§ 543.5 Petition: General requirements.

(a) For each model year through model year 1996, a manufacturer may petition NHTSA to grant exemptions for up to two additional lines of its passenger motor vehicles from the requirements of part 541 of this chapter. For each model year after model year 1996, a manufacturer may petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of part 541 of this chapter.

* * * * *

Issued on March 29, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–7492 Filed 4–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2003–14610; Amendment No. 1572–3]

RIN 1652–AA17

Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is issuing this final rule, which amends its Interim Final Rule (IFR) establishing security threat assessment standards for commercial drivers authorized to transport hazardous materials. TSA is changing the date on which fingerprint-based background checks must begin in all States to January 31, 2005. TSA is making this change so that the States will have enough time to make changes to their existing commercial driver safety and testing programs to facilitate implementation.

DATES: Effective April 6, 2004.

FOR FURTHER INFORMATION CONTACT: For technical questions: John Berry, Credentialing Program Office, Transportation Security Administration Headquarters, East Building, Floor 8, 601 12th Street, telephone: (571) 227–1757, e-mail: *John.Berry1@dhs.gov.* Steve Sprague, Maritime and Land, Transportation Security Administration Headquarters, West Building, Floor 9, 701 12th Street, Arlington, VA, telephone: (571) 227–1468, e-mail *Steve.Sprague@dhs.gov.*

For legal questions: Christine Beyer, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 601 South 12th Street, Arlington, VA 22202–4220; telephone: (571) 227–2657; e-mail: *Christine.Beyer@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments: TSA is not requesting comments to this final rule.

Availability of Rulemaking Document

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting TSA's Laws and Regulations web page at *http://www.tsa.gov/laws_regs/gov_index.shtm.*

In addition, copies are available by writing or calling the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Please be sure to identify the docket number when making requests.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Background

On May 5, 2003, TSA published an interim final rule (IFR) that requires a security threat assessment of commercial drivers who are authorized to transport hazardous materials.[1] The IFR implements several statutory mandates, discussed below, including a check of relevant criminal and international databases, and appeal and waiver procedures. In the IFR, TSA also stated that it would provide guidance on how fingerprints would be collected and adjudicated.

TSA requested and received comments from the States, labor organizations, and trucking industry associations. In addition, TSA held working group sessions with the States to discuss potential fingerprinting systems that would achieve the statutory requirements, but would not adversely impact the States.

Based on the comments received and the working sessions with the States, on November 7, 2003, TSA amended the IFR to delay the date on which fingerprint collection would begin.[2] The amended IFR provided that the States must begin to collect fingerprints and the accompanying identification information as of April 1, 2004. Any State unable to meet this deadline was required to submit a fingerprint collection plan to TSA and request an extension of time (waiver) to submit the biographical information. The amended IFR required all States to be in compliance with the rule by December 1, 2004.

As a result of comments and correspondence received since November 2003, TSA has determined to eliminate the April 1, 2004 deadline. At present, more than thirty-five States have requested an extension of time to establish a fingerprint collection program. In addition, several States, in their requests for an extension of time, expressed concern over their ability to meet the December 1, 2004 deadline for all States to be in compliance with the rule. For this reason, discussed in greater detail below, fingerprinting will begin no later than January 31, 2005.

Under legislation passed in late 2003,[3] DHS must charge a fee for the cost of any credential and background check provided through the Department for workers in the field of transportation. DHS, through TSA, is in the process of preparing rulemaking documents to establish reasonable fees for this and other similar credentialing programs. With the proposed deadline extension, TSA will work to coordinate the timing of fee assessments with the fingerprint-based portion of the background records check.

USA PATRIOT Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001.[4] Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by

[1] 68 FR 23852, May 5, 2003.

[2] 68 FR 63033, November 7, 2003.

[3] Pub. L. 108–90, October 1, 2003, 117 Stat. 1137, Section 520.

[4] Pub. L. 107–56, October 25, 2001, 115 Stat. 272.

adding a new section 5103a titled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides:

> A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.[5]

Section 5103a(a)(2) subjects license renewals to the same requirements.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a hazardous materials endorsement (HME), to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary (as delegated to the Administrator of TSA) of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) a check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.[6] Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully ''ship or transport any explosive in or affecting interstate or foreign commerce'' or ''receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.'' Prior to the amendment, 18 U.S.C. 842(i) prohibited, among other things, the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal prosecution.[7] These incidents are investigated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the Department of Justice and referred, as appropriate, to United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety.'' Under this exception, if DOT regulations address the transportation security issues of persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce. TSA issued the interim final rule in coordination with agencies within DOT, the Federal Motor Carrier Safety Administration and Research and Special Programs Administration, and triggered this exception. The action TSA takes now to move the date on which fingerprinting must begin does not affect the application of the exception.

The Interim Final Rule

To comply with the mandates of the USA PATRIOT Act, and to trigger the exception in 18 U.S.C. 845(a)(1) for the transportation of explosives, TSA issued the May 2003 IFR. Under the IFR, TSA determines that an individual poses a security threat if he or she: (1) is an alien (subject to certain exceptions) or a U.S. citizen who has renounced his or her U.S. citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in military or civilian court for certain felonies; (4) has been adjudicated as a mental defective or involuntarily committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases.

The IFR also establishes conditions under which individuals who have been determined to be security threats can appeal the determination, and a waiver process for those individuals who otherwise could not obtain an HME because they have disqualifying felonies, or were adjudicated as mental defectives or involuntarily committed to a mental institution. Finally, the IFR prohibits an individual from holding, and a State from issuing, renewing, or transferring, an HME for a driver unless the individual has met the TSA security threat assessment standards.

Based on the comments received following publication of the IFR and the working sessions with the States, TSA amended the IFR on November 7, 2003, to delay the date on which fingerprint collection would begin. The amended IFR provided that the States must begin collecting fingerprints and the accompanying identification information as of April 1, 2004. Any State unable to meet this deadline was required to submit a fingerprint collection plan to TSA and request an extension of time to submit the biographical information. Under the amended IFR, all States were required to be in compliance with the rule by December 1, 2004.

Summary of the Final Rule

TSA believes that the fingerprint collection date should be delayed so that TSA and each State may develop a threat assessment program within the existing fiscal, procurement, and legal constraints each entity faces. By issuing the rule now, TSA hopes to prevent unnecessary expenditures the States may make in the short term and to provide the States the time needed to develop the program in an organized fashion. This final rule provides that fingerprint collection must begin no later than January 31, 2005. However, TSA will work with States to begin fingerprint collection and submission before that date using pilot programs.

Many States must initiate rulemaking or enact new legislation to authorize the collection of fees to cover any State costs associated with the new program. Some State legislatures meet biannually and many meet for just a few months of the year. Also, many States operate under fiscal and procurement schedules that do not permit the purchase of necessary equipment and software improvements before April 1, 2004.

At the Federal level, TSA will complete the rulemaking proceeding to establish a fee for the security threat assessment.

Prior to January 31, 2005, TSA will conduct name-based, terrorist-focused checks on drivers who are currently authorized to transport hazardous materials. If TSA discovers during the course of these name-based checks that an individual is suspected of posing or poses a security threat, TSA will initiate action to revoke the individual's HME, in accordance with the procedures in 49 CFR 1572.141. The individual will be

[5] The Secretary of Transportation delegated the authority to carry out the provisions of this section to the Under Secretary of Transportation for Security/Administrator of TSA. 68 FR 10988, March 7, 2003.

[6] Pub. L. 107–296, November 25, 2002, 116 Stat. 2280.

[7] The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to $250,000.

provided with an opportunity to correct underlying records or cases of mistaken identity by submitting fingerprints or corrected court records.

With an estimated population of 3.5 million drivers, the government will prioritize the background check process by searching terrorist-related databases first. TSA believes that this name-based check of all drivers who are currently authorized to transport hazmat will enable the agency to focus on individuals who may pose a more immediate threat of terrorist or other dangerous activity. Following that check, TSA will then search criminal databases that include outstanding criminal wants and warrants, and immigration records to determine citizenship status.

TSA has assessed the risks associated with the transportation of hazardous materials via commercial vehicle and has determined that in conducting name-based checks prior to January 2005, and initiating fingerprint-based criminal history checks as of January 31, 2005, the risks are effectively addressed. The terrorist-related information that TSA will search prior to January 2005, is the best indication of an individual's predisposition to commit or conspire to commit terrorist acts. TSA has determined that the more imminent threat is an individual whose background includes terrorism-related activity. This approach is consistent with the USA PATRIOT Act and meets the needs of the States.

Also, it is important to note that TSA is not delaying the September 2, 2003, compliance date set forth in § 1572.5(b) for surrendering an HME. This section requires any HME holder who does not meet the security threat assessment standards in part 1572 to surrender the endorsement beginning on September 2, 2003. For instance, an individual who knows that he or she has committed a disqualifying offense within the prescribed time periods is required to relinquish his or her HME beginning September 2, 2003. Nothing in this final rule alters this surrender requirement.

In the context of this rulemaking, the surrender requirement buttresses TSA's determination that we should attempt to identify potential terrorist threats from terrorism-related information databases before analyzing criminal history records. As of September 2, 2003, all HME drivers are required to self-report any disqualifying offenses that would appear on a fingerprint-based criminal history records check. TSA will work closely with the State Departments of Motor Vehicles, labor organizations, and the trucking industry to communicate this surrender provision widely and to inform affected drivers of the existing waiver process.

Based on the foregoing, the exception found in 18 U.S.C. 845(a)(1) continues to apply, and persons otherwise prohibited from lawfully possessing explosives who are transporting explosives in commerce would not be subject to criminal prosecution under section 842(i).

This final rule amends the November 2003 IFR by changing the fingerprint start date and the date on which the States may issue, renew, or transfer HMEs only after the threat assessment is complete. In view of the fact that many of the States cannot begin collecting fingerprints or gathering pertinent identification data from drivers by April 1, 2004, and that TSA will not have regulatory authority to charge fees to cover the costs of the security threat assessments before late 2004 when the fee collection rulemaking is complete, TSA is changing the date that all States must begin collecting fingerprints and gathering identification data from hazmat drivers to January 31, 2005. This change accommodates the fiscal and legal tasks that must be completed first.

TSA will complete a rulemaking proceeding to collect fees to cover the cost of each security threat assessment. In the near future, TSA will issue a rule that establishes reasonable fees (Fee Rule) to cover the cost of the hazmat driver security threat assessment.

Section-by-Section Analysis

TSA is adding a definition of "Pilot State'' to § 1572.3. A "Pilot State'' is a State that volunteers to begin the security threat assessment process prior to January 31, 2005. TSA also is making changes to § 1572.5 concerning the date on which TSA's threat assessment based on fingerprint-based criminal history record checks must be underway. The new dates in paragraph 1572.5(c)(2), and the deletion of the dates in paragraph 1572.5(b)(2), reflect TSA's decision to delay the date on which the collection of fingerprints and accompanying biographical data must begin from April 1, 2004, to January 31, 2005.

TSA is revising paragraph (c)(3) with requirements for States that volunteer to be Pilot States. Pilot States will be required to collect the identifying information required in 49 CFR 1572.5(e) and collect and submit fingerprints in accordance with procedures approved by TSA. TSA will work with Pilot States on procedures for the collection and submission of fingerprints.

TSA is removing the requirement in paragraph 1572.5(c)(4) that States must submit fingerprints and information, or request an extension as of April 1, 2004. The requirement that is now in paragraph 1572.5(c)(4) was in paragraph 1572.5(c)(3)(i) in the original IFR. This paragraph permits the States, in the first 6 months of implementation of the rule, to extend the expiration date of an individual's HME until the State receives from TSA a final notification of the individual's threat assessment. This provision is necessary because in the first 180 days of the program, individuals may not have been given sufficient notice of the TSA threat assessment requirements. Allowing States to extend the expiration date of such an individual's HME will provide TSA with enough time to conduct a security threat assessment without unduly delaying the individual's receipt of a renewed or transferred HME.

Future Rulemaking

TSA plans to publish a document to discuss all comments received in this proceeding and to improve the clarity and organization of the rule text. This should be done in conjunction with the aforementioned rulemaking to establish fees. In addition, TSA may make changes to the existing standards, such as the disqualifying criminal offenses and immigration status and provide more information. TSA will rely heavily on comments that the States and industry have provided and will provide to ensure that no State is forced to adhere to a rigid form of program implementation.

Rulemaking Analyses and Notices

Justification for Immediate Adoption

TSA is issuing this final rule in response to comments received following publication of the May 5, 2003 IFR and subsequent amendment issued on November 3, 2003. TSA has received requests for an extension of time from many States that are not able to establish a fingerprint collection program by April 1, 2004. Many of these States do not wish to file an extension of time and submit a fingerprint collection program, because the fees and fingerprint collection system have not yet been determined and it is difficult to predict how fingerprints will be collected and what portion of the cost, if any, the States must bear.

Eliminating the April 1, 2004 deadline will provide the States more time to devote to developing a cost-effective program through appropriate fiscal and operational planning.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

TSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is significant public interest in security issues since the events of September 11, 2001. The IFR and this final rule implements section 1012 of the USA PATRIOT Act by establishing the criteria that will be used in determining whether an individual applying for, transferring, or renewing an HME poses a security risk warranting denial of the endorsement.

This final rule will not impose costs or other economic impacts additional to those that were imposed by the original IFR. This rule simply eliminates the April 1, 2004 date, establishing January 31, 2005 as the date on which fingerprint collection will begin in all States and the Federal government will conduct criminal history background checks, both in accordance with the original rule. Thus, there is no adverse economic impact resulting from the issuance of this final rule, and there may be an economic benefit since the final rule will relieve States of the costs of complying with the fingerprint collection requirements until January 31, 2005. This action is expected to reduce the burden on the States by providing additional time to the States to implement this program. TSA believes it is advisable to publish the rule now so that States do not make expenditures to meet the April 1 date that may subsequently be unnecessary or minimized.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, as amended, (RFA) was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' TSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. This action only extends the date on which fingerprint collection must begin, which should not impose any costs on small entities. Any costs associated with the security threat assessment program stem from the interim final rule that was published on May 5, 2003.

TSA conducted the required review of this rule and, accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This final rule contains information collection activities subject to the PRA. Accordingly, the information requirements have been submitted to OMB for its review (68 FR 63033, November 7, 2003). The comment period closed on January 6, 2004.

As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after OMB approves it.

Executive Order 13132 (Federalism)

Executive Order 13132 requires TSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, TSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications or a substantial direct effect on the States. This final rule changes the date on which the States may issue, renew or transfer a hazardous materials endorsement based on a security threat assessment. This action should reduce burdens on the State by providing additional time to the States to obtain necessary funding and legal authority to implement this program. TSA will continue to consult extensively with the States to ensure that any burdens are minimized to the extent possible.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. In addition, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, TSA has not prepared a written assessment under the UMRA.

Environmental Analysis

TSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this final rule will not have any significant impact on the quality of the human environment.

Energy Impact

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has determined that this rule is not a major regulatory action under the provisions of the EPCA.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from

engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. This rule applies only to individuals applying for a State-issued hazardous materials endorsement for a commercial drivers license. Thus, TSA has determined that this rule will have no impact on trade.

List of Subjects in 49 CFR Part 1572

Commercial drivers license, Criminal history background checks, Explosives, Hazardous materials, Motor carriers, Motor vehicle carriers, Security measures, Security threat assessment.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends 49 CFR chapter XII, subchapter D as follows:

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR LAND TRANSPORTATION SECURITY

■ 1. The authority citation for part 1572 continues to read as follows:

Authority: 49 U.S.C. 114, 5103a, 40113, 46105.

■ 2. In § 1572.3 add the following definition:

§ 1572.3 Terms used in this part.

* * * * *

Pilot State means a State that volunteers to begin the security threat assessment process prior to January 31, 2005.

* * * * *

■ 3. In § 1572.5, revise paragraphs (b)(2), (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 1572.5 Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement.

* * * * *

(b) * * *

(2) *Submission of fingerprints.* (i) If TSA determines that an individual does not meet the security threat assessment standards described in paragraph (d) of this section prior to completing a fingerprint-based criminal history records check and directs the State to revoke the individual's hazardous materials endorsement, the individual may submit fingerprints in a form and manner specified by TSA if he or she believes that the determination is based on mistaken identity.

(ii) When so notified by the State, an individual must submit fingerprints in a form and manner specified by the State and TSA when the individual applies to obtain, renew, or transfer a hazardous materials endorsement for a CDL, or when requested by TSA.

(c) *States.* (1) Each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the standards for security threat assessment in paragraph (d) of this section.

(2) Beginning January 31, 2005:

(i) No State may issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

(ii) Each State must notify each individual holding a hazardous materials endorsement issued by that State that he or she will be subject to the security threat assessment described in this section as part of any application for renewal of the endorsement, at least 180 days prior to the expiration date of the individual's endorsement. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 90 days before the expiration date of the individual's endorsement.

(3) Prior to January 31, 2005, as approved by TSA, a Pilot State may not issue, renew or transfer a hazardous materials endorsement for a CDL unless the Pilot State—

(i) Collects the information required in § 1572.5(e);

(ii) Collects and submits fingerprints in accordance with procedures approved by TSA; and

(iii) Receives a Notification of No Security Threat from TSA.

(4) From January 31, 2005 to June 28, 2005, while TSA is conducting a security threat assessment on an individual applying to renew or transfer a hazardous materials endorsement, the State that issued the endorsement may extend the expiration date of the individual's endorsement until the State receives a Final Notification of Threat Assessment or Notification of No Security Threat from TSA.

* * * * *

Issued in Arlington, VA, on April 1, 2004.

David M. Stone,

Acting Administrator.

[FR Doc. 04–7801 Filed 4–1–04; 2:37 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000922272–4087–02 ; I.D. 061600A]

RIN 0648–AO16

Taking of the Cook Inlet, Alaska Stock of Beluga Whales by Alaska Natives

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS issues regulations to govern the taking of Cook Inlet (CI) beluga whales by Alaska Natives for subsistence purposes. These regulations were developed after considering comments received from the public, stipulations agreed to in the record of hearing before Administrative Law Judge Parlen L. McKenna (Judge McKenna) in December 2000, in Anchorage, AK, and subsequent negotiations with the parties to the hearing. The regulations are intended to conserve and manage CI beluga whales under applicable provisions of the MMPA.

DATES: Effective May 6, 2004.

ADDRESSES: Copies of the final Environmental Impact Statement (EIS), Record of Decision (ROD) and other information related to this rule may be obtained by writing to Chief, Protected Resources Division, NMFS Alaska Regional Office, P.O. Box 21668, Juneau, AK 99802. Documents related to these harvest regulations and on related actions, including the EIS and ROD, are available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm.*

FOR FURTHER INFORMATION CONTACT: Barbara Mahoney or Brad Smith, NMFS, Alaska Region, Anchorage Field Office, (907) 271–5006, fax (907) 271–3030; or Thomas Eagle, NMFS Office of Protected Resources, (301) 713–2322, ext. 105, fax (301) 713–0376.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2000, NMFS proposed harvest regulations (65 FR 59164) governing the take of CI beluga whales by Alaska Natives. In accordance with the Administrative Procedure Act, 5