioner's alternative phase-in compliance option into this interim final rule. The Agency requests comment on this issue.

### **V. Comments and Immediate Effective Date**

Because the August 31 and September 1, 2020 compliance dates are fast approaching, NHTSA finds good cause to issue this interim final rule delaying the compliance dates for six months. There is good cause to make this rule effective immediately so as to provide needed relief to manufacturers facing insurmountable barriers in meeting FMVSS 141 due to the effects of the COVID-19 public health emergency. Pursuant to DOT's regulation on rulemaking procedures, 49 CFR 5.13(j)(2), NHTSA seeks to replace this interim final rule with a final rule, which may differ from today's rule in response to comments received.

Accordingly, NHTSA is accepting comments on this interim final rule. The Agency is seeking comments on all three of the requests made by Alliance in its petition and the Agency's response. In particular, the Agency is interested in information concerning whether the six-month period is adequate and whether the Agency should reconsider its position on the modified standard during the phase-in period. Given the narrow focus of this rule and its near-term effects, the Agency has provided an expedited comment period, which the Agency believes will allow commenters sufficient time to address the issues in this rule and provide the Agency with time to respond to those comments well before the end of revised compliance date. See "Request for Comments" section below.

The Agency is issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

As discussed above in this document, the intent of this action is to provide

relief to manufacturers of hybrid and electric vehicles who have experienced unprecedented disruptions in their production processes and supply chains due to the COVID-19 public health emergency. The phase-in period is currently set to end on August 31, 2020, with full compliance beginning immediately thereafter. Since the compliance dates are imminent, the Agency finds it impracticable to seek public comment. NHTSA seeks to issue this rule to provide relief before August 31 so there is not enough time to publish an NPRM and a final rule before that date. The Agency's understanding from the petitioners is that several members of the industry intended to backload production of compliant vehicles during the phase-in period, such that much of the 50% of vehicles that must comply with the standard would be produced at the beginning of the spring of 2020. However, this plan was made impracticable by the COVID-19 public health emergency, which continues to cause severe disruptions in the auto industry regarding manufacturing, supply chains, and sales. The disruptions have also resulted in delays and challenges to compliance testing by some manufacturers seeking to test for compliance as the basis for certification. As a result, some manufacturers have been unable to either produce sufficient compliant vehicles during the phase-in period to satisfy phase-in requirements, or test new models for compliance with the substantive standards. Failure to extend the compliance period to account for these realities, before the phase-in period concludes, would lead to some manufacturers either withholding production of HEVs, or facing potential non-compliance, due to factors beyond their control.

Since the compliance dates are imminent, the Agency finds it impracticable to seek public comment. Similarly, in order to provide meaningful relief to manufacturers, the Agency finds good cause to make this rule effective immediately. Section 30111(d) of the Safety Act states that a standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed, unless the Secretary (NHTSA by delegation) finds, for good cause shown, that a different effective date is in the public interest and publishes the reasons for the finding. For the reasons discussed in this preamble, NHTSA finds there is good cause for this rule to be effective immediately. This immediate effective date is in the public interest given the

<sup>12</sup> See 81 FR at 90456.

impact the COVID-19 public health emergency has had on the ability of manufacturers to meet the compliance schedule for FMVSS 141 implementation. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule. These comments must be submitted on or before the date indicated in the **DATES** section at the beginning of this document. NHTSA will consider these comments in deciding the next steps following this interim final rule.

## VI. Regulatory Analyses and Notices

### *a. Executive Orders 12866, 13563, 13771 and DOT Rulemaking Procedures*

Executive Order 12866, Executive Order 13563, and the Department of Transportation's administrative rulemaking procedures set forth in 49 CFR part 5, subpart B, provide for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of E.O. 12866.

Today's final rule is not significant and has not been reviewed by OMB under E.O. 12866. This final rule only makes a six-month adjustment to the existing compliance schedules of FMVSS 141. We are only adjusting the phase-in schedule and the September 1, 2020 full compliance date by six months to give manufacturers time to revise their production and compliance schedules in response to disruptions caused by the COVID-19 public health emergency and restore their manufacturing abilities to meet the requirements of the standard.

Without this interim final, the automobile industry would experience a burden due to an inability to comply with FMVSS 141. The interim rule alleviates this burden by delaying the FMVSS 141 compliance date by six months. The delay is unavoidable due to disruptions the auto manufacturing industry has experienced as a consequence of the 2020 COVID-19 public health emergency. The rule provides relief to manufacturers of hybrid and electric vehicles who have experienced unprecedented disruptions to the supply chain; without this interim final rule, compliance with the current schedule for FMVSS 141 implementation would be impracticable and potentially impossible. The Agency's estimates of aggregate costs and benefits from the initial final rule, restated in the response to petitions for reconsideration, were based upon an expected sales volume that has been

severely disrupted by the COVID-19 public health emergency and, therefore, is no longer helpful in determining the rule's likely impacts. Further, there is significant uncertainty about how and when vehicle sales, specifically HEV sales, will rebound over the limited six-month period relevant to this rulemaking, making any new projections impracticable, particularly in light of the need to issue this rule expeditiously. Comments are requested on this issue.

Executive Order 13771 titled "Reducing Regulation and Controlling Regulatory Costs," directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," are subject to these requirements. Per OMB Memo M-17-21, E.O. 13771 applies to a rulemaking action that is "a significant regulatory action as defined in Section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero." As discussed above, by delaying the compliance dates by six months, this action is a deregulatory rule under Executive Order 13771, but the Agency has not estimated quantified cost savings.

### *b. Executive Order 13924*

On May 19, 2020, the President issued Executive Order 13924, "Regulatory Relief to Support Economic Recovery," as part of the Country's ongoing recovery effort to the national COVID-19 public health emergency. The Order directs agencies to address the current economic emergency by using to the fullest extent possible any available emergency authorities to support the economic response to the COVID-19 outbreak. It also directs agencies to provide relief through rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery or by issuing new proposed rules as necessary. This interim final rule is consistent with E.O. 13924 by providing manufacturers adversely affected by production disruptions caused by the national health emergency time to recover to meet the phase-in and full compliance requirements of FMVSS 141, and

reassess how best to implement FMVSS 141.

### *c. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act, NHTSA has considered the impacts of this rulemaking action on small entities (5 U.S.C. Sec. 601 *et seq.*). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Small Business Administration's Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act. Ch.1. p.9.* Accordingly, NHTSA is not required to conduct a regulatory flexibility analysis. Nevertheless, the Agency believes that today's interim final rule will reduce the regulatory burden on small businesses because it delays the compliance with FMVSS 141 for an additional year. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

Even though the Agency is not required to conduct a regulatory flexibility analysis, the Agency believes this interim final rule will reduce the regulatory burden on small businesses but will have a limited impact on small businesses. Extending the phase-in and full compliance dates provide small businesses with additional lead time to meet an already existing standard. As such, small businesses may use the additional time to spread out compliance costs and to continue to sell current vehicles to amortize expenses related to existing vehicle lines. NHTSA notes, however, that it has not heard from small entities about challenges in meeting the compliance dates of FMVSS 141. Thus, NHTSA believes the interim final rule will not have a significant impact on a substantial number of small entities.

### *d. Executive Order 13132, Federalism*

NHTSA has examined today's interim final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The interim final rule will not have

“substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA’s rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer’s compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this interim final rule could or

should preempt State common law causes of action. The Agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the Agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today’s interim final rule and finds that this rule will prescribe only a change in effective dates of a safety standard. As such, NHTSA does not intend that this rule will preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today’s rule.

Establishment of a higher standard by means of State tort law would not conflict with the rule adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

#### *e. The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the Agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

#### *f. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule adjusts the timing of the phase-in reporting requirements to match the manufacturer’s production year but includes no new collection of information because the actual reporting requirements are the same as the requirements in the December 2016 final rule.

#### *g. Civil Justice Reform*

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a Federal motor vehicle safety standard only if the

standard is identical to the Federal standard. However, the United States Government, a State, or political subdivision of a State, may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties file suit in court.

#### *h. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://dms.dot.gov>.

#### *i. Environmental Impacts*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. Since this rulemaking action only extends the compliance dates and does not substantive requirements of the standard, the Agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. NHTSA has also determined that the changes in this final rule would not change the findings in the Final Environmental Assessment prepared in connection with the final rule.

#### *J. Executive Order 13609*

The policy statement in section 1 of Executive Order 13609 provides, in part: The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation.

International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In the preamble to the December 2016 final rule NHTSA discussed the reasons for the differences in the regulatory approach taken by foreign governments that have addressed this issue. This interim final rule does not affect those decisions made in the December 2016 final rule. Further, the Agency reiterates that NHTSA's test procedures are not requirements that manufacturers must follow when certifying vehicles to the FMVSS and manufacturers are free to choose whatever certification method they wish as long as the manufacturer can demonstrate a good faith basis for certification.

## VII. Request for Comments

*How long do I have to submit comments?*

We are providing a 15-day comment period.

*How do I prepare and submit comments?*

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at [http://www.bts.gov/programs/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines](http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines).

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512). To facilitate social distancing during COVID-19, NHTSA is temporarily accepting confidential business information electronically. Please see <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> for details.

*Will the agency consider late comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing the follow on action, we will consider that comment as an informal suggestion for future rulemaking action.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

## List of Subjects in 49 CFR Part 571

Motor vehicle safety, reporting and record keeping requirements, tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

- 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

#### Subpart B—Federal Motor Vehicle Safety Standards

- 2. Section 571.141 is amended by revising S9 to read as follows:

#### § 571.141 Standard No. 141; Minimum Sound Requirements for Hybrid and Electric Vehicles.

\* \* \* \* \*

S9 *Phase-in schedule.*

S9.1 *Hybrid and Electric Vehicles manufactured on or after March 1, 2020, and before February 28, 2021.* For hybrid and electric vehicles to which this standard applies manufactured on and after March 1, 2020, and before March 1, 2021, except vehicles produced by small volume manufacturers, the quantity of hybrid and electric vehicles complying with this safety standard shall be not less than 50 percent of one or both of the following:

(a) A manufacturer's average annual production of hybrid and electric vehicles on and after September 1, 2016, and before September 1, 2019;

(b) A manufacturer's total production of hybrid and electric vehicles on and after March 1, 2020, and before March 1, 2021.

S9.2 *Hybrid and Electric Vehicles manufactured on or after March 1, 2021.* All hybrid and electric vehicles to which this standard applies manufactured on or after March 1, 2021, shall comply with this safety standard.

#### **PART 585—PHASE-IN REPORTING REQUIREMENTS**

■ 3. The authority citation for part 585 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

#### **Subpart N—Minimum Sound Requirements for Hybrid and Electric Vehicles Reporting Requirements**

■ 4. Revise § 585.130 to read as follows:

##### **§ 585.130 Applicability.**

This subpart applies to manufacturers of hybrid and electric passenger cars, trucks, buses, multipurpose passenger vehicles, and low-speed vehicles subject to the phase-in requirements of S9.1 Hybrid and Electric Vehicles manufactured on or after March 1, 2020, and before March 1, 2021 (49 CFR 571.141).

■ 5. Revise § 585.132 to read as follows:

##### **§ 585.132 Response to inquiries.**

At any time, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

■ 6. Section 585.133 is amended by revising paragraph (a) to read as follows:

##### **§ 585.133 Reporting requirements.**

(a) *Phase-in reporting requirements.* Within 60 days after February 28, 2021, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141), for its vehicles produced from March 1, 2020 to February 28, 2021. Each report shall provide the information specified in paragraph (b) of this section and in § 585.2.

\* \* \* \* \*

■ 7. Revise § 585.134 to read as follows:

##### **§ 585.134 Records.**

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.133 until December 31, 2025.

James C. Owens,

Deputy Administrator.

[FR Doc. 2020–19334 Filed 8–28–20; 11:15 am]

**BILLING CODE 4910–59–P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[Docket No. FWS–R3–ES–2020–0053; FF09E21000 FXES11110900000 201]

#### **Endangered and Threatened Wildlife and Plants; Determination That Designation of Critical Habitat is Not Prudent for the Rusty Patched Bumble Bee**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of final determination.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for the rusty patched bumble bee (*Bombus affinis*) would be prudent. On January 11, 2017, we published a final rule listing the rusty patched bumble bee as an endangered species under the Endangered Species Act of 1973, as amended (Act). In that final rule, we stated that designation of critical habitat may be prudent, but not determinable. We have now determined that such a designation would not be prudent. The present or threatened destruction, modification, or curtailment of habitat is not the primary threat to the species, and the availability of habitat does not limit the conservation of the rusty patched bumble bee now, nor will it in the future.

**DATES:** The determination announced in this document was made on September 1, 2020.

**ADDRESSES:** This document and the supporting documentation we used in preparing this determination are available on the internet at <http://www.regulations.gov> under Docket No. FWS–R3–ES–2020–0053.

**FOR FURTHER INFORMATION CONTACT:** Sarah Quamme, Field Supervisor, Minnesota-Wisconsin Ecological Services Field Office, U.S. Fish and Wildlife Service, 4101 American Blvd. E, Bloomington, MN 55425; telephone

952–252–0092. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Historically, the rusty patched bumble bee was broadly distributed across the eastern United States and Upper Midwest, from Maine in the United States and southern Quebec and Ontario in Canada, south to the northeast corner of Georgia, reaching west to the eastern edges of North and South Dakota (Service 2016, p. 49). For a thorough review of the life history and ecology of the rusty patched bumble bee, please refer to the species status assessment report (Service 2016).

##### **Previous Federal Actions**

Please refer to the proposed listing rule for the rusty patched bumble bee (81 FR 65324; September 22, 2016) for a detailed description of previous Federal actions concerning this species. On January 11, 2017, we published in the **Federal Register** (82 FR 3186) a final rule listing the rusty patched bumble bee as an endangered species. The rule became effective on March 21, 2017 (82 FR 10285; February 10, 2017). On January 15, 2019, the Natural Resources Defense Council filed a lawsuit against the Service for not publishing a final rule designating critical habitat for the species. Per a September 25, 2019, settlement agreement with the Natural Resources Defense Council, we agreed to submit to the **Federal Register** either a proposed rule designating critical habitat or a final determination that critical habitat designation is not prudent no later than July 31, 2020.

##### **Critical Habitat**

###### *Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied