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## DEPARTMENT OF TRANSPORTATION

### 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; delay of effective date.

**SUMMARY:** This document announces the indefinite delay of 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) (RIN 2125–AF54) and announces the initiation of additional regulatory proceedings for those portions.

**DATES:** Effective May 19, 2017, 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 delayed indefinitely. FHWA will publish a document in the **Federal Register** announcing the new effective date. The remainder of the provisions of the Final Rule published on January 18, 2017, at 82 FR 5970, and not otherwise specified in this document, will take effect on May 20, 2017.

#### 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 January 20, 2017, the Assistant to the President and Chief of Staff issued a memorandum entitled, "Regulatory Freeze Pending Review." This memorandum directed heads of executive departments and agencies to take certain steps to ensure that the President's appointees and designees have the opportunity to review new and pending regulations. It instructed agencies to temporarily postpone the effective dates of regulations that had been published in the **Federal Register** but were not yet effective until 60 days after the date of the memorandum (January 20, 2017). In accordance with that directive, FHWA announced on February 13, 2017, at 82 FR 10441 that it would delay the effective date of the PM#3 Final Rule to March 21, 2017. On March 21, 2017, at 82 FR 14438, FHWA further delayed the effective date to May 20, 2017.

This document confirms that the majority of the PM#3 Final Rule will become effective on May 20, 2017. After further consideration, FHWA has also determined that the portions of the PM#3 Final Rule pertaining to the

measure on the percent change in CO<sub>2</sub> emissions from the reference year 2017, generated by on-road mobile sources on the National Highway System (the GHG measure) would benefit from further notice and comment procedures under the Administrative Procedure Act (APA). As such, this document delays the effective date for these provisions and announces that FHWA will be publishing an NPRM in the **Federal Register** in the coming weeks pertaining to the GHG measure. The effective date is delayed until such rulemaking on the GHG measure is completed.

Specifically, FHWA is delaying the effective date indefinitely for the following sections of the Final Rule:

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).

#### Waiver of Rulemaking and Delayed Effective Date

Under section 5 U.S.C. 553(b) of the APA, FHWA generally offers interested parties the opportunity to comment on proposed regulations. Under section 553(d) of the APA, FHWA ordinarily 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 provide a delay in effective date for the provisions of a rule 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)).

Good cause exists to suspend the effective date of the GHG measure without notice and comment. Given the imminence of the effective date of the PM#3 Final Rule, seeking prior public

comment on this delay of the GHG measure would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The President's appointees and designees need to further delay the effective date of the sections of the PM#3 Final Rule pertaining to the GHG measure to have adequate time to review them, and neither the notice and comment process nor a 30 day delay in effective date could be implemented in time to allow for this review. Additionally, the public will have the opportunity to provide additional comments on the GHG measure in the near future.

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

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

Issued on: May 15, 2017.

**Walter C. Waidelich, Jr.,**

*Acting Deputy Administrator, Federal Highway Administration.*

[FR Doc. 2017-10092 Filed 5-18-17; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2017-0131]

RIN 1625-AA08

#### **Safety Zone; Space Coast Super Boat Grand Prix; Atlantic Ocean, Cocoa Beach, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Ocean offshore from Cocoa Beach, FL during the Space Coast Super Boat Grand Prix, a series of high-speed boat races. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the general public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative.

**DATES:** This rule is effective from 10 a.m. until 5 p.m. on May 21, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being

available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0131 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714-7616, email [Allan.H.Storm@uscg.mil](mailto:Allan.H.Storm@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

COTP Captain of the Port  
 CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 E.O. Executive order  
 FR Federal Register  
 NPRM Notice of proposed rulemaking  
 Pub. L. Public Law  
 § Section  
 U.S.C. United States Code

##### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time remains to publish an NPRM and to receive public comments, as the Space Coast Super Boat Grand Prix event will occur before the rulemaking process would be completed. Because of the dangers associated with high speed boat races, the safety zone is necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**.

##### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The purpose of the rule is to ensure the safety of the event participants, the general public, vessels and the

navigable waters of the Atlantic Ocean in the vicinity of Cocoa Beach, Florida during the Space Coast Super Boat Grand Prix race event.

##### **IV. Discussion of the Rule**

This rule establishes a safety zone on certain navigable waters of the Atlantic Ocean in the vicinity of Cocoa Beach, Florida during the Space Coast Super Boat Grand Prix race event. The safety zone will cover an offshore area approximately two and a half nautical miles long by one-half nautical mile wide. The races are scheduled to take place from 10 a.m. to 5 p.m. on May 21, 2017. Approximately 30 high-speed race boats are anticipated to participate in the races. No person or non-participant vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the Captain of the Port Jacksonville or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and/or by on-scene designated representatives.

##### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

###### *A. Regulatory Planning and Review*

E.O.s 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be