

of Federal Regulations (14 CFR) part 71, to establish Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at two heliport facilities at Oooguruk, AK (74 FR 17443). Subsequent to publication, the FAA found that a sentence referencing exclusion of restricted airspace in the description for the Oooguruk Drill Site Helipad was inadvertently omitted. This action corrects this error. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Oooguruk heliport area is established by this action.

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 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

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 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 (Lat. 70°29’44” N., long. 150°15’12” W.)

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 (Lat. 70°24’51” N., long. 150°01’07” W.)

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.

\* \* \* \* \*

Issued in Anchorage, AK, on August 20, 2009.

**James L. Krause,**

*Acting Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E9–21061 Filed 9–2–09; 8:45 am]

BILLING CODE 4910–13–P

## 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 also may 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call Dr. Holly A. Bamford, NOAA Marine Debris Program, telephone 301–713–2989, or David Major, Environmental Standards Division, U.S. Coast Guard Headquarters, telephone 202–372–1402. If you have questions about viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

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#### I. Abbreviations

- IMDCC Interagency Marine Debris Coordinating Committee
- CFR Code of Federal Regulations
- FR *Federal Register*
- MARPOL 73/78 International Convention for the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978
- NEPA National Environmental Policy Act
- NOAA National Oceanic and Atmospheric Administration
- NOAA Program NOAA’s Marine Debris Prevention and Removal Program
- NOS National Ocean Service
- NPRM Notice of proposed rulemaking
- NRC National Research Council
- OMB Office of Management and Budget
- U.S.C. United States Code

#### II. Regulatory History

On May 27, 2008, NOAA and the Coast Guard published a notice of proposed rulemaking entitled “Definition of Marine Debris for Purposes of the Marine Debris Research, Prevention, and Pollution Act” in the **Federal Register** (73 FR 30322). The title of the rulemaking has been corrected by replacing the word “pollution” with “reduction,” to reflect the correct name of the Act. NOAA and the Coast Guard received six letters, containing a total of 24 comments, from the public, and four letters, containing 17 comments, from Federal agencies commenting on the proposed rule. All comments are discussed below. No public meeting was requested and none was held.

#### III. Background and Purpose

As society has developed new uses for materials, particularly plastics, the variety and quantity of items found in the marine environment has increased dramatically. These products range from common domestic material (*e.g.*, bags, cups, bottles, balloons) to industrial products (*e.g.*, strapping bands, plastic sheeting, hard hats, resin pellets) to lost or discarded fishing gear (*e.g.*, nets, buoys, traps, lines, light sticks).

In 2006, Congress passed the Marine Debris Research, Prevention, and Reduction Act (the Act) (33 U.S.C. 1951–1958 (2006)), with the purpose of identifying, determining the sources of, assessing, reducing, and preventing marine debris and its adverse impacts on the marine environment and navigation safety.

The Act makes permanent a Marine Debris Prevention and Removal Program within NOAA (NOAA Program) that intends to reduce and prevent the occurrence and adverse impacts of marine debris on the marine environment and navigation safety. The NOAA Program includes mapping, identification, impact assessment, removal, and prevention of marine debris, with a focus on threats to living marine resources, including commercial fisheries and species protected under the Endangered Species Act and Marine Mammal Protection Act, and the habitat upon which they depend. The NOAA Program uses non-regulatory measures to reduce and prevent marine debris and the loss of fishing gear, including the development of local or regional protocols for lost gear reduction and prevention. Examples of such measures include new fishing gear technology, implementation of incentives to reduce lost gear, outreach and education to commercial users and the general public, and other non-regulatory measures to minimize the volume of marine debris and lost and discarded fishing gear, and to aid in its recovery. The Act authorizes NOAA to provide grants to entities for the research, prevention, and reduction of marine debris.

The Act requires the Coast Guard to enforce the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol (MARPOL 73/78), Annex V, and the Act to Prevent Pollution from Ships, 33 USC 1901–1915 (1996). The Coast Guard will continue to monitor and enforce the requirements of these acts among the appropriate regulated industries and communities. The Coast Guard intends to increase international cooperation to reduce marine debris, and to maintain its voluntary reporting program in order to ensure the reporting of damage to vessels and disruption to navigation caused by marine debris. The Act also required the Coast Guard to submit to Congress a report evaluating the Coast Guard’s progress on these initiatives; the report required under 33 U.S.C. 1953(b) was completed in 2007. In addition, the Act required the Coast Guard to obtain a report from the National Research Council (NRC) on the effectiveness of international and domestic measures to prevent and reduce marine debris and its impacts; this report was completed and presented to Congress by NRC in September, 2008.

The Act also reactivated the Interagency Marine Debris Coordinating Committee (IMDCC), an interagency Federal body responsible for developing and recommending comprehensive and

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 NOAA to consider 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 navigation safety. Authority to dispose of or abandon material that may be considered marine debris as defined in

this regulation is not affected by the promulgation of this definition or the implementation of the programs established pursuant to the Act. Some IMDCC members also suggested that the definition of marine debris be limited to debris with adverse effects on the marine environment. NOAA and the Coast Guard did not include this limitation because it would prevent the NOAA program from supporting or conducting research where impacts of debris on marine resources are unknown or uncertain. Limiting the range of research opportunities in this way would diminish the ability of NOAA and the Coast Guard to fulfill the objectives of the Act.

On May 27, 2008, the two agencies published a notice of proposed rulemaking (NPRM) proposing a definition of marine debris for purposes of the Act. The proposed definition read as follows: "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."

#### **IV. Discussion of Comments and Changes**

The Coast Guard and NOAA received 10 letters containing a total of 41 comments on the proposed definition. After consideration of all the comments, and for the reasons set out below, the Coast Guard and NOAA adopt the proposed definition without changes.

##### *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 details on 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. NOAA and the Coast Guard specifically included the Great Lakes in the definition of marine debris to avoid confusion. The marine environment does not include airspace above bodies of water.

One commenter requested that the term "marine environment" be replaced with the term "aquatic environment" in order to cover debris originating from land-based sources via creeks and tributaries. As explained in part F below, such debris is already addressed by the definition.

##### *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 would be 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 breaks apart, 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

Budget has not reviewed it under that Order.

Public comments on the NPRM are summarized in Section IV of this preamble, "Discussion of Comments and Changes." NOAA and the Coast Guard received no public comments and made no changes that would alter the assessment of impacts in the NPRM. A summary of the assessment follows.

The Act requires the Coast Guard and NOAA to jointly develop and promulgate a definition of marine debris for the purposes of the Act.

Accordingly, this rulemaking creates a joint Coast Guard and NOAA definition of the term "marine debris" for the purposes of the Act. The Act does not authorize NOAA or the Coast Guard to undertake regulatory or management activities of other Federal agencies. Instead, the drafting agencies expect to use the definition of marine debris for the administration of research and educational grants. Such grants may map, identify, or assess the impacts of marine debris.

#### *B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the drafting agencies considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

In the NPRM, NOAA and the Coast Guard certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. See the "Regulatory Flexibility Act" section of the NPRM for the complete threshold analysis. NOAA and the Coast Guard found no additional data or information that would change the certification in the NPRM.

Therefore, the Coast Guard and NOAA certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

#### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), NOAA and the Coast Guard will assist all entities, including small entities, in understanding this rule. NOAA and the Coast Guard do not retaliate against any entity, including small entities, that may question or complain about this rule or

any policy or action of the NOAA or the Coast Guard.

#### *D. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. NOAA and the Coast Guard have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### *F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, NOAA and the Coast Guard do discuss the effects of this rule elsewhere in this preamble.

#### *G. Taking of Private Property*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *H. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *I. Protection of Children*

NOAA and the Coast Guard have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *J. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *K. Energy Effects*

NOAA and the Coast Guard 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.ID, 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 **ADDRESSES**.

#### 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.

Dated: August 19, 2009.

#### 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.

**Authority:** 33 U.S.C. 1951–1958 (2006).

#### § 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

**Authority:** 33 U.S.C. 1951–1958 (2006); 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

#### § 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.