

person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

#### Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Modifying Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (reduced from a 7-mile radius) of Fort Scott Municipal Airport, Fort Scott, KS; removing the Fort Scott NDB from the legal description; and removing the extension north of the NDB; and

Modifying Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (reduced from a 7.6-mile radius) of Phillipsburg Municipal Airport, Phillipsburg, KS; removing the Phillipsburg NDB from the legal description; and removing the extension southeast of the NDB.

Airspace reconfiguration is necessary due to the decommissioning of the Fort Scott NDB and the Phillipsburg NDB, the cancellation of the associated instrument approach procedures, and to bring the airspace in compliance with FAA Order 7400.2L, Procedures for Handling Airspace Matters. Controlled airspace is necessary for the safety and management of standard instrument approach procedures for IFR operations at these airports.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### **§ 71.1 [Amended]**

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

**ACE KS E5 Fort Scott, KS [Amended]**  
Fort Scott Municipal Airport, KS

(Lat. 37°47'54" N., long. 94°46'10" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fort Scott Municipal Airport.

\* \* \* \* \*

#### **ACE KS E5 Phillipsburg, KS [Amended]**

Phillipsburg Municipal Airport, KS  
(Lat. 39°44'09" N., long. 99°19'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Phillipsburg Municipal Airport.

Issued in Fort Worth, Texas, on September 27, 2017.

**Wayne Eckenrode,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

[FR Doc. 2017–21362 Filed 10–4–17; 8:45 am]

**BILLING CODE 4910–13–P**

## 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 (CO<sub>2</sub>) 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 November 6, 2017. 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://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 20590, 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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#### I. Executive Summary

##### A. Purpose of the Regulatory Action

The MAP-21<sup>1</sup> (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 Act<sup>2</sup> (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<sup>3 4 5</sup> that

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

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

<sup>3</sup> First performance measure final rule: "National Performance Management Measures: Highway Safety Improvement Program" (RIN 2125-AF49):

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 areas<sup>6</sup> generalized as follows: (1) Serious injuries per vehicle 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 (CO<sub>2</sub>) 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

<https://www.gpo.gov/fdsys/pkg/FR-2016-03-15/pdf/2016-05202.pdf>.

<sup>4</sup> 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>.

<sup>5</sup> 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>.

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

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 (years)	
<b>Benefits</b>							
Annualized Monetized (\$ millions/year).	None .....	None .....	None .....	NA	7	NA	Not Quantified.
Annualized Quantified .....	None .....	None .....	None .....	NA	3	NA	Not Quantified.
	None .....	None .....	None .....	NA	7	NA	
	None .....	None .....	None .....	NA	3	NA	
Qualitative .....	More informed decisionmaking on project, program, and policy choices.						NPRM RIA.
<b>Costs</b>							
Annualized Monetized (\$/year) .....	-\$1,682,339 .....	.....	.....	2014	7	9	NPRM RIA.
	-\$1,655,267 .....	.....	.....	2014	3	9	
Annualized Quantified .....	None .....	None .....	None .....	2014	7	9	NPRM RIA.
	None .....	None .....	None .....	2014	3	9	
Qualitative							
<b>Transfers</b>	None						
From/To	From:			To:			
<b>Effects</b>							
State, Local, and/or Tribal Government.	-\$1,682,339 .....	.....	.....	2014	7	9	NPRM RIA.
	-\$1,655,267 .....	.....	.....	2014	3	9	
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	Acronym or abbreviation	Term
APA .....	Administrative Procedure Act.	HPMS .....	Highway Performance Monitoring System.
CFR .....	Code of Federal Regulations.	HFCs .....	Hydrofluorocarbons.
CH <sub>4</sub> .....	Methane.	MAP-21 .....	Moving Ahead for Progress in the 21st Century Act.
CMAQ .....	Congestion Mitigation and Air Quality Improvement Program.	MOVES .....	Motor Vehicle Emission Simulator.
CO <sub>2</sub> .....	Carbon dioxide.	MPO .....	Metropolitan Planning Organizations.
DOT .....	U.S. Department of Transportation.	N <sub>2</sub> O .....	Nitrous oxide.
EO .....	Executive Order.	NHPP .....	National Highway Performance Program.
EERPAT .....	Energy and Emissions Reduction Policy Analysis Tool.	NHS .....	National Highway System.
EIA .....	Energy Information Agency, U.S. Department of Energy.	NPRM .....	Notice of proposed rulemaking.
FAST Act .....	Fixing America's Surface Transportation Act.	NPMRDS .....	National Performance Management Research Data Set.
FHWA .....	Federal Highway Administration.	OMB .....	Office of Management and Budget.
FR .....	Federal Register.	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).<sup>7</sup> The third performance

<sup>7</sup> Third performance measure NPRM: "Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and

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 CO<sub>2</sub> 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 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.<sup>8</sup> The GHG policy established in the final rule was the measure discussed in the third performance measure NPRM: total annual tons of CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> emissions; (2) VMT estimates along with MOVES<sup>9</sup> emissions factors; (3) FHWA's Energy and Emissions Reduction Policy Analysis Tool (EERPAT) model;<sup>10</sup> or (4) other method the MPO can demonstrate has valid and useful results for CO<sub>2</sub> measurement.

On January 30, 2017, President Donald J. Trump issued Executive Order 13771, entitled, "Reducing Regulation and Controlling Regulatory Costs,"<sup>11</sup> 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,"<sup>12</sup> 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 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 CO<sub>2</sub> emissions on the NHS compared to the Calendar Year 2017 level—is imperfect. It is measured by calculating fuel sales and multiplying the associated CO<sub>2</sub> 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

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

<sup>10</sup> FHWA's Energy and Emissions Reduction Policy Analysis Tool (EERPAT) [https://www.planning.dot.gov/FHWA\\_tool/default.aspx](https://www.planning.dot.gov/FHWA_tool/default.aspx).

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

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

Congestion Mitigation and Air Quality Improvement Program" (RIN 2125-AF54): <https://www.gpo.gov/fdsys/pkg/FR-2016-04-22/pdf/2016-08014.pdf>.

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

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 MPOs 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.<sup>13</sup>

**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 (E.O.) 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 E.O. 12866 as discussed below. This action complies with E.O.s 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 E.O. 12866.

The FHWA considers this proposed rule to be an E.O. 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 E.O. 12866 and E.O. 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 CO <sub>2</sub> Emissions .....	1,821,862	2,177,239	279,631	279,631
Section 490.513—Calculation of System Performance Measures .....	48,703	58,061	7,475	7,457
Calculate % Change in Tailpipe CO <sub>2</sub> Emissions the NHS Compared to the Calendar Year 2017 Level Perf. Measure .....	48,703	58,061	7,475	7,457
<b>Total Cost of Final Rule .....</b>	<b>10,960,828</b>	<b>12,888,091</b>	<b>1,682,339</b>	<b>1,655,267</b>

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

<sup>13</sup> 23 CFR 490.109.

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 E.O. 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 E.O. 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 E.O. 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 E.O. 12630.

#### *I. Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 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 E.O. 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 E.O. 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 E.O. 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 E.O. 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).

[FR Doc. 2017–21442 Filed 10–4–17; 8:45 am]

**BILLING CODE 4910–22–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R07–OAR–2017–0386; FRL–9968–75–Region 7]

**Approval of Nebraska Air Quality Implementation Plans; Adoption of a New Chapter Under the Nebraska Administrative Code**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the state of Nebraska on November 14, 2011. Nebraska is adding a new chapter titled “Visibility Protection” which provides Nebraska authority to implement Federal regulations relating to Regional Haze and Best Available Retrofit Technology (BART). The chapter incorporates by reference EPA’s Guidelines for BART Determinations under the Regional Haze Rule. The revision to the SIP meets the visibility component of the Clean Air Act (CAA).  
**DATES:** Comments on this proposed action must be received in writing by November 6, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0386, to <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7391, or by email at [crable.gregory@epa.gov](mailto:crable.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document proposes to take action to add chapter 43, “Visibility Protection”. We have published a direct final rule approving the State’s SIP revision in the “Rules and Regulations” section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2017.

**Cathy Stepp,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 2017–21381 Filed 10–4–17; 8:45 am]

**BILLING CODE 6560–50–P**