

compliance reviews or roadside inspections before June 17, 2002. Both grandfathered employees and those certified under the rule will be required to maintain their certification by completing a minimum number of safety review activities each year.

The 2002 Department of Transportation (DOT) Appropriations Act (Pub. L. 107–87, 115 Stat. 833, December 18, 2001) had stipulated that FMCSA could not expend funds on processing applications of Mexico-domiciled motor carriers for authority to operate in the United States beyond the border commercial zones, as recommended by an international arbitration panel convened pursuant to the North American Free Trade Agreement, until FMCSA published, among other things, a number of regulations including the Certification rule. (This condition was again imposed in the 2003 DOT Appropriations Act [Pub. L. 108–7, 117 Stat. 11, February 20, 2003]). Another precondition for processing such applications was publication of a rule implementing Sec. 210 of the MCSIA. An interim final rule entitled “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) 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 establishing application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. See *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 conduct an EA for 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 July 17, 2003, the Secretary notified the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that, in accordance with his authority under 49 U.S.C. 31148(c),

he had extended the deadline for compliance with the statutory certification requirements to December 31, 2003, while FMCSA acted to comply with the court’s mandate. FMCSA notified the public of this extension (68 FR 44378, Jul. 28, 2003).

On August 26, 2003, FMCSA issued a notice to advise the public that a Programmatic Environmental Impact Statement (PEIS) would be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), as amended, and a General Conformity Evaluation would be made pursuant to the Clean Air Act [42 U.S.C. 7506(c)(1)], before promulgation of the rules on application and safety monitoring procedures for Mexico-domiciled carriers seeking U.S. operating authority (68 FR 51322, Aug. 26, 2003). The notice also announced 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, the agency determined that preparation of an Environmental Impact Statement (EIS) is required.

On September 8, 2003, the United States sought Supreme Court review of the Ninth Circuit decision that invalidated the rules concerning Mexico-domiciled carriers, but did not seek review on the exclusion issues that pertained solely to the Certification rule. The following month, FMCSA issued a notice announcing the availability of an EA for the Certification rule and requesting public comment (68 FR 56863, Oct. 2, 2003). On December 15, 2003, the Supreme Court granted the Government’s petition for review.

Environmental Assessment and Finding of No Significant Impact

The EA noted that the Certification rule is intended to promote more accurate safety audits, inspections, and compliance reviews by ensuring that these activities are conducted by highly trained personnel certified by FMCSA or by State or local governments. The procedures established under the rule preserve and formalize training requirements and practices that have been in effect within the DOT system for more than 20 years. Implementation of these procedures will not require FMCSA to engage in any new activities or to construct new inspection facilities, classroom facilities, or roadways; nor will the certification program, in and of itself, increase the number of safety inspections performed. 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.

Therefore, the Certification rule will neither increase commercial vehicular traffic congestion, noise levels, and land use nor adversely impact air quality. Likewise, the certification process will have no measurable impact in conventional analysis areas such as visual, cultural, and aesthetic resources, geology and soils, water resources and hydrology, biological and ecological resources, energy consumption, socioeconomic, and environmental justice.

As required by DOT Order 5610.1C, Procedures for Considering Environmental Impacts, September 18, 1979, as amended on July 13, 1982, and July 30, 1985, and the Council on Environmental Quality’s regulations implementing NEPA, the EA 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, FMCSA considered two alternative actions. As detailed in the EA, we judged all three alternatives to be inadequate.

The EA concluded that insofar as the certification program increases the government’s ability to identify potentially unsafe carriers and vehicles and remove them from the Nation’s roads, it will have positive, if minimal, effects on air quality, noise levels, and public safety. Accordingly, FMCSA anticipates that the Certification rule will produce a net positive impact on the affected environment, and has determined that an EIS for the rule is not required. The agency received no public comments on the EA.

As noted in the Background section of this document, the FY 2002 and 2003 DOT Appropriations Acts made issuance of the Certification rule a precondition to FMCSA’s expenditure of funds on the processing of Mexico-domiciled motor carrier applications for authority to operate in the United States beyond the border commercial zones. Nevertheless, the EA does not attempt to analyze the prospective environmental impacts of Mexico-domiciled carriers operating in the United States. This is because the PEIS and General Conformity Evaluation required by the Ninth Circuit Court decision are already being undertaken with respect to the two other rules discussed in the Background section that are preconditions to the processing of