

on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that he had extended the compliance deadline to December 31, 2003. FMCSA notified the public of this extension (68 FR 44378, Jul. 28, 2003).

As required by Sec. 211, the agency published an interim final rule, *Certification of Safety Auditors, Safety Investigators, and Safety Inspectors*, establishing procedures to certify and maintain certification for safety auditors, inspectors, and investigators (67 FR 12776, Mar. 19, 2002). This rule amends 49 CFR parts 350 and 385 to provide for three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside vehicle and driver inspections. FMCSA determined the Certification rule was not subject to environmental analysis due to a categorical exclusion from statutory requirements. The rule took effect on July 17, 2002.

The 2002 DOT Appropriations Act (Pub. L. 107–87) stipulated that FMCSA could not begin processing applications to allow Mexico-domiciled motor carriers to operate in the United States beyond the border commercial zones in accordance with the North American Free Trade Agreement (NAFTA) until FMCSA published, among other things, a number of regulations including the Certification rule (a condition again imposed in the 2003 Appropriations Act). Another precondition for processing such applications was publication of a rule implementing Sec. 210 of the MCSIA. An interim final rule, *New Entrant Safety Assurance Process* (New Entrant rule) establishing procedures to heighten the agency's safety scrutiny of new entrant motor carriers, including standards and procedures regarding the safety audits mandated by Sec. 210, was published on May 13, 2002 (67 FR 31978, May 13, 2002) and became effective on January 1, 2003.

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the Certification rule and two other FMCSA rules that established application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate in the United States. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. *Public Citizen v. DOT*, 316 F.3d 1002 (9th Cir. 2003). Specifically with respect to the Certification rule, the court determined that because the rule

did not fall within any of the existing DOT categorical exclusions, FMCSA acted arbitrarily and capriciously by failing to at least conduct an Environmental Assessment (EA) of the rule. DOT's petition for rehearing was denied on April 10, 2003. Consequently, the court's mandate setting aside the three rules took effect on April 18, 2003. On September 8, 2003, the United States sought Supreme Court review of the Ninth Circuit decision as to the application and safety monitoring rules, but not the Certification rule.

On August 26, 2003, FMCSA issued a notice to advise the public that a Programmatic Environmental Impact Statement (PEIS) will be prepared pursuant to NEPA and a General Conformity Evaluation will be made pursuant to the Clean Air Act before promulgating the regulations establishing the application and safety monitoring procedures for Mexico-domiciled carriers (68 FR 51322). The Notice stated that FMCSA was preparing an EA for the Certification rule and that a supplemental Notice of Intent would be issued if, based on the EA, FMCSA determined that preparation of a PEIS is required.

#### Summary of Environmental Assessment

FMCSA limited its analysis to those environmental resources—land use, traffic and congestion, air quality, noise, and public safety and health—that could be affected by implementation of the safety auditor certification procedures. The certification process preserves and formalizes training requirements and practices that have been in effect within the DOT system for more than 20 years. Implementing the proposed procedures would not require FMCSA to engage in any new activities. Although the New Entrant rule created a new kind of review—the “safety audit” of new entrant carriers—the training required for safety auditor certification is merely a simplified, less comprehensive version of that required to conduct compliance reviews and roadside vehicle and driver inspections.

For each type of certification, initial and refresher training would take place at existing classroom facilities. Audits, inspections and compliance reviews necessary to obtain and maintain certification would be conducted at carrier facilities, weigh stations and other inspection facilities, or by use of existing mobile equipment. No additional facilities or roadways would need to be built. Further, as the certification program would not, in and of itself, increase the number of inspections performed, commercial vehicular traffic congestion and

associated air emissions would not increase. Because the Certification rule would not affect construction activity or commercial vehicular traffic, it would not have an adverse impact on air quality and noise levels or increase existing land use.

Generally, an action that involves operational changes or construction of facilities would have potential impacts on a range of environmental characteristics, including visual, cultural, and aesthetic resources, geology and soils, water resources and hydrology, biological and ecological resources, energy consumption, socioeconomics, and environmental justice. However, because the employee certification process would not increase commercial vehicular traffic, alter established safety oversight activities, or require construction of new facilities, it would have no measurable impact in these conventional analysis areas.

As required by DOT Order 5610.1C and the Council on Environmental Quality's regulations implementing NEPA, FMCSA also analyzed the potential environmental impact of failure to implement the proposed certification procedures (the No Action Alternative). Under this scenario, the agency would withdraw the Certification rule and make no changes to the safety fitness regulations at 49 CFR part 385. In addition, we considered two alternative actions: (1) restricting the grandfather period for the certification program to those safety employees who were fully trained before December 9, 1999, and (2) codifying the training requirements. We judged all three alternatives to be inadequate.

Under the No Action Alternative, the inability to hire certified safety employees could diminish the government's ability to identify unsafe motor carriers, vehicles, and drivers. This would adversely impact public safety and be likely to hinder FMCSA's achievement of continued reductions in commercial vehicle-related accidents and fatalities. Limiting the grandfather period would impose significant costs and burdens on FMCSA as well as on State and local governments, while producing little if any safety benefit. Codification of the training requirements would make the certification program less flexible by hampering the agency's ability to quickly modify course content in response to regulatory or circumstantial changes.

The certification alternative is intended to promote more accurate compliance reviews, safety audits, and inspections by ensuring that these