



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA-2017-0025]

RIN 2125-AF76

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: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM follows a series of related rules that established a set of performance measures for State departments of transportation (State DOT) and Metropolitan Planning Organizations (MPO) to use as required by Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation (FAST) Act. In the last of that series of rules, published on January 18, 2017, FHWA established a measure on the percent change in carbon dioxide (CO₂) emissions from the reference year 2017, generated by on-road mobile sources on the National Highway System (NHS) (also referred to as the Greenhouse Gas (GHG) measure). Through this NPRM, FHWA proposes to repeal the GHG measure.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number FHWA-2017-0025 by any one of the following methods:

Fax: 1-202-493-2251;

Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building
Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building
Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590,
between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identifier Number (RIN) for this rulemaking (2125-AF76). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical information: Susanna Hughes Reck, Office of Infrastructure, (202) 366-1548; for legal information: Anne Christenson, Office of Chief Counsel, (202) 366-1356, Federal Highway Administration,

1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the NPRM, all comments received, and all background material may be viewed online at <http://www.regulations.gov>. 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>.

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N. Regulation Identifier Number

I. Executive Summary

A. Purpose of the Regulatory Action

The MAP-21¹ (Pub. L. 112-141) transforms the Federal-aid highway program by establishing new requirements for performance management to ensure the most efficient investment of Federal transportation funds. The FAST Act² (Pub. L. 114-94) continued these requirements. Performance management increases the accountability and transparency of the Federal-aid highway program and provides a framework to support improved investment decisionmaking through a focus on performance outcomes for key national transportation goals.

As part of this mandate, FHWA issued three related national performance management measure rules^{3, 4, 5} that established a set of performance measures for State DOTs and MPOs to use to assess performance. In these rules, FHWA established performance measures in 12 areas⁶ generalized as follows: (1) serious injuries per vehicle

¹ Moving Ahead for Progress in the 21st Century Act (MAP-21): <https://www.gpo.gov/fdsys/pkg/PLAW-112publ141/html/PLAW-112publ141.htm>

² Fixing America's Surface Transportation (FAST) Act: <https://www.gpo.gov/fdsys/pkg/PLAW-114publ94/html/PLAW-114publ94.htm>

³ First performance measure final rule: "National Performance Management Measures: Highway Safety Improvement Program" (RIN 2125-AF49): <https://www.gpo.gov/fdsys/pkg/FR-2016-03-15/pdf/2016-05202.pdf>

⁴ Second performance measure final rule: "National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program" (RIN 2125-AF53): <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00550.pdf>

⁵ Third performance measure final rule: "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" (RIN 2125-AF54): <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00681.pdf>

⁶ These areas are listed within 23 U.S.C. 150(c), which requires the Secretary to establish measures to assess performance or condition.

mile traveled (VMT); (2) fatalities per VMT; (3) number of serious injuries; (4) number of fatalities; (5) pavement condition on the Interstate System; (6) pavement condition on the non-Interstate NHS; (7) bridge condition on the NHS; (8) performance of the Interstate System; (9) performance of the non-Interstate NHS; (10) freight movement on the Interstate System; (11) traffic congestion; and (12) on-road mobile source emissions.

One of the measures FHWA created to assess the performance of the NHS under the National Highway Performance Program (NHPP) is Percent Change in Tailpipe Carbon Dioxide (CO₂) Emissions on the NHS from the Calendar Year 2017 (also referred to as the GHG measure). It was created to advance a policy preference of the prior Administration. It would be calculated using data on fuel use and VMT. The FHWA received a high volume of comments both in support of and opposed to this measure in response to the third NPRM. This measure became effective on DATE, 2017, at 82 FR CITE. After further consideration and review of DOT policy, as well as the statutory provisions, the DOT is proposing to repeal the requirement. This rulemaking provides additional opportunity for public comment and submission of information that will aid FHWA in making this determination.

B. Costs

As part of the rulemaking that was finalized in January 2017, FHWA estimated the incremental costs associated with the new requirements for a GHG Measure that represented a change to current practices of DOT, State DOTs, and MPOs. The FHWA derived the costs of the new requirements by assessing the additional capital needed and the expected increase in the level of labor effort for FHWA, State DOTs, and MPOs to calculate the measure and establish and report GHG measure targets. To develop this

estimate, FHWA sought opinions from subject matter experts (SME). Cost estimates were developed based on information received from SMEs. To estimate costs, FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate that varied by the type of laborer needed to perform the activity. Where necessary, capital costs were also included. The 9-year cost discounted at 7 percent to comply with the GHG measure discussed in this document is \$11.0 million. By proposing to remove the GHG measure in this rulemaking, FHWA is proposing a deregulatory action that may result in cost-savings of \$11.0 million discounted at 7 percent over 9 years.

Table X displays the Office of Management and Budget (OMB) A-4 Accounting statement as a summary of the cost savings associated with repealing the GHG measure.

Table X – OMB A-4 Accounting Statement

Category	Estimates			Units			Source / Citation
	Primary	Low	High	Year Dollar	Discount Rate	Period Covered	
Benefits							
Annualized Monetized (\$ millions/year)	None	None	None	NA	7%	NA	Not Quantified
	None	None	None	NA	3%	NA	
Annualized Quantified	None	None	None	NA	7%	NA	Not Quantified
	None	None	None	NA	3%	NA	
Qualitative	More informed decisionmaking on project, program, and policy choices.						NPRM RIA
Costs							
Annualized Monetized (\$/year)	-\$1,682,339			2014	7%	9 Years	NPRM RIA
	-\$1,655,267			2014	3%	9 Years	
Annualized Quantified	None	None	None	2014	7%	9 Years	NPRM RIA

Category	Estimates			Units			Source / Citation
	Primary	Low	High	Year Dollar	Discount Rate	Period Covered	
	None	None	None	2014	3%	9 Years	
Qualitative							
Transfers	None						
From/To	From:			To:			
Effects							
State, Local, and/or Tribal Government	-\$1,682,339			2014	7%	9 Years	NPRM RIA
	-\$1,655,267			2014	3%	9 Years	
Small Business	Not expected to have a significant impact on a substantial number of small entities.			NA	NA	NA	NPRM RIA

II. Acronyms and Abbreviations

Acronym or Abbreviation	Term
APA	Administrative Procedure Act
CFR	Code of Federal Regulations
CH ₄	Methane
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CO ₂	Carbon dioxide
DOT	U.S. Department of Transportation
EO	Executive Order
EERPAT	Energy and Emissions Reduction Policy Analysis Tool
EIA	Energy Information Agency, U.S. Department of Energy
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FR	Federal Register
GHG	Greenhouse gas
HPMS	Highway Performance Monitoring System
HFCs	Hydrofluorocarbons
MAP-21	Moving Ahead for Progress in the 21st Century Act
MOVES	Motor Vehicle Emission Simulator
MPO	Metropolitan Planning Organizations
N ₂ O	Nitrous oxide

Acronym or Abbreviation	Term
NHPP	National Highway Performance Program
NHS	National Highway System
NPRM	Notice of proposed rulemaking
NPMRDS	National Performance Management Research Data Set
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act of 1995
RIA	Regulatory Impact Analysis
RIN	Regulatory Identification Number
SMEs	Subject Matter Experts
State DOTs	State departments of transportation
U.S.C.	United States Code
VMT	Vehicle miles traveled

III. Background

The third performance measure NPRM was published on April 22, 2016 (81 FR 238060).⁷ The third performance measure NPRM proposed a set of national measures for State DOTs to use to assess the performance of the Interstate and non-Interstate NHS to carry out the NHPP; to assess freight movement on the Interstate System; and to assess traffic congestion and on-road mobile source emissions for the purpose of carrying out the CMAQ Program.

In the preamble to the third performance measure NPRM, FHWA sought public comment on whether and how to establish a CO₂ emissions measure in the final rule. The FHWA asked a series of questions regarding the design and implementation of a GHG measure and whether one should be established.

The FHWA received thousands of comments on whether to establish such a measure and how a measure should be designed and implemented. Supporting comments

⁷ Third performance measure NPRM: “Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program” (RIN 2125-AF54): <https://www.gpo.gov/fdsys/pkg/FR-2016-04-22/pdf/2016-08014.pdf>

came from 9 State DOTs, 24 MPOs, 19 U.S. Senators, 48 Members of the U.S. House of Representatives, over 100 cities, numerous local officials, over 100 businesses, 91,695 citizens, and over 100 public interest, non-profit and advocacy organizations. Some State DOTs and MPOs already use GHG emissions as a performance measure.

Comments against a GHG measure were submitted by 10 State DOTs, 2 MPOs, 5 U.S. Senators, 31 Members of the U.S. House of Representatives, and 27 transportation and infrastructure industry associations. In addition, nine State DOTs and three industry associations requested that FHWA not establish any performance measures not explicitly authorized in legislation, because GHG is not identified in the legislation.

Several of the commenters in both groups addressed whether FHWA has the legal authority to establish a GHG measure and whether such measure could be established in this rulemaking.

The FHWA published the third performance measure final rule on January 18, 2017, at 82 FR 5971.⁸ The GHG policy established in the final rule was the measure discussed in the third performance measure NPRM: total annual tons of CO₂ emissions from all on-road mobile sources. The rule requires State DOTs to calculate the measure by multiplying motor fuel sales volumes by emissions factors of CO₂ per gallon of fuel and percentage VMT on the NHS. A metropolitan planning areawide GHG metric may be: (1) a share of the State's (or States') VMT as a proxy for that metropolitan planning area share of CO₂ emissions; (2) VMT estimates along with MOVES⁹ emissions factors;

⁸ <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00681.pdf>

⁹ EPA's Motor Vehicle Emissions Simulator (MOVES): <https://www.epa.gov/moves>

(3) FHWA's Energy and Emissions Reduction Policy Analysis Tool (EERPAT) model;¹⁰ or (4) other method the MPO can demonstrate has valid and useful results for CO₂ measurement.

On January 30, 2017, President Donald J. Trump issued Executive Order 13771, entitled, "Reducing Regulation and Controlling Regulatory Costs,"¹¹ which required Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. Additionally, on February 24, 2017, the President issued Executive Order 13777, entitled, "Enforcing the Regulatory Reform Agenda,"¹² which required Federal agencies to designate a Regulatory Reform Office and a Regulatory Reform Task Force charged with reviewing agency regulations. Furthermore, the Administration is considering a number of policy changes with respect to climate change. For example, the Administration has announced its intent to withdraw from the Paris Accords. Pursuant to Executive Order 13771 and 13777, the DOT commenced a review of existing and pending regulations, which included the third performance measure final rule, to determine whether changes would be appropriate to eliminate duplicative regulations and streamline regulatory processes. Based upon this review, DOT identified the GHG measure of the third performance measure final rule as being potentially duplicative of existing efforts in some States, and burdensome. Also, the

¹⁰ FHWA's Energy and Emissions Reduction Policy Analysis Tool (EERPAT)
https://www.planning.dot.gov/FHWA_tool/default.aspx

¹¹ 82 FR 9339, February 3, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>

¹² 82 FR 10691, February 14, 2017. <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>

performance management statute (23 U.S.C. 150) does not explicitly require a GHG measure. For these reasons, this NPRM proposes to repeal the GHG measure.

This rulemaking proposes to repeal the GHG measure, while seeking additional public comment on whether to retain, or revise the GHG measure established in the third performance measure final rule. This rulemaking seeks additional information that may not have been available to the Agency during the development of the final rule.

Additional information will aid FHWA in determining whether the measure should be repealed, retained, or revised.

During the first public comment period, several commenters argued that, should FHWA decide to establish a GHG measure, it should do so through a separate rulemaking. They claimed that the third performance measure NPRM did not provide sufficient detail about the type of measure FHWA might adopt for them to comment on the issue meaningfully. The FHWA believes that sufficient notice was provided in the third performance measure NPRM under the Administrative Procedure Act (APA); however, we are mindful that the third performance measure NPRM did not include proposed regulatory text for the GHG measure. Although the APA does not require proposed regulatory text to be included in the third performance measure NPRM, FHWA acknowledges that the GHG measure was presented differently than the other measures in that it was discussed in the preamble using a series of questions to limit the scope of the proposal. Some commenters stated that they found it difficult to formulate meaningful comments using this approach alone.

In the third performance measure final rule preamble, FHWA recognized that the GHG measure chosen—the percent change in tailpipe CO₂ emissions on the NHS

compared to the Calendar Year 2017 level—is imperfect. It is measured by calculating fuel sales and multiplying the associated CO₂ emissions by the proportion of VMT that takes place on the NHS. As noted in the final rule preamble, this methodology is not a perfect proxy, as speeds, operating conditions, and vehicle types on the NHS differ from those that are on other roads and differ between States. The FHWA indicated that the methodology adopted was a balance between the competing goals of simplicity and precision. We request comments on whether the lack of precision in the methodology markedly impedes the ability of State DOTs and MPOs to use the measure and associated targets in evaluating system performance and making investment decisions.

The FHWA is interested in whether data are available to more directly measure GHG emissions effects of NHS projects undertaken by States or MPOs. The FHWA is responsible for establishing the data elements that are necessary to collect and maintain the standardized data to carry out a performance-based approach under 23 U.S.C. 150(c)(3)(A)(iv). We request comments on whether the data used to calculate the measure is precise enough to meet these goals. Please identify any information that may mitigate some of the limitations of the proposed GHG measure.

In addition, commenters are encouraged to provide information regarding whether the measure, including the methodology adopted in the final rule, provides meaningful utility for assessment of environmental performance of the NHS by States and MPOs. Please provide any information or data that would justify the utility of the measure relative to the increased burden to the States and MPO's reporting this information.

Finally, FHWA also requests input from States and MPOs on the potential costs imposed by the addition of this measure in the third performance measure final rule.

Because a GHG measure was not proposed in the NPRM, the costs were not presented in that economic analysis. The FHWA did provide an assessment of the benefits and costs of all the measures in the final rule. As part of this rulemaking, FHWA is analyzing the costs associated solely with the GHG measure, and the attendant savings that would result from its repeal. The FHWA requests data from States and MPOs on the costs imposed due solely to the addition of this measure. Given that several States are already conducting efforts in this area, FHWA requests information on whether the GHG measure is a duplicative requirement and whether FHWA's estimate of the cost savings associated with a repeal of the GHG measure are accurate. Additionally, FHWA requests information from States not currently conducting similar efforts on the burdens this measure would impose.

Further, in the final rule, the GHG measure was adopted under 23 U.S.C. 150(c)(3) (NHPP) and not 23 U.S.C. 150(c)(5) (CMAQ). As the measure is under the NHPP program, State DOTs are subject to a significant progress determination if they fail to achieve their targets and, if they fail to make significant progress, additional reporting requirements. Because of these potential burdens, FHWA requests comments on any costs to States associated with the NHPP significant progress determination for the GHG measure.¹³

¹³ 23 CFR 490.109

IV. Rulemaking Analyses and Notices

A. Rulemaking Analysis and Notices Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order (EO) 12866 and within the meaning of DOT regulatory policies and procedures due to the significant public interest in regulations related to performance management. It is anticipated that the economic impact of this rulemaking will not be economically significant within the meaning of EO 12866 as discussed below. This action complies with EOs 12866, 13563, and 13771 to improve regulation. This action is considered significant because of widespread public interest in the transformation of the Federal-aid highway program to be performance-based, although it is not economically significant within the meaning of EO 12866.

The FHWA considers this proposed rule to be an EO 13771 deregulatory action, resulting in \$11.0 million in cost-savings discounted at 7 percent over 9 years. Details on the estimated cost savings of this proposed rule are presented in the RIA (or regulatory impact analysis), which may be accessed from the docket (docket number FHWA– 2013-0054). The RIA evaluates the economic impact, in terms of costs and benefits, on Federal, State, and local governments, as well as private entities regulated under this action, as required by EO 12866 and EO 13563. However, the RIA does not attempt to quantify any changes from improved decisionmaking that would result in benefits if the GHG measure requirement were retained.

Estimated Cost Savings of Repealing the GHG Measure

To estimate cost savings from repealing the GHG measure, FHWA assessed the level of effort, expressed in labor hours and categories, and the capital needed to comply with the requirement as provided in the third performance management final rule. Level of effort by labor category is monetized with loaded wage rates to estimate total costs.

Table X displays the total cost for the GHG measure for the 9-year study period (2018–2026). The FHWA chose an 9-year analysis period and displayed the values in 2014 dollars in order to correlate the values presented in this NPRM with those presented in the third performance measure final rule. Total costs are estimated to be \$10,960,828 discounted at 7 percent, and \$12,888,091 discounted at 3 percent.

Table X: Total Cost Savings from repealing the GHG Measure

Cost Components	9-Year Total Cost		Annualized Cost	
	7%	3%	7%	3%
Section 490.105 - 490.109 - Reporting Requirements	\$9,090,263	\$10,652,791	\$1,395,232	\$1,368,179
Establish and Update Performance Targets	\$6,368,958	\$7,392,818	\$977,549	\$949,488
Reporting on Performance Targets				
Progress	\$2,573,869	\$3,068,421	\$395,054	\$394,089
Assess Significant Progress Toward Achieving Performance Targets	\$147,435	\$191,552	\$22,629	\$24,602
Section 490.511 - Calculation of System Performance Metrics	\$1,821,862	\$2,177,239	\$279,631	\$279,631
Calculate Annual Total Tailpipe CO₂	\$1,821,862	\$2,177,239	\$279,631	\$279,631

Cost Components	9-Year		Annualized Cost	
	Total Cost			
	7%	3%	7%	3%
Emissions				
Section 490.513 - Calculation of System				
Performance Measures	\$48,703	\$58,061	\$7,475	\$7,457
Calculate % Change in Tailpipe CO ₂ Emissions the NHS Compared to the Calendar Year 2017 Level Perf. Measure	\$48,703	\$58,061	\$7,475	\$7,457
Total Cost of Final Rule	\$10,960,828	\$12,888,091	\$1,682,339	\$1,655,267

This action complies with the principles of E.O. 13563. After evaluating the costs and benefits of the rule, FHWA believes that the cost savings from this rulemaking would exceed the foregone benefits. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. The rule addresses the obligation of Federal funds to State DOTs for Federal-aid highway projects. The rule affects two types of entities: State governments and MPOs. State governments do not meet the definition of a small entity under 5 U.S.C. 601, which have a population of less than 50,000.

The MPOs are considered governmental jurisdictions, and to qualify as a small entity they would need to serve less than 50,000 people. The MPOs serve urbanized areas with populations of 50,000 or more. As discussed in the RIA, the rule is expected to impose costs on MPOs that serve populations exceeding 200,000. Therefore, the MPOs that incur economic impacts under this rule do not meet the definition of a small entity.

I hereby certify that this regulatory action would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The FHWA has determined that this action does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of \$151 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

D. Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this action in accordance with the principles and criteria contained in EO 13132. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

E. Executive Order 12372 (Intergovernmental Review)

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

F. Paperwork Reduction Act

Under the PRA (44 U.S.C. 3501, et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this action under the PRA and has determined that this rulemaking does not contain collection of information requirements for the purposes of the PRA. If finalized, this proposal would reduce PRA burdens associated with this measure.

G. National Environmental Policy Act

The FHWA has analyzed this action for the purpose of NEPA, as amended (42 U.S.C. 4321 et seq.), and has determined that this action would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

H. Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this action under EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not

anticipate that this action would affect a taking of private property or otherwise have taking implications under EO 12630.

I. Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of EO 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Executive Order 13045 (Protection of Children)

We have analyzed this rule under EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

K. Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under EO 13175, dated November 6, 2000, and believes that the action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The rulemaking addresses obligations of Federal funds to State DOTs for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

L. Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

M. Executive Order 12898 (Environmental Justice)

The EO 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

N. Regulation Identifier Number

An RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Reporting and recordkeeping requirements.

Issued in Washington, DC on September 29, 2017 under authority delegated in 49 CFR 1.85
Brandye L. Hendrickson,
Acting Administrator,
Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend 23 CFR part 490 to read as follows:

PART 490 – NATIONAL PERFORMANCE MANAGEMENT MEASURES

1. The authority citation for part 490 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 148(i), and 150; 49 CFR 1.85.

Subpart A—General Information

§ 490.105 [Amended].

2. Amend § 490.105 by removing and reserving paragraphs (c)(5) and (d)(1)(v).

§ 490.107 [Amended].

3. Amend § 490.107 by removing and reserving paragraphs (b)(1)(ii)(H), (b)(2)(ii)(J), (b)(3)(ii)(I), and (c)(4).

4. Amend §490.109 by removing and reserving paragraphs (d)(1)(v) and (f)(1)(v) and revising paragraph (d)(1)(vi) to read as follows:

§ 490.109 Assessing significant progress toward achieving the performance targets for the National Highway Performance Program and the National Highway Freight Program.

* * * * *

(d) * * * (1) ***

(vi) Baseline condition/performance data contained in HPMS and NBI of the year in which the Baseline Period Performance Report is due to FHWA that represents baseline conditions/performances for the performance period for the measures in §§ 490.105(c)(1) through (4).

* * * * *

Subpart E - National Performance Management Measures to Assess Performance of the National Highway System

§490.503 [Amended].

5. Amend §490.503 by removing and reserving paragraph (a)(2).

§490.505 [Amended].

6. Amend §490.505 by removing the definition for “Greenhouse gas (GHG).”

§490.507 [Amended].

7. Amend §490.507 by removing and reserving paragraph (b).

§490.509 [Amended].

8. Amend §490.509 by removing paragraphs (f) – (h).

§490.511 [Amended].

9. Amend §490.511 by removing and reserving paragraphs (a)(2), (c), (d), and (f).

§490.513 [Amended].

10. Amend §490.513 by removing paragraph (d).

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