

Order No. 104908 issued January 26, 1995.

A public scoping meeting will be held in the fall of 2003. The purpose of the public scoping meeting is to request comments and identify issues that will be considered during the evaluation of alignment alternatives and preparation of the EIS. All interested citizens are encouraged to attend these meetings. Large-scale maps of the project area will be displayed at the meeting. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, a public hearing will be held.

The EIS will evaluate potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to water of the United States including wetlands from right-of-way encroachment, impacts to historic and archaeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and Local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. 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 FHWA at the address above.

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

**John R. Mack,**

*District Engineer.*

[FR Doc. 03-25008 Filed 10-1-03; 8:45 am]

**BILLING CODE 4910-22-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-11060]

#### Availability of an Environmental Assessment for the Certification of Safety Auditors, Safety Investigators, and Safety Inspectors Interim Final Rule

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces the availability of the Environmental Assessment for the Certification of Safety Auditors, Safety Investigators, and Safety Inspectors interim final rule (67 FR 12776, Mar. 19, 2002) (commonly referred to as the "Certification" rule). This announcement is pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended; the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500-1508); and U.S. Department of Transportation (DOT) Order 5610.1C, *Procedures for Considering Environmental Impacts*, dated September 18, 1979, as amended July 13, 1982, and July 30, 1985. 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. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these rules. Accordingly, FMCSA has analyzed the potential environmental impacts from implementation of the Certification rule. The agency has concluded that implementing the rule's requirements would have no adverse environmental consequences and in fact would be likely to have a positive, if minimal, impact on the affected environment.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA-2001-11060 by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building,

Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> and/or Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at <http://dms.dot.gov>.

#### 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(b)]. Sec. 211 of the MCSIA requires that any safety audit conducted after December 31, 2002, be performed by a certified motor carrier safety auditor [49 U.S.C. 31148(b)]. The legislation also gives the Secretary of Transportation (Secretary) authority to decertify a safety auditor and extend the December 31, 2002, compliance deadline [49 U.S.C. 31148 (e) and (c)]. 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 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

activities are conducted by highly trained personnel certified by FMCSA or by State or local governments. To the extent that implementation of the certification process increases the government's ability to identify potentially unsafe carriers and vehicles and remove them from the Nation's roads, it would have positive, if minimal, effects on air quality, noise levels, and public safety. Accordingly, FMCSA anticipates that implementation of the Certification rule would produce a net positive impact on the quality of the human environment. The agency's full Environmental Assessment is available in this docket.

As noted in the Background section of this document, the 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 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 environmental analysis of such operations, in the form of a PEIS and General Conformity Evaluation required by the Ninth Circuit decision, is already being undertaken with respect to two other rules discussed above (establishing application and safety monitoring procedures for Mexico-domiciled carriers) that are preconditions to the processing of applications of Mexican carriers for beyond-the-border-commercial-zones operating authority. Unless the Ninth Circuit 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 the PEIS and General Conformity Evaluation have been completed and considered by FMCSA. Thus, no operations of Mexican-domiciled carriers could take place beyond the border commercial zones as a result of issuance of the Certification rule.

Additionally, given the nature of the Certification rule, the rule standing alone would have no impact on Mexican truck and bus operations beyond the border commercial zones. For example, implementation of the rule would 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. For these reasons, FMCSA believes that the scope of the Environmental Assessment for the Certification rule is appropriate.

Issued on: September 26, 2003.

**John H. Hill,**

*Assistant Administrator/Chief Safety Officer.*

[FR Doc. 03-24979 Filed 10-1-03; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number MARAD 2003 16229]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BON ALIZE.

**SUMMARY:** As authorized by Public Law 105-383 and Public Law 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003-16229 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before November 3, 2003.

**ADDRESSES:** Comments should refer to docket number MARAD-2003 16229. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel BON ALIZE is:

*Intended Use:* "Sailing charter, private sailing lessons, passage making, and funeral services scattering ashes."  
*Geographic Region:* "California and Hawaii."

Dated: September 29, 2003.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

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**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number MARAD 16230]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GATO VERDE.

**SUMMARY:** As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is