



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**23 CFR Part 490**

**[Docket No. FHWA-2013-0054]**

**RIN 2125-AF54**

**National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final regulation; announcement of effective date.

**SUMMARY:** This document announces the effective date for specific portions of the National Performance Management measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program Final Rule (PM#3).

**DATES:** The effective date of the amendments to 49 CFR 490.105(c)(5) and (d)(1)(v), 490.107(b)(1)(ii)(H), (b)(2)(ii)(J), (b)(3)(ii)(I), and (c)(4), 490.109(d)(1)(v) and (f)(1)(v), 490.503(a)(2), 490.505 (Definition of Greenhouse gas (GHG)), 490.507(b), 490.509(f), (g) and (h), 490.511(a)(2), (c), (d), and (f), and 490.513(d) published on January 18, 2017, at 82 FR 5970, is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Christopher Richardson, Assistant Chief Counsel for Legislation, Regulations, and General Law, Office of Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC

20590. Telephone: (202) 366-0761. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

Electronic Access and Filing

A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, the Final Rule, and all background material may be viewed online at <http://www.regulations.gov> using the docket numbers listed above. A copy of this document will be placed on the docket. Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at <http://www.ofr.gov> and the Government Publishing Office's Web site at <http://www.gpo.gov>.

**Background**

On May 19, 2017, at 82 FR 22879, FHWA announced that the majority of the PM#3 Final Rule would become effective on May 20, 2017, and that the portions of the PM#3 Final Rule pertaining to the measure on the percent change in CO2 emissions from the reference year 2017, generated by on-road mobile sources on the National Highway System (the GHG) measure would be further suspended pending additional rulemaking.

This document confirms that the following sections of the Final Rule are effective as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]:

1. 23 CFR 490.105(c)(5)
2. 23 CFR 490.105(d)(1)(v)
3. 23 CFR 490.107(b)(1)(ii)(H)

4. 23 CFR 490.107(b)(2)(ii)(J)
5. 23 CFR 490.107(b)(3)(ii)(I)
6. 23 CFR 490.107(c)(4)
7. 23 CFR 490.109(d)(1)(v)
8. 23 CFR 490.109(f)(1)(v)
9. 23 CFR 490.503(a)(2)
10. 23 CFR 490.505 (Definition of *Greenhouse gas (GHG)*)
11. 23 CFR 490.507(b)
12. 23 CFR 490.509(f)
13. 23 CFR 490.509(g)
14. 23 CFR 490.509(h)
15. 23 CFR 490.511(a)(2)
16. 23 CFR 490.511(c)
17. 23 CFR 490.511(d)
18. 23 CFR 490.511(f)
19. 23 CFR 490.513(d).

The FHWA recognizes that there are short timeframes to comply with the October 1, 2018 reporting deadline. However, FHWA expects that the burden to comply with the upcoming reporting deadline will be minimal, consisting mostly of preliminary target-setting activities using existing data sources.

The FHWA has initiated additional rulemaking procedures proposing to repeal the GHG measure (RIN 2125-AF76) and anticipates publishing an NPRM in 2017 with a goal of issuing a Final Rule in Spring 2018.

### **Waiver of Rulemaking**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), FHWA generally offers interested parties the opportunity to comment on proposed regulations and publishes rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or delay effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive these requirements here as unnecessary, because this rule merely ceases the suspension of the Final Rule pending additional rulemaking, as provided for in the May 19, 2017 document at 82 FR 22879, thus putting in effect the requirements of the above-referenced sections of the Final Rule as previously promulgated after notice and comment. The cessation of the suspension is therefore not significant in nature and impact, and does not impose new burdens on State departments of transportation and Metropolitan Planning Organizations.

### **List of Subjects in 23 CFR Part 490**

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: September 22, 2017.

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Brandy L. Hendrickson,  
Acting Administrator,  
Federal Highway Administration.

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