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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**DEPARTMENT OF TRANSPORTATION ET AL. *v.*
PUBLIC CITIZEN ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 03–358. Argued April 21, 2004—Decided June 7, 2004

The National Environmental Policy Act of 1969 (NEPA) requires federal agencies to analyze the environmental impact of their proposals and actions in an Environmental Impact Statement (EIS), but Council of Environmental Quality (CEQ) regulations allow an agency to prepare a more limited Environmental Assessment (EA) if the agency’s proposed action neither is categorically excluded from the EIS production requirement nor would clearly require production of an EIS. An agency that decides, pursuant to an EA, that no EIS is required must issue a “finding of no significant impact” (FONSI). The Clean Air Act (CAA) leaves States to develop “implementation plans” to comply with national air quality standards mandated by the Act, and requires federal agencies’ actions to “conform” to those state plans, 42 U. S. C. §7506(c)(1). In 1982, Congress enacted a moratorium, prohibiting, *inter alia*, Mexican motor carriers from obtaining operating authority within the United States and authorizing the President to lift the moratorium. In 2001, the President announced his intention to lift the moratorium once new regulations were prepared to grant operating authority to Mexican motor carriers. The Federal Motor Carrier Safety Administration (FMCSA) published one proposed rule addressing the application form for such carriers and another addressing the establishment of a safety-inspection regime for carriers receiving operating authority. Congress subsequently provided, in §350 of a DOT appropriations Act, that no funds appropriated could be obligated or expended to review or process any Mexican motor carrier’s applications until FMCSA implemented specific application and safety-monitoring requirements. Acting pursuant to NEPA, FMCSA issued an EA for its proposed rules. The EA did not

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consider the environmental impact that might be caused by the increased presence of Mexican trucks in the United States, concluding that any such impact would be an effect of the moratorium's modification, not the regulations' implementation. Concluding that the regulations' issuance would have no significant environmental impact, FMCSA issued a FONSI. In subsequent interim rules, FMCSA relied on the EA and FONSI to demonstrate compliance with NEPA, and determined that any emissions increase from the regulations would fall below the Environmental Protection Agency's (EPA) threshold levels needed to trigger a conformity review under the CAA. Before the moratorium was lifted, respondents sought judicial review of the proposed rules, arguing that their promulgation violated NEPA and the CAA. The Court of Appeals agreed, finding the EA deficient because it did not consider the environmental impact of lifting the moratorium, when that action was reasonably foreseeable at the time FMCSA prepared the EA and directing FMCSA to prepare an EIS and a full CAA conformity determination for the regulations.

Held: Because FMCSA lacks discretion to prevent cross-border operations of Mexican motor carriers, neither NEPA nor the CAA requires FMCSA to evaluate the environmental effects of such operations. Pp. 9–19.

(a) FMCSA did not violate NEPA or the relevant CEQ regulations. Pp. 9–16.

(1) An agency's decision not to prepare an EIS can be set aside only if it is arbitrary and capricious, see 5 U. S. C. §706(2)(A). Respondents argue that the issuance of a FONSI was arbitrary and capricious because the EA did not take into account the environmental effects of an increase in cross-border operations of Mexican motor carriers. The relevant question, under NEPA, is whether that increase, and the correlative release of emissions, is an "effect," 40 CFR §1508.8, of FMCSA's rules; if not, FMCSA's failure to address these effects in the EA did not violate NEPA, and the FONSI's issuance cannot be arbitrary and capricious. Pp. 9–10.

(2) Respondents have forfeited any objection to the EA on the ground that it did not adequately discuss potential alternatives to the proposed action because respondents never identified in their comments to the rules any alternatives beyond those the EA evaluated. Pp. 10–11.

(3) Respondents argue that the EA must take the increased cross-border operations' environmental effects into account because §350's expenditure bar makes it impossible for any Mexican truck to operate in the United States until the regulations are issued, and hence the trucks' entry is a "reasonably foreseeable" indirect effect of

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the issuance of the regulations. 40 CFR §1508.8. Critically, that argument overlooks FMCSA's inability to countermand the President's lifting of the moratorium or otherwise categorically to exclude Mexican trucks from operating in the United States. While §350 restricted FMCSA's ability to authorize such operations, FMCSA remains subject to 49 U. S. C. §13902(a)(1)'s mandate that it register any motor carrier willing and able to comply with various safety and financial responsibility rules. Only the moratorium prevented it from doing so for Mexican trucks before 2001. Respondents must rest on "but for" causation, where an agency's action is considered a cause of an environmental effect even when the agency has no authority to prevent the effect. However, "but for" causation is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations. NEPA requires a "reasonably close causal relationship" akin to proximate cause in tort law. *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U. S. 766, 774. Also, inherent in NEPA and its implementing regulations is a "rule of reason," which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process. The underlying policies behind NEPA and Congress' intent, as informed by the "rule of reason," make clear that the causal connection between the proposed regulations and the entry of Mexican trucks is insufficient to make FMCSA responsible under NEPA to consider the environmental effects of entry. Neither of the purposes of NEPA's EIS requirement—to ensure both that an agency has information to make its decision and that the public receives information so it might also play a role in the decisionmaking process—will be fulfilled by requiring FMCSA to consider the environmental impact at issue. Since FMCSA has no ability to prevent such cross-border operations, it lacks the power to act on whatever information might be contained in an EIS and could not act on whatever input the public could provide. This analysis is not changed by the CEQ regulation requiring an agency to evaluate the "cumulative impact" of its action, 40 CFR §1508.7, since that rule does not require FMCSA to treat the lifting of the moratorium itself or the consequences from that lifting as an effect of its rules promulgation. Pp. 11–16.

(b) FMCSA did not act improperly by not performing a full conformity analysis pursuant to the CAA and relevant regulations. To ensure that its actions are consistent with 42 U. S. C. §7606, a federal agency must undertake "a conformity determination . . . where the total of direct and indirect emissions in a nonattainment or maintenance area caused by [the] action would equal or exceed" certain threshold levels established by the EPA. 40 CFR §93.153(b). "Direct emissions" "are caused or initiated by the Federal action and occur at

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the same time and place as the action,” §93.152; and “indirect emissions” are “caused by the Federal action” but may occur later in time, and may be practicably controlled or maintained by the federal agency, *ibid.* Some sort of “but for” causation is sufficient for evaluating causation in the conformity review process. See *ibid.* Because it excluded emissions attributable to the increased presence of Mexican trucks within the United States, FMCSA concluded that its regulations would not exceed EPA thresholds. Although arguably FMCSA’s proposed regulations would be “but for” causes of the entry of Mexican trucks into the United States, such trucks’ emissions are not “direct” because they will not occur at the same time or place as the promulgation of the regulations. And they are not “indirect” because FMCSA cannot practicably control or maintain control over the emissions: FMCSA has no ability to countermand the President’s decision to lift the moratorium or to act categorically to prevent Mexican carriers from registering and Mexican trucks from entering the country; and once the regulations are promulgated, FMCSA will not be able to regulate any aspect of vehicle exhaust from those trucks. Pp. 17–19.

316 F. 3d 1002, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.