

No. 14-____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

In Re Advocates for Highway and Auto Safety; the International Brotherhood
of Teamsters; and Citizens for Reliable and Safe Highways,

Petitioners.

Anthony Foxx, Secretary of the United States Department of Transportation;
the United States Department of Transportation; and the Federal Motor Carrier
Safety Administration,

Respondents.

**PETITION FOR A WRIT OF MANDAMUS TO ANTHONY FOXX,
SECRETARY OF THE UNITED STATES DEPARTMENT OF
TRANSPORTATION, THE UNITED STATES DEPARTMENT OF
TRANSPORTATION, AND THE FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION**

Henry Jasny
ADVOCATES FOR HIGHWAY
AND AUTO SAFETY
750 First Street NE
Washington, DC 20002
(202) 408-1711

Adina H. Rosenbaum
Allison M. Zieve
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Petitioners

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GLOSSARY

APA	Administrative Procedure Act
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
ISTEA	Intermodal Surface Transportation Efficiency Act
MAP-21	Moving Ahead for Progress in the 21st Century Act
TRAC	Telecommunications Research and Action Center

INTRODUCTION

In 1991, Congress ordered the Department of Transportation (DOT) to conduct a rulemaking on entry-level training for commercial motor vehicle operators. The statute required that the rulemaking be completed by 1993. More than eight years after that deadline, when DOT still had not completed the rulemaking, organizations concerned with vehicle safety filed a petition with this Court, asking it to order DOT to act. In a settlement agreement, DOT agreed to issue a final rule by 2004.

DOT issued a final rule that year, but its rule was so at odds with the record it had assembled that this Court, considering a challenge brought by safety advocates, declared the rule arbitrary and capricious and remanded to the agency for further rulemaking. When more than six more years passed without the agency completing that rulemaking, Congress enacted another statute, directing DOT to issue regulations establishing entry-level training requirements for commercial motor vehicle operators. This time, Congress set a deadline of October 1, 2013.

Congress's most recent deadline has come and gone, almost another year has passed, and the agency still has not issued a proposed rule, let alone the final rule required by law. Indeed, the agency has made clear that it has not yet even decided whether to undertake notice-and-comment rulemaking or to conduct a negotiated rulemaking.

“At some point, [the Court] must lean forward from the bench to let an agency know, in no uncertain terms, that enough is enough.” *Public Citizen Health Research Group v. Brock*, 823 F.2d 626, 627 (D.C. Cir. 1987). That point has come. This Court should order the agency to publish proposed regulations establishing minimum entry-level training requirements for commercial motor vehicle operators within 60 days of the Court’s order, and to issue a final rule within 120 days thereafter.

STATEMENT OF THE ISSUE

Whether DOT’s failure to promulgate an entry-level driver training regulation within the statutory deadline set by Congress, or within the more than eleven months since that deadline passed, constitutes agency action “unlawfully withheld” and “not in accordance with law,” 5 U.S.C. § 706, and entitles Petitioners to an order compelling DOT to promulgate an entry-level driver training regulation by a date certain.

JURISDICTION

The Hobbs Act, 28 U.S.C. § 2342(3)(A), “read in conjunction with the All Writs Act,” 28 U.S.C. § 1651(a), affords the Court jurisdiction over this case. *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 75 (D.C. Cir. 1984) (*TRAC*). Where a statute provides a court of appeals with jurisdiction over petitions by persons adversely affected by an agency order, that jurisdiction also

covers petitions by parties adversely affected by the agency's *failure* to act: "Because the statutory obligation of a Court of Appeals to review on the merits may be defeated by an agency that fails to resolve disputes," a court of appeals may resolve claims about an agency's failure to act "in order to protect its future jurisdiction." *Id.* at 76.

Here, jurisdiction to review challenges to DOT regulations establishing minimum entry-level training requirements for commercial motor vehicle operators lies in this Court under 28 U.S.C. § 2342(3)(A), which grants the courts of appeals jurisdiction over, among other things, challenges to regulations promulgated by the Secretary of Transportation pursuant to chapter 313 of Title 49. Chapter 313 includes 49 U.S.C. § 31305(c), which requires the Secretary of Transportation to issue final regulations establishing minimum entry-level training requirements for commercial motor vehicle operators. Because this Court would have jurisdiction to review DOT's final entry-level driver training rule, it has jurisdiction to review DOT's failure to issue that rule. *TRAC*, 750 F.2d at 75-76.

PARTIES¹

Petitioner Advocates for Highway and Auto Safety (Advocates) is an alliance of consumer, health, and safety groups and insurance companies and agents working together to make America's roads safer. Ex. 1, Gillan Decl. ¶ 2.

¹ Declarations on behalf of each Petitioner are attached to this petition as Exhibits 1 through 4.

Advocates promotes the adoption of laws, regulations, and programs that prevent motor vehicle crashes. *Id.* Advocates files this petition on behalf of its insurance-company members, who may be liable for monetary damages and associated expenses when vehicles they insure are involved in crashes caused by commercial motor vehicle operators who have not received a minimum level of driver training. *Id.* ¶¶ 6-7; Ex. 2, Mullen Decl. ¶¶ 4-6.

Petitioner International Brotherhood of Teamsters is a labor organization with more than 1.2 million members who are employed in virtually every job classification of work in the United States and Canada. Ex. 3, Byrd Decl. ¶ 2. The International Brotherhood of Teamsters has tens of thousands of members who are commercial motor vehicle operators in the United States. *Id.* These members include entry-level drivers who are directly regulated by the entry-level driver training regulation that DOT enacted in 2004, which this Court declared arbitrary and capricious but left in place without vacatur when it remanded to the agency for further rulemaking. *Id.* ¶ 3. Entry-level drivers at workplaces at which drivers are represented by the International Brotherhood of Teamsters will be regulated by the entry-level driver training regulation that Congress has required DOT to promulgate. *Id.* ¶ 4.

Petitioner Citizens for Reliable and Safe Highways is a nationwide, non-profit organization dedicated to improving overall truck safety in the United States.

Ex. 4, Lannen Decl. ¶ 2. Its volunteers include truck crash survivors and families of truck crash victims. *Id.* Citizens for Reliable and Safe Highways and its volunteers have been, and continue to be, injured by Respondents' failure to promulgate the entry-level driver training rule at issue here. *Id.* ¶ 5.

Respondent DOT is the federal agency responsible for ensuring the safety of American transportation systems. Respondent Anthony Foxx is the Secretary of DOT. He is responsible for carrying out DOT's legal responsibilities, including the issuance of the regulations at issue in this petition. Respondent Federal Motor Carrier Safety Administration (FMCSA) is the DOT subagency charged with implementing DOT's commercial vehicle safety obligations.

FACTUAL BACKGROUND

In 1991, "concerned about the number of heavy truck crashes caused by inadequate driver training, and believ[ing] that better training would reduce these types of crashes," 68 Fed. Reg. 48863, 48867 (Aug. 15, 2003), Congress passed a law requiring a rulemaking on training for entry-level commercial motor vehicle drivers. More than twenty years, two lawsuits, and another statutory mandate later, DOT still has not enacted regulations requiring entry-level drivers to receive training in how to drive a commercial motor vehicle.

A. The First Statutory Mandate

In the Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. No. 102-240, § 4007, 105 Stat. 1914 (1991), Congress required the Secretary of Transportation to report to Congress on the effectiveness of private sector training of entry-level commercial motor vehicle drivers by December 18, 1992, and to complete a rulemaking proceeding on the need to require training of all entry-level drivers of commercial motor vehicles by December 18, 1993. *Id.* § 4007(a). The required report, which was submitted to Congress on February 5, 1996 (slightly more than three years late), concluded that training of new commercial motor vehicle drivers was inadequate. *See* Federal Highway Administration, *Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report, Vol. I: Executive Summary 2* (1995). The report found, for example, that only 31.1 percent of heavy truck drivers and 18.2 percent of motorcoach drivers with five or fewer years of driving experience had received adequate training. *Id.* at 5. In an accompanying cost-benefit analysis, the agency determined that the benefits of an entry-level driver training program would outweigh its costs. *See* 61 Fed. Reg. 18355 (Apr. 25, 1996).

On April 25, 1996, DOT published a notice in the Federal Register requesting comment from the public on the two studies, *id.*, and on November 13, 1996, the agency sponsored a public meeting on training entry-level drivers. *See*

61 Fed. Reg. 51076 (Sept. 30, 1996). In the next six years, however, the agency took no steps toward issuing a rule on entry-level driver training.²

B. The 2002 Lawsuit

In November 2002, organizations concerned about vehicle safety, including Petitioner Citizens for Reliable and Safe Highways, filed a petition for a writ of mandamus in this Court, seeking an order directing the Secretary of Transportation to fulfill his statutory duty to promulgate overdue regulations relating to motor vehicle safety, including the regulation on entry-level driver training. The petition pointed out that the agency was supposed to have completed its entry-level driver training rulemaking by *December 18, 1993*—almost nine years earlier. *See* Petition for a Writ of Mandamus and for Relief from Unlawfully Withheld Agency Action, *In re Citizens for Reliable and Safe Highways*, No. 02-1363 (D.C. Cir. Nov. 26, 2002). As part of a settlement agreement between the organizations and DOT, DOT agreed to issue a final rule on minimum training standards for entry-level commercial motor vehicle drivers by May 31, 2004. *See* Settlement

² In 1996, as part of an “Act to codify without substantive change laws related to transportation and to improve the United States Code,” Pub. L. No. 104-287, 110 Stat. 3388, Congress repealed Sections 4007(a), (c), (d), and (e) of ISTEA. *Id.* § 7(8). In doing so, “Congress appears to have believed it was repealing only obsolete statutory language relating to the [requirement that DOT submit a report].” *Advocates for Highway & Auto Safety v. FMCSA*, 429 F.3d 1136, 1144 (D.C. Cir. 2005).

Agreement, *In re Citizens for Reliable and Safe Highways*, No. 02-1363 (D.C. Cir. Feb. 24, 2003).³

C. The 2004 Rule and Lawsuit

On August 15, 2003, almost twelve years after ISTEA was enacted, DOT (through FMCSA) published a notice of proposed rulemaking on minimum training requirements for entry-level commercial motor vehicle operators. On May 21, 2004, it published a final rule. Although the agency expressly acknowledged that training for entry-level drivers was inadequate and stated its belief that a 320-hour model curriculum developed by the Federal Highway Administration that includes extensive behind-the-wheel training “represents the basis for training adequacy,” 68 Fed. Reg. at 48865, the rule did not require any of the skills and knowledge training that form the central focus of the model curriculum. Instead, it required training in just four areas: 1) driver qualifications; 2) hours of service; 3) driver wellness; and 4) whistleblower protection. *Id.* at 48868. DOT estimated that the required training would take only 10 hours. 69 Fed. Reg. 29384, 29387 (May 21, 2004).

Petitioner Advocates for Highway and Auto Safety, among others, petitioned this Court for review of the final rule, arguing that the rule was arbitrary and

³ The petition in *In re Citizens for Reliable and Safe Highways*, No. 02-1363, is available at <http://www.citizen.org/documents/Petition%20Final.pdf>. The settlement agreement is available at <http://www.citizen.org/documents/TruckSafety%20RulesAgreement0224.pdf>.

capricious because it did not require entry-level drivers to receive any training in how to operate a commercial motor vehicle. In a decision dated December 2, 2005, this Court agreed. *See Advocates for Highway & Auto Safety*, 429 F.3d 1136. The Court determined that the agency had “adopted a final rule whose terms have almost nothing to do with an ‘adequate’ [commercial motor vehicle] training program.” *Id.* at 1147. “FMCSA simply disregarded the volumes of evidence that extensive, on-street training enhances [commercial motor vehicle] safety,” the Court continued. *Id.* “FMCSA’s action was thus arbitrary and capricious under [the Administrative Procedure Act (APA)].” *Id.* Without vacating the rule, the Court remanded the rule to the agency for further rulemaking. *Id.* at 1140.

On December 26, 2007, approximately two years after this Court’s decision, FMCSA issued a proposed rule, “proposing new training standards for entry-level drivers that would include behind-the-wheel . . . as well as classroom training.” 72 Fed. Reg. 73226, 73227 (Dec. 26, 2007). FMCSA based the requirements in the proposed rule on the Federal Highway Administration model curriculum and explained that they were “a means to enhance the safety of [commercial motor vehicle] operations on our Nation’s highways.” *Id.* at 73226, 73232. The comment period, which was initially set to end on March 25, 2008, was later extended until May 23, 2008. *See* 73 Fed. Reg. 15471 (Mar. 24, 2008).

D. The Second Statutory Mandate

After the comment period on the proposed rule closed, four years passed without DOT issuing a final rule on entry-level training for commercial motor vehicle operators. In 2012, Congress again directed DOT to conduct a rulemaking on the issue. Specifically, Congress required the Secretary of Transportation to “issue final regulations establishing minimum entry-level training requirements for an individual operating a commercial motor vehicle.” Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141, § 32304, 126 Stat. 405, 791 (July 6, 2012), codified at 49 U.S.C. § 31305(c). Congress specified that the final regulations must 1) address the knowledge and skills necessary to safely operate a commercial motor vehicle; 2) address the specific training needs of drivers seeking passenger or hazardous materials endorsements; 3) require effective instruction to acquire the knowledge, skills, and training to safely operate a commercial motor vehicle, including classroom and behind-the-wheel instruction; 4) require certification that operators meet the requirements that are established; and 5) require training providers to demonstrate that their training meets the requirements of the regulations. *Id.*

MAP-21 directed DOT to issue the entry-level driver training final rule within one year. *Id.* Under Section 3 of MAP-21, the date of the law’s enactment

is deemed to be October 1, 2012. *Id.* § 3, 126 Stat. at 413.⁴ Accordingly, DOT was required to issue its final rule on entry-level driver training by October 1, 2013.

In the next year—during which it was supposed to complete and publish a final rule—FMCSA held two half-day public listening sessions, *see* 78 Fed. Reg. 13607 (Feb. 28, 2012) (announcing listening session in Louisville on March 22, 2013, from 1:00-4:00 p.m.); 77 Fed. Reg. 75491 (Dec. 20, 2012) (announcing listening session in Charlotte on January 7, 2013, from 9:00-11:00 a.m. and 2:00-4:00 p.m.), and tasked its Motor Carrier Safety Advisory Committee with coming up with “ideas the Agency should consider” in implementing MAP-21’s requirements. 78 Fed. Reg. 57585, 57585 (Sept. 19, 2013). Then, on September 19, 2013—less than two weeks before its deadline for issuing a final rule—FMCSA published a notice in the Federal Register announcing that it was withdrawing its December 26, 2007, proposed rule. *See id.* The agency stated that in light of the comments it received on its 2007 proposed rule, its two listening sessions, the MAP-21 requirements, and the letter report produced by the Motor Carrier Safety Advisory Committee, it had “concluded that a new rulemaking

⁴ Section 3(a) of MAP-21 stated that, with certain exceptions inapplicable here, the division of the Act that includes the entry-level driver training requirements would take effect on October 1, 2012. Section 3(b) stated that any reference to the enactment date in that division is deemed to be a reference to the division’s effective date.

should be initiated in lieu of completing the 2007 rulemaking.” *Id.* FMCSA did not indicate when it expected to complete its new rulemaking.

The statutory deadline passed, and then an additional ten months, without any apparent agency action on an entry-level driver training rule. On August 19, 2014, FMCSA published a notice in the Federal Register making clear that it has not even begun to work on a proposed rule—and that it does not intend to begin such work any time soon. Instead, the agency announced that it is “exploring the feasibility of conducting a negotiated rulemaking.” 79 Fed. Reg. 49044 (Aug. 19, 2014). According to the notice, the agency has “retained a neutral convener” who, “among other things,” will “interview affected interests, including but not limited to, [commercial motor vehicle] driver organizations, [commercial motor vehicle] training organizations, motor carriers (of property and passengers) and industry associations, State licensing agencies, State enforcement agencies, labor unions, safety advocacy groups, and insurance companies and associations,” “determine whether additional categories of interested parties may be necessary,” “examine the potential for adequate and balanced representation of these varied interests on an advisory committee that would be convened to negotiate the regulation,” and then “submit a written ‘convening’ report of findings and recommendations to the Agency.” *Id.* at 49044-45. The agency provided no time frame in which the convener would complete these tasks. Only after all of the tasks are completed

will the agency make a decision about whether to proceed with a negotiated rulemaking or “proceed with traditional notice-and-comment rulemaking,” *id.* at 49045, and begin the rulemaking process.

REASONS FOR ISSUANCE OF THE WRIT

A. DOT’s Failure To Issue the Entry-Level Driver Training Regulation Is Unlawful.

DOT’s failure to promulgate entry-level driver training regulations by the statutory deadline violates the unambiguous language of MAP-21. MAP-21 directed DOT to issue final regulations establishing minimum entry-level training requirements for commercial vehicle operators by October 1, 2013. *See* Pub. L. No. 112-14, § 32304, 126 Stat. at 791 (“Not later than 1 year after the date of enactment . . . the Secretary *shall* issue final regulations establishing minimum entry-level training requirements for an individual operating a commercial motor vehicle” (emphasis added)). DOT’s failure to issue regulations by that deadline constitutes agency action “unlawfully withheld” and “not in accordance with law” under the APA. *See* 5 U.S.C. § 706.

B. This Court Should Issue an Order Compelling DOT To Promulgate the Entry-Level Driver Training Regulation by a Date Certain.

Because DOT violated a clear statutory mandate, thereby unlawfully withholding agency action required by law, this Court should order the agency to promulgate the entry-level driver training rule by a date certain. The APA specifies

that a “reviewing court *shall* . . . compel agency action unlawfully withheld.” 5 U.S.C. § 706 (emphasis added). And this Court issues writs of mandamus “to correct transparent violations of a clear duty to act.” *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 418 (D.C. Cir. 2004) (internal quotation marks and citations omitted); *see, e.g., In re Aiken County*, 725 F.3d 255, 257 (D.C. Cir. 2013) (noting that the Court’s “task is to ensure, in justiciable cases, that agencies comply with the law as it has been set by Congress” and granting petition for a writ of mandamus where Nuclear Regulatory Commission failed to act within the statutorily-mandated deadlines). Here, the agency has violated a clear duty to act, and the Court should issue a writ of mandamus ordering the agency to act.

The multi-factor test originally set forth in *TRAC*, 750 F.2d at 80, to evaluate claims of unreasonable delay further demonstrates that the Court should order DOT to issue the entry-level driver training rule. *See, e.g., In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C. Cir. 2000) (citing *TRAC* factors in case in which statute commanded agency to act by a set date). *But see, e.g., In re Aiken County*, 725 F.3d 255 (granting mandamus where agency violated statutory deadline without citing *TRAC* factors). The *TRAC* test states that:

- (1) [T]he time agencies take to make decisions must be governed by a rule of reason;
- (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
- (3) delays that might be reasonable in the sphere of

economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

TRAC, 750 F.2d at 80 (citations and internal quotation marks omitted).

“The first and most important” of the TRAC factors looks to whether the length of the delay is governed by a “rule of reason.” *In re Core Commc’ns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008). Where Congress provides a timetable in a statute, that timetable, under the second factor, supplies the “rule of reason,” setting forth what is reasonable under the statute. *TRAC*, 750 F.2d at 80. Here, MAP-21 specified that the final rule had to be promulgated within a year of the statute’s enactment. *See* Pub. L. No. 112-14, § 32304, 126 Stat. at 791. Given Congress’s specification of a timetable, DOT’s failure to promulgate a final rule (or even issue a proposed rule) almost a year after the statutory deadline has passed is unreasonable.

Furthermore, the deadline set by MAP-21 is only the most recent of the deadlines that DOT has missed. Congress first ordered DOT to conduct a rulemaking addressing the need for entry-level driver training in *1991*, requiring that rulemaking to be completed within twenty-four months. Over twenty years later, DOT still has not promulgated the required regulation. A delay of this

magnitude is “nothing less than egregious.” *In re Am. Rivers & Idaho Rivers United*, 372 F.3d at 419 (finding a more than six-year delay egregious); *see Midwest Gas Users Ass’n v. FERC*, 833 F.2d 341, 359 (D.C. Cir. 1987) (“[T]his court has stated generally that a reasonable time for an agency decision could encompass ‘months, occasionally a year or two, but not several years or a decade.’” (quoting *MCI Telecomms. Corp. v. FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980))). “If these circumstances do not constitute agency action unreasonably delayed, it is difficult to imagine circumstances that would.” *Radio-Television News Directors Ass’n v. FCC*, 229 F.3d 269, 272 (D.C. Cir. 2000) (citation omitted).⁵

Although DOT issued a rule on driver training in 2004, 69 Fed. Reg. 29384, that rule bore so little connection with the record assembled by the agency that this Court declared it arbitrary and capricious and remanded to the agency “for further rulemaking consistent” with its opinion. *Advocates for Highway & Auto Safety*, 429 F.3d at 1140. DOT’s failure to issue a final rule on entry-level driver training in the more than eight years that have passed since the Court’s remand makes the

⁵ As noted above, *supra* n.2, in 1996, Congress repealed the section of ISTEA that required DOT to conduct a rulemaking on entry-level driver training, appearing to believe that, in doing so, it was repealing only the obsolete language requiring DOT to submit a report on driver training to Congress. *See Advocates for Highway & Auto Safety*, 429 F.3d at 1144. Whether or not ISTEA’s rulemaking requirement remained in effect after 1996, the fact remains that Congress first instructed DOT to complete a rulemaking on driver training over twenty years ago.

need for an immediate remedy here particularly apparent. *See In re People's Mojahedin Org. of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012) (explaining that fact that agency “failed to heed our remand” was “decisive” and granting mandamus where agency did not act within twenty months of Court’s remand); *In re Core Commc’ns*, 531 F.3d at 857 (holding that six-year delay in responding to Court’s remand was unreasonable, explaining that “that factor [was] decisive,” and granting mandamus); *Radio-Television News Directors Ass’n*, 229 F.3d 269 (granting mandamus where agency did not act within nine months of Court’s remand). By failing to promulgate a new regulation consistent with the Court’s opinion, “the agency . . . effectively nullified [the Court’s] determination that [the 2004 final rule was] invalid, because [the Court’s] remand without vacatur left [that rule] in place.” *In re Core Commc’ns*, 531 F.3d at 856.

The third and fifth *TRAC* factors likewise weigh in favor of setting a firm deadline for DOT to issue the entry-level driver training rule. These factors consider, respectively, whether “human health and welfare are at stake,” and “the nature and extent of the interests prejudiced by delay.” *TRAC*, 750 F.2d at 80. Here, the interests at stake are the safety of drivers and passengers on our nation’s roads. As FMCSA explained when it issued its (now-withdrawn) proposed rule in 2007, regulations “would strengthen the Agency’s entry-level driver training

requirements as a means to enhance the safety of [commercial motor vehicle] operations on our Nation’s highways.” 72 Fed. Reg. at 73226.

Finally, the fourth *TRAC* factor—which looks at whether mandating agency action would interfere with other agency priorities, *TRAC*, 750 F.2d at 80—also supports relief. Congress’s establishment of a timetable for the agency to act makes clear that Congress wanted the agency to prioritize the entry-level driver training regulations. “Congress undoubtedly knew the . . . demands placed upon the [agency] and nonetheless limited [its] time to act” on MAP-21’s statutory mandate. *In re People’s Mojahedin Org.*, 680 F.3d at 837. By setting a date by which the agency must act, Congress itself set the agency’s priorities vis-a-vis other agency activities. *Cf. TVA v. Hill*, 437 U.S. 153, 194 (1978) (“Once Congress . . . has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.”).

In sum, the *TRAC* factors highlight the need for this Court to order defendants to issue proposed regulations establishing minimum entry-level training requirements for commercial motor vehicle operators by a date certain. Moreover, Petitioners have no other judicial or administrative remedy. DOT’s actions show that it does not feel compelled to act by congressional mandates or the Court’s earlier decision, which set no timetable. Therefore, absent imposition of a deadline

from the Court, the agency will be able to continue to delay indefinitely, depriving Petitioners of an entry-level driver safety rule that Congress has determined is needed to keep our roads safe for drivers and passengers. In light of the length of the delay, DOT's recalcitrance, and the safety concerns underlying the statutory mandate, the Court should order DOT to publish a proposed rule within 60 days of the Court's order and to issue a final rule within 120 days thereafter.

RELIEF SOUGHT

Petitioners ask that the Court issue a writ of mandamus directing Respondents to publish proposed regulations establishing entry-level training requirements for commercial motor vehicle operators within 60 days of the Court's order, and to issue a final rule within 120 days after the proposed rule is published. The Court should also retain jurisdiction to monitor Respondents' compliance with the Court's order.

Respectfully submitted,

/s/ Adina H. Rosenbaum

Adina H. Rosenbaum

Allison M. Zieve

PUBLIC CITIZEN LITIGATION GROUP

1600 20th Street NW

Washington, DC 20009

(202) 588-1000

Henry Jasny

ADVOCATES FOR HIGHWAY

AND AUTO SAFETY
750 First Street NE
Washington, DC 20002
(202) 408-1711

Counsel for Petitioners

September 18, 2014

**Certificate as to Parties, Rulings, and Related Cases Under Circuit Rules
21(d) and 28(a)(1) (Including Circuit Rule 26.1 Statement)**

Pursuant to Rules 21(d), 26.1, and 28(a)(1) of this Court, counsel for Petitioners certifies as follows:

A. Parties and Amici

Petitioners are Advocates for Highway and Auto Safety, the International Brotherhood of Teamsters, and Citizens for Reliable and Safe Highways. Advocates for Highway and Auto Safety and Citizens for Reliable and Safe Highways are nonprofit organizations that work to improve truck safety. The International Brotherhood of Teamsters is a labor union representing more than 1.2 million workers, including commercial truck drivers, in the United States and Canada. None of the Petitioners issues shares or debt securities to the public or has a parent, subsidiary, or affiliate that has issued shares or debt securities to the public.

Respondents are Anthony Foxx, the Secretary of the United States Department of Transportation; the United States Department of Transportation; and the Federal Motor Carrier Safety Administration.

B. Ruling Under Review

This petition seeks relief from Respondents' failure to issue a rule on entry-level driver training, as required by the Moving Ahead for Progress in the 21st

Century Act, Pub. L. No. 112-141, § 32304, 126 Stat. 405, 791 (2012), codified at 49 U.S.C. § 31305(c).

C. Related Cases

In 2002, non-profit organizations, including Petitioner Citizens for Reliable and Safe Highways, filed a writ of mandamus seeking an order directing the Secretary of Transportation to promulgate overdue regulations on motor vehicle safety, including the regulation on entry-level driver training. *In re Citizens for Reliable and Safe Highways*, No. 02-1363 (D.C. Cir.). That case settled, with DOT agreeing to issue a final rule on driver training by May 31, 2004.

In 2004, non-profit organizations, including Petitioner Advocates for Highway and Auto Safety, filed a petition challenging an entry-level driver training rule promulgated by FMCSA. *Advocates for Highway & Auto Safety v. FMCSA*, 429 F.3d 1136 (D.C. Cir. 2005). The Court declared the rule arbitrary and capricious and remanded to the agency for further proceedings.

Respectfully submitted,

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum
Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that on September 18, 2014, I caused this petition, including all exhibits, to be served by U.S. postal mail on Respondents, as follows:

Kathryn B. Thomson, General Counsel
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Secretary Anthony Foxx
United States Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Eric Holder, Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum
Counsel for Petitioners