

Cultural Property Implementation Act and these two agreements may be found at <http://exchanges.state.gov/culprop>.

Dated: December 11, 2003.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 03-31578 Filed 12-22-03; 8:45 am]

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## DEPARTMENT OF STATE

### [Public Notice 4568]

#### **Bureau of Administration; Notice of Availability of Alternative Fueled Vehicle (AFV) Report for Fiscal Year 2003**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of State, Bureau of Administration, is issuing this notice in order to comply with the Energy Policy Act of 1992 and 42 U.S.C. 13218(b). The purpose of this notice is to announce the public availability of the Department of State's interim Fiscal Year 2003 report at the following Web site: <http://www.state.gov/m/a/26931.htm>. A final report will be made available upon completion of data collection.

#### **FOR FURTHER INFORMATION CONTACT:**

Questions regarding reports on the AFV report Web site should be addressed to the Domestic Fleet Management and Operations Division (A/OPR/GSM/FMO) [Attn: Barry Shpil], 2201 C Street NW (Room B258), Washington, DC 20520, phone 202-647-3628.

Dated: December 9, 2003.

**Vincent J. Chaverini,**

*Deputy Assistant Secretary Office of Operations, Department of State.*

[FR Doc. 03-31585 Filed 12-22-03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

#### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2003-15642 and FMCSA-2001-11060]**

#### **Safety Auditor Certification; Notice of Statutory Compliance Date**

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

**ACTION:** Notice of statutory compliance date.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) gives

notice that after December 31, 2003, all safety inspections, audits, and compliance reviews will be conducted by FMCSA or State employees certified under the Certification of Safety Auditors, Safety Investigators, and Safety Inspectors interim final rule (67 FR 12776, Mar. 19, 2002; 67 FR 41196, Jun. 17, 2002) (commonly referred to as the "Certification rule") or qualified under the grandfather provisions of 49 U.S.C. 31148(b). The Certification rule was one of three interim final rules set aside by the U.S. Court of Appeals for the Ninth Circuit on January 16, 2003, on the grounds that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. On July 28, 2003, FMCSA notified the public (68 FR 44378) that, as authorized by Sec. 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), the Secretary of Transportation (Secretary) had extended by 12 months the agency's December 31, 2002, statutory deadline for compliance with the safety certification requirements. The extension of the statutory compliance deadline provided FMCSA the necessary time to comply with the court's mandate by preparing an Environmental Assessment (EA) for the Certification rule. The EA concluded that implementation of the Certification rule would have no adverse environmental consequences and, in fact, would likely have a positive, if minimal, impact on the affected environment. On October 2, 2003, the agency issued a notice announcing the EA's availability in the docket and requesting public comment (68 FR 56863). The agency received no comments on the EA. Following the close of the public comment period, FMCSA prepared a Finding of No Significant Impact document for the Certification rule. The Finding of No Significant Impact is attached to the EA in the docket. Compliance with the statutory certification requirement by FMCSA and its State partners will assure the agency's continued fulfillment of its statutory responsibilities to reduce crashes, injuries, and fatalities involving large trucks and buses.

**DATES:** Compliance with 49 U.S.C. 31148(b) begins January 1, 2004.

#### **FOR FURTHER INFORMATION CONTACT:**

Mary Pat Woodman, Chief of the Enforcement and Compliance Division (MC-ECE), (202) 366-9699, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

#### **SUPPLEMENTARY INFORMATION:**

## Background

Sec. 210 of the Motor Carrier Safety Improvement Act (MCSIA) of 1999 (Pub. L. 106-159, 113 Stat. 1748) directs that all motor carriers (both foreign and domestic) granted new operating authority must undergo a safety audit within 18 months of commencing operations in interstate commerce in the United States [49 U.S.C. 31144(c)(1)]. Sec. 211 of the MCSIA requires that any safety audit conducted after December 31, 2002, be performed by: (1) A motor carrier safety auditor certified under rules established for that purpose, or (2) a Federal or State employee qualified to perform such an audit or review at the time MCSIA was enacted [49 U.S.C. 31148(b)]. The legislation gives the Secretary oversight responsibility for these motor carrier safety auditors and investigators, including the authority to decertify them [49 U.S.C. 31148(e)]. In addition, section 31148(c) authorizes the Secretary to extend (by no more than 12 months) the December 31, 2002, deadline for compliance with the safety certification requirements of MCSIA if it is determined that the rulemaking required by the statute cannot be timely implemented.

As required by Sec. 211, FMCSA published an interim final rule entitled "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; 67 FR 41196, Jun. 17, 2002). The rule amends 49 CFR parts 350 and 385 to provide for three types of certification, as follows: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside vehicle and driver inspections. The Certification rule took effect on July 17, 2002 (67 FR 41196).

The rule requires certification not only for Federal employees performing safety audits, inspections, and compliance reviews but also for State and local employees conducting these activities under the Motor Carrier Safety Assistance Program (MCSAP). States must certify that safety employees meet minimal Federal standards as a condition of their continued participation in the MCSAP. Federal and MCSAP employees qualified to perform compliance reviews on December 9, 1999, are grandfathered by 49 U.S.C. 31148(b)(2) and are not required to be certified under the rule. The Certification rule extended this grandfather period to include personnel who were fully trained and performing

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

applications of Mexican carriers for operating authority beyond the border commercial zones. Unless the Ninth Circuit Court decision is reversed or the relevant terms of the DOT Appropriations Acts are not extended, FMCSA cannot process applications of Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones until a PEIS and General Conformity Evaluation have been completed and considered by FMCSA. Implementing the Certification rule will not affect that prohibition.

Further, the Certification rule standing alone will have no impact on prospective Mexican truck and bus operations beyond the border commercial zones. For example, it will not affect either the number of Mexico-domiciled vehicles entering the United States or the number and duration of safety inspections of these vehicles. Indeed, unlike the application and safety monitoring rules, which apply solely to Mexico-domiciled motor carriers, the only connection between the Certification rule and the operation of Mexican carriers beyond the border commercial zones is the contingency Congress created when it made issuance of the rule one of the preconditions to the processing of these carriers' applications for operating authority.

As noted above, FMCSA received no public comments in response to the EA. Following the close of the public comment period, the agency prepared a Finding of No Significant Impact document for the Certification rule. FMCSA's full Environmental Assessment and Finding of No Significant Impact are available in the docket.

In accordance with the agency's statutory obligation under 49 U.S.C. 31148(b), FMCSA and its State partners will comply with the statutory certification requirement effective January 1, 2004.

Issued on: December 18, 2003.

Annette M. Sandberg,  
Administrator.

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BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### Pipeline Safety: Potential Service Disruptions in Supervisory Control and Data Acquisition Systems

AGENCY: Research and Special Programs  
Administration (RSPA), DOT.

**ACTION:** Notice; issuance of advisory  
bulletin.

**SUMMARY:** RSPA's Office of Pipeline Safety (RSPA/OPS) is issuing this advisory notice to owners and operators of gas and hazardous liquid pipelines who use Supervisory Control and Data Acquisition (SCADA) systems. Pipeline owners and operators should establish thorough testing regimes when they design and implement modifications and enhancements of their SCADA systems. Owners and operators should consider using off-line or developmental workstations to test changes, then deploy the changes on-line under close monitoring at times when few operational changes are expected on the pipeline. Applying these techniques will help ensure that changes in the SCADA system environment do not have an unexpected effect on pipeline operations.

**FOR FURTHER INFORMATION CONTACT:**

Richard Huriaux, (202) 366-4565; or by e-mail, [richard.huriaux@rspa.dot.gov](mailto:richard.huriaux@rspa.dot.gov). This document can be viewed at the RSPA/OPS home page at <http://ops.dot.gov>. General information about the RSPA/OPS programs can be obtained by accessing RSPA's home page at <http://rspa.dot.gov>.

#### I. Advisory Bulletin (ADB-03-09)

To: Owners and Operators of Gas and Hazardous Liquid Pipeline Systems Who Use SCADA Systems.

Subject: Potential Service Disruptions in SCADA Systems.

Purpose: To inform pipeline owners and operators of the potential for service disruptions in SCADA systems caused by maintenance or enhancements of SCADA system configuration and other critical databases, and the possibility of those disruptions leading to or aggravating pipeline releases.

Advisory: Each pipeline owner or operator should review their procedures for the upgrading, configuring, maintaining, and enhancing its SCADA system. If not well thought out and thoroughly tested, such changes could cause inadvertent service disruptions in the SCADA system. Resulting conditions could may impede controllers responsible for operating the pipeline from promptly recognizing and reacting to abnormal conditions, and could potentially impact the controllers' abilities to restore normal operations. Owners and operators should ensure that SCADA system modifications do not degrade overall SCADA performance to an unacceptable level. To further reduce the potential effect of service disruptions, responsible personnel should coordinate significant

and non-routine SCADA modifications to occur at times when no significant changes to pipeline operations are anticipated.

It is good practice for owners and operators of pipeline systems to periodically review their SCADA system configurations, operating procedures, and performance measurements to ensure that the SCADA computer servers are functioning as intended. Owners and operators should consider using off-line or development workstations/servers to help ensure that impending changes are tested as thoroughly as possible before moving the changes into production. Although off-line or development workstations can be valuable, they may not fully represent timing, load and other factors that will be present in the production environment. System modifications should be implemented via structured and managed processes to reduce the likelihood of unforeseen problems. Such controlled processes are especially important if an owner or operator makes changes directly in the on-line environment.

In addition, owners or operators should periodically confirm that associated design and maintenance personnel, whether employees, contractors, or third-party providers, are adequately skilled to perform SCADA system modifications without causing undesirable consequences. These same personnel should be cognizant of the critical system attributes that should be monitored during the testing phase of implementation.

#### SUPPLEMENTARY INFORMATION:

##### II. Background

This advisory bulletin responds to National Transportation Safety Board (NTSB) Recommendation P-02-05, which suggested that RSPA/OPS: "[i]ssue an advisory bulletin to all pipeline owners and operators who use supervisory control and data acquisition (SCADA) systems advising them to implement an off-line workstation that can be used to modify their SCADA system database or to perform developmental and testing work independent of their on-line systems. Advise owners and operators to use the off-line system before any modifications are implemented to ensure that those modifications are error-free and that they create no ancillary problems for controllers responsible for operating the pipeline."

During an earlier investigation of a pipeline incident, RSPA/OPS inspectors identified inadequate SCADA performance as an operational safety