The Class E airspace areas designated as 700/1,200 ft. transition areas are adopted as proposed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule, with the clarification of the airspace description of the Oooguruk Drill Site Helipad, is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace extending 700 and 1,200 feet above the surface at Oooguruk, AK. New special IAPs have been developed for two heliport facilities, Oooguruk Drill Site Helipad, and Oooguruk Tie-in Helipad, that will provide adequate controlled airspace for IFR operations at these landing sites. Also, added to the airspace description for the Drill Site Helipad will be "... excluding of that portion within R-2204 when R-2204 is active."

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the two helipads at Oooguruk, AK and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

§ 71.1 [Amended]

1. The authority citation for 14 CFR part 71 continues to read as follows:


§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

AAL AK E5 Oooguruk Drill Site Helipad, AK [New]

Oooguruk, Oooguruk Drill Site Helipad, AK

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Oooguruk Drill Site Helipad, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Oooguruk Drill Site Helipad, AK, excluding that portion within R2204 when R2204 is active.

AAL AK E5 Oooguruk Tie-in Helipad, AK [New]

Oooguruk, Oooguruk Tie-in Helipad, AK

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Oooguruk Tie-in Helipad AK, excluding that portion within R2204 when R2204 is active; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Oooguruk Tie-in Helipad, AK, excluding that portion within R2204 when R2204 is active.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 909

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2007–0164]

RIN 0648–AV68; 1625–AB24

Definition of Marine Debris for Purposes of the Marine Debris Research, Prevention, and Reduction Act

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce; Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: NOAA and the Coast Guard are defining “marine debris” for purposes of the Marine Debris Research, Prevention, and Reduction Act (the Act). The Act requires NOAA and the Coast Guard to jointly develop a definition and promulgate it through regulations; this rule represents the agencies’ compliance with the Act. For the purposes of the Marine Debris Research, Prevention, and Reduction Act only, marine debris is defined as any persistent solid material that is...
manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or the Great Lakes.

DATES: This final rule is effective October 5, 2009.

ADDRESSES: Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–0164 and are available for inspection and copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to http://www.regulations.gov, selecting the Advanced Docket Search option on the right side of the screen, typing USCG–2007–0164 into the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

multi-disciplinary approaches to reduce the sources and impacts of marine debris to the nation’s marine environment, natural resources, public safety, and economy. The IMDCC meets quarterly to ensure coordination of research, monitoring, education, and regulatory actions addressing the persistent marine debris problem.

As codified in Title 33 of the United States Code, the Act requires NOAA and the Coast Guard, in consultation with the IMDCC, to “jointly develop and promulgate through regulations a definition of the term ‘marine debris’ for the purposes of this Act.” 33 U.S.C. 1954(b)(2006). The Act expressly limits the application of the definition of marine debris to the implementation and requirements of the Act. The Act does not authorize NOAA or the Coast Guard to undertake regulatory actions other than the promulgation of this definition, and the definition of marine debris does not affect the regulatory or management activities of other Federal agencies.

NOAA and the Coast Guard worked together to develop and propose a definition, taking into account both agencies’ responsibilities under the Act. The term “marine debris” has a variety of meanings to the many entities working in and affecting the marine environment. The definition promulgated by this rule, however, focuses on solid debris from land-based and ocean-based sources. While NOAA and the Coast Guard considered alternative definitions, this definition will allow the Coast Guard to more effectively address the broadest possible range of marine debris activities for grant and research support as provided in the Act. The definition will also provide the Coast Guard sufficient parameters to conduct useful and focused studies and reports required by the Act.

As required by the Act, the two agencies consulted with the IMDCC during the development of this definition. Some IMDCC members suggested that the definition include the term “unauthorized” in order to exclude materials explicitly permitted to be discharged into the marine environment. NOAA and the Coast Guard did not include the term “unauthorized” in the definition. As discussed in more detail below, such a limited definition would be inconsistent with the objectives of the Act, which are to identify, determine the sources of, assess, reduce, and prevent the full range of marine debris and its adverse effects on the marine environment and navigable waters of the United States, and the lands therein and thereunder, and adjacent shorelines and shorelands.

A. Comments on the Purpose of the Definition

Several commenters approached the definition of marine debris from an enforcement perspective, assuming that items within the definition of marine debris would necessarily be subject to anti-pollution mandates. An item that satisfies the definition of marine debris may, in some cases, be addressed by anti-pollution laws that prohibit the disposal or abandonment of the material. However, the fact that a material satisfies the definition of marine debris does not mean its disposal or abandonment is prohibited. The Act does not prohibit the disposal or abandonment of marine debris, nor does it provide regulatory authority to do so. Instead, the Act is intended to help identify, assess, reduce, and prevent marine debris. See Section III of this preamble for a description of agency involvement in addressing these areas. The definition of marine debris will be used only for the implementation of the Act.

B. Comments on “Marine Environment”

Two commenters asked what areas are included in the term “marine environment.” NOAA and the Coast Guard use the term “marine environment” consistently with its use in other sections of the United States Code. The term “marine environment” is defined in various parts of the United States Code to include the high seas, exclusive economic zone, territorial sea, coastal waters, Great Lakes, navigable waters of the United States, and the lands therein and thereunder, and adjacent shorelines and shorelands.

C. Comments on “Solid”

Three commenters asked whether specific materials they consider to be “semi-solid” would be included within the definition of marine debris, or encouraged that such materials be included. Marine debris, pursuant to the Act, is defined as any persistent solid material and therefore does not include semi-solids, such as tar balls and sewer cakes. NOAA and the Coast Guard concluded that the Act was not intended to cover materials other than solid materials. Internationally and domestically, the generally accepted usage of “marine debris,” including in research, refers to solid items. For example, all of the marine debris items catalogued in the 1988 Report of the Interagency Task Force on Persistent Debris are solids.

D. Comments on “Persistent”

Three commenters asked for clarification of the word “persistent” as used in the definition. The term “persistent” is intended to capture items that degrade slowly, as noted in the CEQ Ocean Blueprint for the 21st Century and the House Report on the Act (H.R. Rep. No. 109–332, pt. 2, at 1759 (2006)). This also is consistent with the 1988 Report of the Interagency Task Force on Persistent Debris, in which small pieces of plastic and plastic particles are recognized as marine
debris. Persistency is affected by material composition, movement within the water column, and exposure to sunlight, among other things. The ability of marine debris to travel long distances away from the point of origin is taken into account in considering persistency.

E. Comments on “Manufactured or Processed”

Five commenters requested the definition be modified to include “naturally occurring” debris such as downed trees, or expressed interest in the treatment of lost agricultural cargo. The Coast Guard and NOAA concluded that organic matter that is not processed or manufactured, that enters the marine environment, would not meet the definition of marine debris within the context of the Act, which focuses on manufactured and processed items. To the extent that organic matter has been subject to manufacturing or processing, those items may be considered marine debris if they satisfy the remainder of the definition.

One commenter requested the definition be modified to include materials “intended to be processed.” The commenter provided the specific example of raw materials used for plastic production, namely pre-production plastic pellets. All plastic items have been created through a manufacturing process, as they do not exist naturally in the environment. Therefore, plastic in any form and of any size already is included in the definition of marine debris. Similar manufactured persistent solids mentioned by commenters, such as golf balls, also are considered marine debris.

F. Comments on “Disposed of or Abandoned Into”

Commenters described a variety of means by which material can be disposed of or abandoned into the marine environment, such as transport by wind or storm drains, and inquired how or whether the manner of transport affects whether or not the material is within this definition of marine debris. The means by which material enters into marine environment does not affect whether that material is considered marine debris. As noted in the preamble above, a variety of both sea and landside events and activities, such as storm water runoff, wind, or natural disasters, may ultimately result in materials being abandoned or disposed of in the marine environment. For that reason, the definition of marine debris includes materials disposed of or abandoned “directly or indirectly, intentionally or unintentionally” into the marine environment.

G. Comments on Discharges in Compliance With Law

Three commenters commented on whether the definition of marine debris should include materials discharged in compliance with relevant enforcement regimes. A persistent solid material that is manufactured or processed, and disposed of or abandoned into the marine environment, is considered marine debris even when the disposal or abandonment is legally permissible. As noted above, NOAA and the Coast Guard define marine debris exclusively for the purposes of the Act, and the Act does not create an enforcement regime. Existing enforcement regimes referenced in the Act, such as the Act to Prevent Pollution from Ships and MARPOL Annex V, allow the legal discharge of items into the sea. Congress did not state in the Act or legislative history that a definition exclude those items. Moreover, it is impractical to classify items based on source rather than location. For example, a tin can located in the sea may have been discharged in accordance with MARPOL or may have blown into the ocean from a pier. In both circumstances, considering the tin can to be marine debris fulfills the intent of the Act.

The Act is non-regulatory and overlaps with current enforcement regimes established by other laws. The fact that an item is legally disposed of or abandoned does not prevent it being studied or tracked. Environmental goals can be achieved through non-regulatory means, including study and the promotion of new methods to prevent, reduce, and mitigate the effects of debris. Thus, marine debris of any type is open for research or other activities as specified in the Act.

H. Comments on Items Placed in the Marine Environment by Permit

Four commenters raised concerns that materials placed in the marine environment by public agencies or under permit by public agencies—such as artificial reefs, marine structures, vessels, rigs, pipelines, and navigational and weather buoys—may be deemed marine debris. The Coast Guard and NOAA do not consider such items disposed of or abandoned, because the items are intact, on station, and monitored. However, an item or piece of an item originally placed or permitted in the marine environment, but that subsequently by wear and tear, becomes lost, or is no longer actively monitored, could be considered disposed of or abandoned and would meet the definition of marine debris. The Coast Guard and NOAA emphasize that a government approval or permission for disposal or abandonment of material into the marine environment does not exclude that material from research, removal, or outreach activities contemplated by the Act. For example, a tire reef off the coast of Florida, legally placed there in 1972, has fragmented and allowed tires to drift across the seafloor; those tires are considered marine debris for purposes of the Act.

I. Comments on Medical Waste and Hazardous Materials

Three commenters expressed concern about medical waste, such as syringes, located in the marine environment, and about floating containers containing hazardous, or unknown but potentially hazardous, substances. Solid medical waste material such as syringes and floating or submerged containers are marine debris under the definition. Hazardous material response is not within the scope of the Act; however, the remediation of many types of marine debris, including hazardous materials covered by the Comprehensive Environmental Response and Liability Act (42 U.S.C. 9601 et seq.), is provided for by a variety of statutes.

J. Comments on Consultation With the Interagency Marine Debris Coordinating Committee

Two commenters questioned the lack of consensus with some members of the IMDCC regarding the definition of marine debris. The Act directs NOAA and the Coast Guard to consult with the IMDCC in developing the definition of marine debris, and this consultation took place at a number of quarterly IMDCC meetings through August, 2007. NOAA and the Coast Guard have addressed the comments made by IMDCC members in this preamble and will continue to work with the IMDCC in implementing the Act.

V. Regulatory Analyses

The Coast Guard and NOAA developed this rule after considering numerous statutes and executive orders related to rulemaking. Below is a summary of our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and
The Coast Guard and NOAA have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. NOAA and the Coast Guard have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, NOAA and the Coast Guard did not consider the use of voluntary consensus standards.

M. Department of Commerce Docket Number

The clearance docket number for the Department of Commerce is: 070615197–91195–02.

N. Environment

The Coast Guard has analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and NOAA has analyzed the proposed rule under NOAA Administrative Order 216–6, which sets forth NOAA’s
environmental review procedures for implementing NEPA. The agencies have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 6(b) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy” (67 FR 48244, July 23, 2002) and NOAA NAO 216–6 sections 5.05 and 6.03(c)[3][i]. This rule involves congressionally mandated regulations designed to improve or protect the environment. An environmental analysis checklist and the relevant categorical exclusion determinations are available in the docket where indicated under ADRESSES.

List of Subjects
15 CFR Part 909
Marine resources, Marine debris, Marine pollution, and Ocean dumping.

33 CFR Part 151
Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, and Water pollution control.
NOAA signature.
John H. Dunnigan,
Assistant Administrator for Ocean Services and Coastal Zone Management.
Coast Guard signature.
Dated: August 20, 2009.
B.M. Salerno,
RADM, Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

For the reasons discussed in the preamble, NOAA adds 15 CFR part 909 and the Coast Guard amends 33 CFR part 151 as follows:
\[1. 15 CFR Part 909 is added to read as follows:

PART 909—MARINE DEBRIS

§ 909.1 Definition of marine debris for the purposes of the Marine Debris Research, Prevention, and Reduction Act.


§ 909.1 Definition of marine debris for the purposes of the Marine Debris Research, Prevention, and Reduction Act.

(a) Marine debris. For the purposes of the Marine Debris Research, Prevention, and Reduction Act (33 U.S.C. 1951–1958 (2006)) only, marine debris is defined as any persistent solid material that is manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or the Great Lakes.

(b) NOAA and the Coast Guard have jointly promulgated the definition of marine debris in this part. Coast Guard’s regulation may be found in 33 CFR 151.3000.

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

2. Add Subpart E to Part 151, to read as follows:

Subpart E—Definition of Marine Debris for the purposes of the Marine Debris Research, Prevention, and Reduction Act


§ 151.3000 Definition of Marine Debris for the purposes of the Marine Debris Research, Prevention, and Reduction Act.

(a) Marine debris. For the purposes of the Marine Debris Research, Prevention, and Reduction Act (33 U.S.C. 1951–1958 (2006)) only, marine debris is defined as any persistent solid material that is manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or the Great Lakes.

(b) NOAA and the Coast Guard have jointly promulgated the definition of marine debris in this part. NOAA’s regulation may be found in 15 CFR part 909.

[FR Doc. E9–21261 Filed 9–2–09; 8:45 am]
BILLING CODE 3510–JE–P 4910–15–P

DEPARTMENT OF LABOR
Employment and Training Administration

20 CFR Part 655
RIN 1205–AB54

Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Correction

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Technical correction.

SUMMARY: This document contains a correction to the Final Rule of the H–2B program that was published on December 19, 2008. The Final Rule re-engineers the application filing and review process by centralizing processing and by enabling employers to conduct pre-filing recruitment of United States (U.S.) workers. In addition, the rule enhances the integrity of the H–2B program through the introduction of post-adjudication audits and procedures for penalizing employers who fail to meet program requirements. This rule also makes technical changes to both the H–1B and the permanent labor certification program regulations to reflect operational changes stemming from this regulation.

DATES: This technical correction is effective September 3, 2009. The technical correction is applicable beginning January 18, 2009.

FOR FURTHER INFORMATION CONTACT: For information on the labor certification process governed by this correction, contact William L. Carlson, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:
Background

On December 19, 2008 the Department of Labor’s (Department) Employment and Training Administration (ETA) published a Final Rule titled “Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes.” It has come to ETA’s attention that due to a technical oversight a certain part of the final regulations was deleted from the Final Rule publication. The Department did not intend to remove this language from the regulations and through this correction notice the Department seeks to reinsert the inadvertently deleted language.

Need for Correction

As published, the final regulation erroneously removed a paragraph of § 655.731 that the Department had intended to remain. The intention of this Notice is to reestablish that paragraph.