

outcome of the scoping process. Coordination has been initiated and will continue with appropriate Federal, State, and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2003-15642]

Safety Auditor Certification; Extension of Statutory Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of extension of statutory compliance date.

SUMMARY: The FMCSA is required by law to ensure that all safety audits or compliance reviews of motor carriers conducted after December 31, 2002 be conducted by duly certified personnel. The Secretary of Transportation is authorized to extend this deadline until December 31, 2003 by notifying Congress that implementation of this requirement cannot be achieved by the initial deadline, and stating the reasons. By this document the FMCSA is notifying the public that on July 17, 2003 the Secretary of Transportation gave notice to Congress that he is extending the deadline to December 31, 2003. The extension is necessary because of a recent Federal court decision that set aside the FMCSA rule establishing procedures for certifying personnel to conduct safety reviews.

DATES: The Secretary of Transportation has extended the statutory deadline for

49 U.S.C. 31148(b) until December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Jr., Office of Bus & Truck Standards and Operations, (202) 366-4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Pub. L. 106-159). Section 210 of MCSIA requires that all new entrant motor carriers, both foreign and domestic, receive safety audits within 18 months of commencing operations in interstate or foreign commerce. Section 211 of MCSIA requires the Secretary of Transportation to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors to conduct safety inspection audits and reviews. The legislation also gives the Secretary oversight responsibility for these motor carrier auditors and investigators, including the authority to decertify them.

As enacted by section 211(a), 49 U.S.C. 31148(b) and (c) read as follows:

(b) CERTIFIED INSPECTION AUDIT REQUIREMENT.—Not later than one year after completion of the Rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 313, or 315 of this title and performed after December 31, 2002, shall be conducted by—

(1) a motor carrier safety auditor certified under subsection (a); or

(2) a Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

(c) EXTENSION.—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

On March 19, 2002, the FMCSA published an Interim Final Rule implementing section 211 (the auditor certification rule) by establishing three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside inspections (67 FR 12776). This rule

was primarily designed to respond to the increase in audits necessitated by the new entrant requirements of Section 210 of MCSIA. However, publication of the rule was one of several conditions imposed in the 2002 DOT Appropriations Act (Pub. L. 107-87), which had to be met before FMCSA could begin processing applications to allow Mexico-domiciled motor carriers to operate in the United States beyond the commercial zones along the United States-Mexico border in accordance with the North American Free Trade Agreement (NAFTA). Another condition imposed by the Appropriations Act was FMCSA publication of a rule implementing section 210 of MCSIA. An Interim Final Rule establishing procedures for increasing FMCSA's safety scrutiny of new entrant motor carriers, including standards and procedures regarding the safety audits mandated by section 210, was published on May 13, 2002 (67 FR 31978) and became effective on January 1, 2003.

FMCSA hired and trained over 200 people to perform compliance reviews, safety audits, and vehicle inspections. However, most audits of new entrant motor carriers are to be undertaken by State employees under the Motor Carrier Safety Assistance Program (MCSAP).

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the auditor certification rule and two other FMCSA rules which established application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate in the United States. The Court's ruling was based on its conclusion that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. *Public Citizen v. Dept. of Transportation*, 316 F.3d 1002. The Department of Transportation filed a petition for rehearing with the Ninth Circuit, but this petition was denied on April 10, 2003. Consequently, the Court's mandate setting aside the three rules took effect on April 18, 2003.

As noted above, section 210 of the MCSIA requires that all new entrant motor carriers, both foreign and domestic, receive safety audits within 18 months of commencing operations in interstate or foreign commerce. As a result of the Ninth Circuit decision in *Public Citizen*, FMCSA and its State partners will not be able to hire and train additional personnel to conduct motor carrier safety audits, reviews or inspections, thereby impairing their ability to comply with the statutory mandate regarding new entrant motor carriers. The consequent reduction of