

Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073).

Section 150.15 also issued under Nuclear Waste Policy Act sec. 135 (42 U.S.C. 10155, 10161). Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

## PART 160—TRESPASSING ON COMMISSION PROPERTY

- 71. Revise the authority citation for part 160 to read as follows:

**Authority:** Atomic Energy Act secs. 161, 229, 223, 234 (42 U.S.C. 2201, 2278a, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841).

## PART 170—FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

- 72. Revise the authority citation for part 170 to read as follows:

**Authority:** Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act sec. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

## PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

- 73. Revise the authority citation for part 171 to read as follows:

**Authority:** Consolidated Omnibus Budget Reconciliation Act sec. 6101 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

Dated at Rockville, Maryland, this 27th day of June 2012.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 93

[Docket No. FAA–2010–0302; Amdt. No. 93–97]

**RIN 2120–AJ75**

#### The New York North Shore Helicopter Route

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action requires helicopter pilots to use the New York North Shore Helicopter Route when operating along the north shore of Long Island, New York. The North Shore Helicopter Route was added to the New York Helicopter Route Chart in 2008 and prior to this action, its use has been voluntary. The purpose of this rule is to protect and enhance public welfare by maximizing utilization of the existing route flown by helicopter traffic one mile off the north shore of Long Island and thereby reducing helicopter overflights and attendant noise disturbance over nearby communities. This rule will lapse in 2 years unless the FAA determines that a permanent rule is merited.

**DATES:** Effective August 6, 2012 through August 6, 2014.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this rule contact Gary A. Norek, Airspace, Regulations and ATC Procedures Group, AJV–11, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8783. For legal questions concerning this rule contact Rebecca MacPherson, AGC–200, Office of Chief Counsel, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone 202–267–3073.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for This Rulemaking**

The FAA has broad authority and responsibility to regulate the operation of aircraft, the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 *et seq.*, 40103(b)). The FAA’s authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under section 40103, the Administrator of the FAA has authority to “prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for \* \* \* (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b)(2)). In addition, section 44715(a), provides that to “relieve and protect the public health and welfare from aircraft noise,” the Administrator of the FAA, “as he deems necessary, shall prescribe \* \* \* (ii) regulations to control and abate aircraft noise \* \* \*”

##### **I. Executive Summary**

In response to continued concerns from a large number of local residents who are disturbed by the level of noise from helicopters operating over Long Island, the FAA adopts this final rule, as proposed, to require helicopter pilots whose route of flight takes them over the north shore of Long Island to fly the North Shore Helicopter Route. This route is based on a voluntary route that the FAA established in 2008. The route is published on the New York Helicopter Route Chart. This rule also provides that when necessary for safety, weather, or when transitioning to or from a point of landing, a pilot may deviate from the published altitudes and routes. This action is part of an on-going process to enhance public health and welfare by reducing helicopter noise for residents along the north shore of Long Island.

The FAA believes this rule is justified for several reasons. Maximizing the utilization of the existing route by making it mandatory is expected to help to further decrease levels of noise that have already been voluntarily achieved. Because the route is approximately one mile off the northern shore of Long Island and away from the residential communities on Long Island that are the source of hundreds of comments supporting the rule, it should not in itself cause any environmental harm. Other than necessary deviations or transitions, the noise from the helicopters would be over water, and there is no evidence of any significant

effect of the rule on water quality, ecological resources, or other aspects of the environment.

The rule fully addresses any safety concerns by beginning the route at a point that minimizes interaction with LaGuardia's airport traffic, and allowing deviations at the pilot's discretion for safety and weather concerns.

Since the extra distance traveled is relatively minor to get to and return from the approximately one-mile offshore route, the costs for fuel and extra time would also be minimal. In addition, no new equipment is required.

The FAA has noted five circumstances, the combination of which is likely unique to Long Island, that support using our statutory authority to move forward with a final rule.

1. Because Long Island is surrounded by water, it was possible to develop a route that took helicopters a short distance off the shoreline. Thus, the North Shore Helicopter Route does not adversely affect other communities and operators can use the route without significant additional costs.

2. There are disproportionately more multi-engine helicopters flying in Long Island than the national averages (approximately 65% versus 10–15% nationally.) This allows for greater use of the off-shore route.

3. There are visual waypoints along the route that allow pilots to fly along the route with no additional equipment during good weather.

4. The helicopter traffic along the north shore of Long Island is largely homogenous, in that it is primarily point-to-point transit between New York City and the residential communities along the northern and eastern shores of Long Island.

5. The population corridor along the north shore of Long Island is significant, and coupled with the number of airports/heliports on the island, the FAA found it reasonable to develop a route to mitigate noise impacts.

Since a voluntary route already exists, the only available remaining option to further abate this noise problem is to make the route mandatory to the extent consistent with aviation safety. In light of the minimal costs imposed and the substantial number and volume of complaints, the FAA finds that this rule is justified. However, the FAA recognizes that there may already be a high rate of compliance with the voluntary route and that it is imprudent to mandate that all helicopters follow the route under all circumstances. Accordingly, it is possible that the actual rates of compliance may not improve significantly or that noise

levels that are currently dispersed may inadvertently be concentrated as a result of the rule. Consequently, the FAA has decided to sunset the rule in 2 years in the event the agency concludes that the rule does not reduce or alleviate noise concerns or is otherwise unjustified. During the time that the rule is in effect, the FAA will continue to review and monitor the implementation of this rule and work with stakeholders to ensure that the rule addresses the problem and is otherwise justified; if not, the FAA will allow the rule to lapse at the end of 2 years. Alternatively, the FAA may amend the rule to implement meaningful changes should they be identified.

## II. Background

### A. Statement of the Problem

Helicopter traffic between New York City and eastern Long Island has traditionally followed one of three paths. The helicopters fly along the north shore of Long Island and then travel to the south to the intended destination; they travel across the middle of the island along the Long Island Expressway until branching off to the destination; or they travel along the south shore of Long Island and then turn inland to the final destination. Many of the helicopters take off or land in the Hamptons. There are two airports and a helipad that service the Hamptons. Other operators take off or land at one of the many other airports or heliports throughout the island. There are no airports and very few heliports along the north shore of Long Island. Accordingly, one might think that operators would prefer to travel along the south shore or along the Long Island Expressway. In fact, many operators prefer to travel along the north shore of Long Island and then travel inland to the desired landing spot. This is because this is a faster route and because at some locations, most notably the Hamptons, weather delays are common for aircraft approaching from the south.

In October 2007, Senator Charles Schumer and Representative Tim Bishop conducted a meeting with the FAA, local helicopter operators and airport proprietors to specifically address noise complaints stemming from helicopter operations along the north shore of Long Island. As a result of this meeting, the FAA designed a visual flight rules (VFR) helicopter route, the North Shore Helicopter Route, for helicopters to use when transiting the area that would reduce the noise impact of helicopter traffic on populated

areas by having these operations offshore.

The FAA published the route on the Helicopter Route Chart for New York, effective May 8, 2008. Subsequently, New York public officials advised the FAA that they continue to receive noise complaints in this area even with the voluntary North Shore Helicopter Route in place. The local FAA Flight Standards District Office has also received similar complaints.

### Uniqueness of the Situation

There are a number of unique characteristics that, taken together, made development of an alternative over-water route along the north shore of Long Island appropriate and feasible and consistent with the FAA's safety mandate. First, because Long Island is surrounded by water, it was possible to develop a route that took helicopters a short distance off the shoreline. Thus, the North Shore Helicopter Route does not negatively impact other communities, and operators can use the route with minimal additional costs. Second, the fleet mix in Long Island consists of significantly more multi-engine helicopters than the national mix, allowing more operators to use the route. There are limits on the distance certain helicopters can prudently operate from shore without being equipped for overwater operation. Unlike fixed wing aircraft, helicopters are not able to glide in the event of total loss of power for any significant distance. Thus, pilots of single-engine rotorcraft not equipped for overwater operation need to operate close to shore so they can land safely in the event of a loss of power. Nationally, the vast majority (roughly between 85 and 90 percent)<sup>1</sup> of helicopters have only one engine. However, the FAA believes that about two-thirds of commercial helicopters flying from New York City to Long Island are multi-engine helicopters, while about one-third of the helicopters being used for this purpose have only one engine.<sup>2</sup> Thus, the need to stay close to land is less of an issue along the North Shore than it would be in other areas of the country where the number of single-engine helicopters is significantly greater. This highly

<sup>1</sup> A review of the Registry database indicated that approximately 90 percent of all registered helicopters have a single-engine. A review of the 2010 GA survey indicated that approximately 85 percent of the active helicopter population is single-engine. The discrepancies in the two data sets are a function of filters in the survey that are designed to focus on helicopters that are actively flown.

<sup>2</sup> See Eastern Region Helicopter Council Operations Analysis—Suffolk County, Memorial Day Weekend 2010, June 23, 2010, Docket No. FAA-2010-0302-0898.

unusual situation allows us to implement an inexpensive alternative that should effectively and safely address the considerable complaints. Third, there are visual waypoints along the route that allow pilots to fly along the route with no additional equipment during good weather. While many pilots use Global Positioning System (GPS) coordinates to track a portion of the route, they are not required to do so. Fourth, the helicopter traffic along the north shore of Long Island is largely homogenous, in that it is primarily point-to-point transit between New York City and the residential communities along the northern and eastern shores of Long Island. Unlike helicopter traffic in urban areas, where the destination points and reasons for using a helicopter diverge widely (e.g., news reporting, aerial traffic updates, as well as point-to-point transit), the nature of helicopter traffic over and along the North Shore lends itself to the development of a single route that could be used consistently. Finally, the population corridor along the north shore of Long Island is significant, and coupled with the number of airports/heliports on the island, the FAA found it reasonable to develop a route to mitigate noise impacts.

#### Safety Implications

In developing this route, the FAA considered the potential safety implications associated with helicopters flying in VFR conditions off the coastline and the interaction with other traffic at or above the specified minimum altitude. The route begins approximately 20 miles northeast of LaGuardia in order to minimize interaction of the traffic operating to or from that airport.

#### Community Involvement

The FAA, airport sponsors, state and local government, aircraft operators, and local communities all have a role to play in reducing aircraft noise. Community noise concerns about aircraft overflights are uniquely local in nature and are best resolved in a voluntary manner, at the local level, and with the participation of all affected parties. In this instance, local participation was crucial to the development of the voluntary route. Based on the number of complaints and public comments to the proposed rule, the local effort, while successful in many regards, has not fully resolved community annoyance with helicopters flying over homes in northern Long Island.

The FAA's experience with aircraft noise has shown that community flight path preferences vary significantly;

some communities prefer to concentrate noise over a particular area while others prefer to disperse the flight paths so that individual neighborhoods experience less noise overall. Thus, the FAA's policy is to respond to requests for noise abatement flight procedural changes from airport sponsors and to encourage the development of such proposals through the FAA's Airport Noise Compatibility Program established under the Aviation Safety and Noise Abatement Act of 1979.

#### Future Technology

While helicopter noise appears to have recently roused the greatest number of noise complaints, over time helicopters will incorporate better technology and become less noisy. The FAA is developing rules to impose more stringent noise standards for all new rotorcraft models being certificated. As these quieter aircraft are built and incorporated into the fleet, noise levels associated with helicopter operations should correspondingly decrease.<sup>3</sup>

However, these standards are not yet in place. Given the existence of a voluntary route that reduces noise to some extent, the only available remaining option to further abate this noise problem is to require utilization of the route to the extent consistent with aviation safety.

#### B. Summary of the NPRM

On May 26, 2010, the FAA published the NPRM titled "The New York North Shore Helicopter Route" (75 FR 29471). The FAA proposed requiring civil helicopters operating along Long Island, New York's northern shoreline to utilize the published New York North Shore Helicopter Route between the fixed waypoint Visual Point Lloyd Harbor (VPLYD) and Orient Point. Specifically, the mandatory portion of the route begins at a waypoint 20 miles northeast of LaGuardia Airport (LGA) and near Huntington, NY; remains approximately one mile offshore, extends to the eastern end of Long Island; and terminates at Orient Point, near the eastern edge of Long Island. Helicopters operating on this route would have to remain at or above 2,500 feet mean sea level (MSL). The proposal contemplated helicopter pilots would deviate from the published altitude and route under several conditions. The conditions take into consideration the wide variety of

<sup>3</sup> Should the FAA decide against allowing the rule to sunset, we may evaluate the affected fleet as the quieter technologies are incorporated into the helicopter fleet as a whole and may reevaluate the continued need for a mandatory route if the majority of affected helicopters have the quieter engines.

helicopters, their associated performance and mission profiles, the dynamic weather environment along the route, and the pilot's responsibility to conduct safe operations at all times. The proposal also contemplated allowing operators to deviate from the route in order to reach their final destination.<sup>4</sup> The comment period closed on June 25, 2010.

#### C. General Overview of Comments

The FAA received approximately 900 comments. Many comments were from residents, local government, citizen groups, and businesses. Slightly more than a third of the total number of commenters complained about the levels of helicopter noise that they are exposed to, particularly during the summer months. The FAA also received numerous comments from individual pilots, many of whom were opposed to the implementation of a mandatory route on principle. In addition, the agency received comments from the Aircraft Owners and Pilots Association (AOPA), the Eastern Region Helicopter Council (ERHC), the General Aviation Manufacturers Association (GAMA), the National Air Transportation Association (NATA), the National Business Aviation Association (NBAA), and United Technologies Corporation (UTC/UTFlight).

The number and tenor of the comments demonstrates affected parties at odds with each other.

On the one hand, the residents along the north shore of Long Island emphatically agreed that helicopter overflights during the summer months are unbearable and negatively impact their quality of life. They opposed any route over communities, even sparsely settled areas, and suggested the route go over the ocean. One commenter noted he had counted over 25 helicopter operations in a 2-hour period. He also said the flights started early in the morning and continued to early evening. Other commenters noted that the helicopter noise interferes with sleep, conversation, and outdoor activities. Still others complained that the helicopters fly so low that their walls vibrated.

On the other hand, helicopter operators and their associations argued that the helicopter noise levels over Long Island are not appreciable, that operators are already largely flying on the voluntary route, and that any mandated route would result in an

<sup>4</sup> While the route extends to Orient Point, it is unlikely that many operators would stay on the route that long because Orient Point is located at the far eastern point of the island, well east of any significant population centers.

unacceptable imposition of cost and safety risk.

The FAA received more specific comments on the following general areas of the proposal:

- Justification for the rule,
- Safety issues,
- Route location,
- Environmental concerns,
- Procedural/miscellaneous, and
- Economic evaluation.

### III. Discussion of Public Comments and Final Rule

#### A. Justification for the Rule

Several commenters alleged that the proposal does not have adequate factual support. Some commenters argued that according to industry measurements, compliance on the voluntary route is very high already and that mandating this route is therefore not necessary. According to data collected by ERHC after the voluntary route was implemented, roughly 85–95 percent of operators observed over multiple holiday weekends comply with the North Shore Helicopter Route.<sup>5</sup> ERHC noted that it believes the noise complaints are coming from a relatively small number of households. While ERHC can demonstrate that relatively few households call its noise hotline, it cannot demonstrate these individuals are the only ones disturbed by the existing noise levels.

Other commenters stated that the lack of environmental analysis makes it impossible to determine that the rule actually addresses the concerns. ERHC and the Town of East Hampton contended that without such analysis, it is arbitrary and capricious to conclude that the route reduces noise on nearby communities.

As stated earlier, the original reason for establishing the North Shore Helicopter Route was to reduce noise from helicopter flights over communities along the north shore of Long Island by moving those flights offshore and establishing a minimum altitude. Because the route applies only to VFR flights, the FAA cannot definitively determine its current level of use. Even assuming the level of use is high, as alleged by the commenters, it is neither arbitrary nor capricious for the FAA to conclude, even without a specific noise analysis, that increasing use of the route by making it mandatory will further reduce noise impacts from helicopters operating along the north

shore of Long Island. ERHC's contention that only a small number of households object to the helicopter noise levels is called into question by the hundreds of comments the FAA received supporting the mandatory use of the offshore route and the complaints filed with local government and FAA.

No one contends that pilots are using the route 100 percent of the time, and the FAA cannot determine how long operators fly along the route (either geographically or at the specified altitudes) when they do use it. While the final rule allows operators to deviate from the route for safety (including adverse weather) or to reach their destination, the FAA is unable to determine whether operators are currently deviating for other reasons. However, based on comments to the NPRM and the continued concerns expressed by the residents' elected officials, the FAA understands that helicopter overflights continue to be a problem for the residents along the north shore of Long Island.

The FAA, with the assistance of the John A. Volpe National Transportation Systems Center (Volpe Center), analyzed data from the Performance Data Analysis and Reporting System (PDARS) to assess the noise of flight operations along the north shore of Long Island.<sup>6</sup> The FAA reviewed helicopter traffic for the Memorial Day and Fourth of July weekends in the summer of 2011. That data indicated that helicopter traffic is greater on the Fridays before the long holiday weekends and on the last day of the holiday weekend than in the interim period. Based on this limited data set, as well as the assertions in the comments that the problem is greater in the summer, it is reasonable to assume that traffic is not evenly distributed throughout the year and on all days of the week. Thus, while overall cumulative noise levels may be low when averaged across the year, helicopter overflights could be more disturbing on certain days when they are experienced several times over a period of several hours or the course of a day. Maximizing the utilization of the existing route by making it mandatory

will secure and improve upon the decreased levels of noise that have been voluntarily achieved.

#### B. Safety Issues

ERHC objected to the over-water route because it places some helicopters beyond the autorotation performance distance needed to reach land in the event of an engine failure or other emergency.

The FAA notes that safety is its highest priority. To the extent a helicopter operator cannot safely fly along the North Shore Helicopter Route, this rule specifically allows for deviation.

The FAA recognizes the varying capabilities of helicopters, and this rule permits pilots to deviate from the rule for safety, weather, or when transitioning to or from a destination or point of landing. Under § 91.3, the pilot in command is directly responsible for and is the final authority as to the operation of that aircraft. Therefore, if flight along this route places a helicopter beyond the autorotation performance distance to the shore and the helicopter is not equipped with flotation devices, such as life jackets or helicopter floats, the pilot is permitted to deviate from the route and altitude.

AOPA stated there is no altitude discrimination between opposite direction helicopter traffic transiting the route. AOPA further stated that the FAA, at a minimum, should provide additional guidance on altitude assignments for opposite direction traffic in order to decrease the risk of a mid-air accident over Long Island.

As an initial matter, the FAA agrees that additional guidance is useful and is developing guidance that will be available before use of the route becomes mandatory. The FAA also acknowledges that opposite direction VFR traffic takes place along this route, but this is not unusual. There already are rules governing rights of way in VFR conditions, and §§ 91.113 and 91.155 are applicable to pilots operating along this route. These rules respectively address right of way rules for converging aircraft, approaching aircraft head on, overtaking aircraft, and the appropriate visibility minimums.

The FAA encourages operators to identify industry best practices and operational procedures for use on the route. The FAA also will develop a voluntary training awareness course for operators, which will include these best practices and emphasize industry's "fly neighborly" program as described on the New York Helicopter Route Chart. Most importantly, this rule provides pilots with the needed flexibility to

<sup>5</sup> The FAA has not been able to independently assess the validity or reliability of these estimates. In any event, the FAA continued to receive noise complaints after implementation of the voluntary route.

<sup>6</sup> The Performance Data Analysis and Reporting System (PDARS) supports the collection, archiving, and reporting of flight plan and radar track data from Air Route Traffic Control Centers, Terminal Radar Approach Control facilities, and Air Traffic Control Towers to manage aviation activity within the National Airspace System (NAS). The PDARS data analyzed by the FAA for this rule represents visual flight rule (VFR) aircraft operating in Class E and G airspace along the northern shoreline of Long Island, New York. The data represent aircraft using a transponder code indicating VFR operation and altitude.

maneuver off the route and/or altitude for weather, safety, or transition to/from a point of landing. FAA guidance on conducting operations subject to this rule will enhance pilot awareness and the safety of flights operating within the vicinity of this route. Should the level of traffic indicate an unacceptable level of safety risk, the FAA may choose to mandate separation standards for east- and westbound traffic in a subsequent rulemaking. Nothing in this rule should be construed as restricting or limiting in any way an air ambulance operator's ability to deviate from this route in order to provide emergency medical services.

ERHC argued that under the current rules, only the New York Helicopter Route Chart and New York Sectional depict the North Shore Helicopter Route, neither of which is required to be carried by pilots operating under VFR. ERHC further argued that the New York Sectional and New York Terminal Area Chart would need to be updated with the mandatory route and would need to be made mandatory for flight. ERHC asserted that the FAA would have to address the charting of the route as well as requirements to carry charts and sectionals, as no such requirements currently exist.

In accordance with § 91.103, the pilot in command is responsible before the beginning of a flight to become familiar with all information concerning the flight. Under this final rule, that responsibility includes being aware of the mandatory route when planning to fly along the north shore of Long Island. Though there is no specific requirement for pilots to carry aeronautical charts, the FAA believes that prudent pilots would carry charts, especially given the complexity and volume of air traffic in the greater New York City metropolitan area. The FAA will issue a notice to airmen (NOTAM) providing the operational requirements of this rule to augment information available to pilots.

Some commenters alleged this route would mix together VFR and instrument flight rules (IFR) aircraft. Portions of the route are located in Class E airspace where both IFR and VFR operations are conducted. However, this is not a unique situation for any Class E airspace area. Existing FAA regulations and air traffic control procedures provide for the safe integration of VFR and IFR operations. VFR pilots are responsible to see and avoid other traffic, which is how they operate today. Again, it must be emphasized that utilizing this route does not exempt pilots from this responsibility.

### C. Route Location

This action requires helicopter operators to use the currently published North Shore Helicopter Route when transiting the north shore of Long Island. The mandatory portion of the route begins at VPLYD waypoint located approximately 20 miles northeast of LGA, remains approximately one mile offshore, and extends to the eastern end of Long Island, terminating at Orient Point.

Some commenters stated that the definition of the geographical boundaries of the route is insufficient and difficult to identify visually.

The FAA believes the route is sufficiently defined. A VFR route is to be flown under visual conditions. Pilotage, as defined in 14 CFR 1.1, is an acceptable means by which to conduct operations along the route. Most of the route is located just one mile off the shoreline, which provides adequate visual reference for navigation purposes. The route was developed and designed by the FAA in cooperation with local helicopter operators, many of whom according to ERHC, have been flying this route for several years. The FAA meets regularly with local helicopter operators to discuss safety and noise issues. In the four years since this route was published, the FAA is not aware of any concerns regarding navigating the route.

ERHC asserted proposed airspace changes would lower Class B dimensions and impose higher workloads on air traffic controllers and IFR traffic. ERHC further asserted that since the controllers have no ability to deny VFR operators clearance, the burden would be higher on the air traffic controllers (ATC) and IFR operators. ERHC posited that if the North Shore Helicopter Route falls within the redesigned Class B Airspace, the VFR helicopter operators would further burden ATC controllers as they would be required to receive special VFR (SVFR) clearances whenever weather minimums are less than those prescribed in the Code of Federal Regulations.

The FAA notes that while airspace changes for the New York Class B Airspace area have been under discussion for many years, there are no formal proposals under consideration to date. With respect to the ATC workload, controllers provide services on a first come, first serve basis. If necessary, controllers may direct aircraft to remain clear of the Class B airspace or to standby, or controllers may refuse traffic from other sectors. If weather conditions deteriorate to the point where a pilot

requires a SVFR clearance, the same first come first serve basis applies. The FAA notes that fixed wing SVFR operations are currently prohibited in the New York Class B Airspace Area.

Most residents and local government groups supported the over-water location of the route, and moving the helicopter traffic away from their communities by overflying the water. However, numerous commenters expressed opposition to the route, mistakenly believing the route would pass over land and therefore, bring helicopter overflights over their homes and communities. Obviously all helicopter operators planning on landing on Long Island will, at some point, have to fly inland in order to land. Were there no provision to allow operators to leave the route to transit to their destination, the likely impact on a few communities, notably those near VPLYD and Orient Point, would bear the brunt of the noise associated with the majority of helicopters flying over their communities. However, there are nine airports and 16 heliports on Long Island to the east of VPLYD. The noise associated with flying to an airport or other landing site should be dispersed among the affected communities. This is because this final rule allows pilots to deviate from the route for purposes of reaching their destination. The FAA notes that a local news article published during the comment period incorrectly placed the route over land. It is possible that some of the commenters were responding to the incorrect information contained in that news article.

ERHC also objected to the route, stating the route is difficult to navigate, and will require the purchase of helicopter charts and GPS equipment to comply with the regulation.

The NPRM did not propose any changes to the current published route, which is over water. This route was the result of many meetings and consultations between the FAA, local helicopter operators, residents, and elected officials. The FAA and the interested parties selected and agreed on the waypoints that are located near, or parallel to easily seen and identified locations along the shore. For example, VPLYD and VPJAY were chosen because of their proximity to two physically prominent locations (Lloyd Point, situated at the northern most spot on Lloyd Neck, and Old Field Point, a lighthouse location near Port Jefferson, respectively). The FAA designed the route to be over water, as it would prevent helicopter traffic from overflying residential areas. This voluntary route was charted and has been flown by helicopter operators for

several years. The FAA is not aware of any navigational or safety issues associated with the use of this route.

#### D. Environmental Concerns

Several commenters contended that the FAA has failed to analyze adequately the final rule's environmental consequences, as required by the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.* ERHC alleged that without an adequate description of the proposed route, it is impossible to provide comments on whether there would be extraordinary circumstances that would preclude use of a categorical exclusion to comply with NEPA. ERHC further noted the lack of analysis to determine whether increased noise and operations over the water would affect water quality or ecological resources. Several commenters asserted that the rule would cause noise to concentrate over some communities.

The FAA's analysis of its PDAR data indicates that existing levels of helicopter noise is below levels at which homes are significantly impacted.<sup>7</sup> Beyond making use of the North Shore Helicopter Route mandatory, the rule does not change the existing route, which has been charted and flown by helicopter operators for several years. The rule allows pilots to deviate from the route when transitioning to or from a destination or point of landing, thus avoiding concentrated operations at any particular point of entry or exit along the route. Therefore, it is reasonable to assume that those pilots currently complying with the voluntary route will continue to follow the same flight paths to the extent they have been following them in the past, with the same resulting pattern of noise dispersion among underlying communities.

<sup>7</sup> Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The FAA analyzed data from the PDARS. The PDARS supports the collection, archiving, and reporting of flight plan and radar track data from Air Route Traffic Control Centers, Terminal Radar Approach Control facilities, and Air Traffic Control Towers to manage aviation activity within the National Airspace System (NAS). The PDARS data analyzed by the FAA for this rule represents visual flight rule (VFR) aircraft operating in Class E and Class G airspace in the vicinity of the northern shoreline of Long Island, New York. The data represent aircraft using a transponder code indicating VFR operation and altitude. The FAA's analysis modeled noise from approximately 15,600 flight operations, based on an average of 42.8 operations per day over 11 days around Memorial Day and July 4, 2011. The resulting noise levels were below DNL 45 dB. Under federal guidelines, residential land uses are considered compatible with noise levels below DNL 65 dB. 14 CFR part 150, appendix A, Table 1.

The FAA does not believe that this rule will create a negative impact on the public welfare. It is possible that compliance with the rule by pilots not currently complying with the voluntary route could result in some additional flights over some communities. However, because of the deviation allowed by the rule, the FAA cannot reliably predict the specific flight paths these pilots will follow on their way to or from the route. As a result, any specific noise impacts of such flight paths are not reasonably foreseeable.

In accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," the FAA has determined that the rule is categorically excluded from environmental review under paragraph 312f of the order, which applies to "regulations \* \* \* (excluding those which if implemented may cause a significant impact on the human environment)." There are no significant noise or emissions impacts, which would be the primary concerns. The FAA determined that there are no extraordinary circumstances that would preclude the applicability of this categorical exclusion, and ERHC does not provide any facts supporting the presence of any such circumstances. Moreover, ERHC does not identify any significant effects the rule would have on water quality, ecological resources, or any other aspect of the environment, and the FAA has no reason to believe that any such effects would occur.

Were the rule to require pilots to follow the route in its entirety without regard to their origin or destination, it would be reasonable to expect an increase in noise in communities near the route's termination points (i.e., the VPLYD waypoint and Orient Point), due to the resulting concentration of operations entering and exiting the route at those locations. However, the rule allows pilots to deviate from the route when transitioning to or from a destination or point of landing. Therefore, it is reasonable to assume that those pilots currently complying with the voluntary route will continue to follow the same flight paths they have been following, with the same resulting pattern of noise dispersion among underlying communities. Compliance with the rule by pilots not currently complying with the voluntary route could result in additional flights over some communities. However, because of the deviation allowed by the rule, the FAA cannot reliably predict the specific flight paths these pilots will follow on their way to or from the route. As a result, any specific noise impacts of such flight paths are not reasonably foreseeable. In any event, based on the

number of helicopter operations the ERHC estimates occur along the north shore of Long Island, any noise increase in residential communities from further concentration of those operations would not be significant. This conclusion is further supported by an FAA analysis of radar and flight plan data, a copy of which has been placed in the docket for this rulemaking.

The FAA notes that it is likely noise impacts will be felt most keenly near airports or heliports, as the helicopters descend to land. Nothing in this rule makes that a unique phenomenon. Rather, aircraft noise is typically concentrated near airports, which is why the FAA typically addresses aircraft noise through the Airport Noise Compatibility Program.<sup>8</sup>

Several commenters alleged that the rule would require helicopter operators to fly more miles and therefore burn more fuel, and that this would cause significant environmental impacts. Specifically, ERHC alleged, without supporting documentation,<sup>9</sup> that compliance with the rule would increase average flight time by 10 minutes, resulting in the consumption of nearly 117,000 additional gallons of fuel per year.

As stated above, the rule does not mandate entry or exit points, nor does it require operators to fly any specific route to or from the North Shore Helicopter Route. Therefore, it is not possible to reliably determine the amount of any increase in fuel consumption that might occur as a result of the rule. However, assuming ERHC is correct that average flight time would increase by 10 minutes, the commenter's estimated increase of 117,000 gallons per year would result in air emissions well below levels determined by the U.S. Environmental Protection Agency (EPA) to be *de*

<sup>8</sup> Presumably those airports and heliports near larger population centers will receive have more take-offs and landings than the airports and heliports near smaller population centers. But this may not actually be true. It is possible that the airports and heliports near relatively small, but more affluent population centers will handle most of the helicopter traffic.

<sup>9</sup> The FAA is unable to validate the assumptions of ERHC because it is impossible to determine where operators would choose to divert from the route to reach their intended destinations. However, the FAA did evaluate what it believes would be one of the worst case scenarios in terms of additional distance by looking at the distance between the initial waypoint at VPLYD and the Alexanders East Heliport, which is the southernmost heliport on the far south shore of Long Island. Assuming a 100 knot groundspeed, the FAA calculated the direct route time as 23.4 minutes (39 nm) and the North Shore route time as 30.6 minutes (51 nm), a difference of 7 minutes.

*minimis*.<sup>10</sup> One commenter stated that aircraft on the North Shore Helicopter Route could impact wildlife. However, the commenter does not provide any information in support of this assertion, and the FAA is not aware of any reasonably foreseeable adverse impacts on wildlife from helicopters flying on the route at or above 2,500 feet MSL.

The Town of East Hampton raised several objections to the FAA's use of the cited categorical exclusion for the rule. First, the Town asserted that the categorical exclusion is inconsistent with the FAA's intent in proposing the rule. According to the Town, if the rule would not significantly affect the human environment, there is no basis for saying it would reduce noise impact on nearby communities as stated in the NPRM. Second, the Town contended that the FAA mischaracterized the legal standard for a categorical exclusion by limiting the analysis to adverse impacts. Third, the Town claimed that the FAA used the wrong categorical exclusion for the rule.

The FAA does not agree that the cited categorical exclusion, paragraph 312f of FAA Order 1050.1E, is inconsistent with the purpose of the rule. As stated above, the purpose of the rule is to maximize use of the North Shore Helicopter Route and reduce the noise impact of helicopter flights over nearby communities. Categorical exclusion of the rule from further environmental review under NEPA is fully consistent with that purpose and is based on the FAA's analysis of the environmental effects of the rule. The FAA also disagrees with the Town's contention that the agency erred in basing its application of the categorical exclusion on the absence of significant adverse environmental impacts. The agency is not aware of any controlling authority that precludes application of a

categorical exclusion to an action because the action has an environmental benefit. Finally, the cited categorical exclusion specifically applies to regulations and therefore is appropriate for this rule.

#### *E. Procedural/Miscellaneous*

ERHC argued the FAA has not cited the proper authority for this rule and that reliance on section 44715 is "overstated and misapplied." ERHC further commented that the FAA failed to consult with the Administrator of the EPA prior to prescribing standards and regulations under section 44715(a), as required. It also contended that § 44715(a) was intended to authorize the FAA to promulgate regulations addressing certification standards, not airspace matters.

NATA, UTC/UTFlight, and AOPA commented that this is the first action by the FAA to mandate the use of a noise abatement procedure without providing some type of operational or environmental analysis. They argued that, historically, the FAA addresses noise abatement action areas initiated by an airport sponsor, as it applies to takeoffs and landings, not to the enroute operation of the aircraft.

In response to the procedural comment, the FAA did consult with the Administrator of the EPA prior to issuing the NPRM, in accordance with the requirements of section 44715(a). That communication and the EPA response have been placed in the docket for this proceeding. In promulgating this rule, the FAA cites to sections 40103(b)(2) and 44715 to articulate the breadth of its authority to address noise stemming from aircraft overflights, aircraft operations in the airport environment and setting aircraft certification standards. Contrary to the commenters' assertion, the FAA possesses and has exercised its authority in the past to address noise issues associated with aircraft overflights.<sup>11</sup> The FAA continues to believe that noise generated by aircraft overflights generally is best addressed locally and with voluntary measures as

the primary consideration. However, the FAA is within its authority to address the issue by regulatory action.

UTC/UTFlight argued that the appropriate regulatory structure already exists in 14 CFR 91.119, which provides for minimum safe altitudes. UTC/UTFlight contended that this mandatory route redefines minimum safe altitudes.

The FAA disagrees with UTC/UTFlight that compliance with § 91.119 adequately addresses this issue. Section 91.119 provides the minimum safe altitudes for aircraft and helicopters and is not intended to address aircraft noise. Pilots must follow this provision, unless an altitude is otherwise specified for certain operations. Part 93 in 14 CFR sets forth specific rules for aircraft operations that are necessary for designated airports or defined areas.

GAMA, ERHC, and AOPA contended that the 30-day comment period was too compressed to provide the needed analysis and response to a proposal that raises significant technical, safety, environmental, and operational concerns. A number of the commenters requested that the FAA withdraw the NPRM and some commenters further requested that the FAA instead engage in a series of public meetings and a process to establish routes that would produce effective noise mitigation and provide safety and operational enhancements.

The Administrative Procedure Act<sup>12</sup> does not specify a minimum period for comment. The FAA finds 30 days is not an unreasonable amount of time to comment on the use of a route that has been in place since 2008 and, according to ERHC, has a high rate of use. The FAA also notes that within the 30-day comment period, approximately 900 comments were filed, some of which were extensive. Furthermore, FAA regulations governing rulemaking provide that late filed comments will be considered to the extent possible only if they do not significantly delay the rulemaking process. (See 14 CFR 11.45(b)) The Agency notes that some commenters submitted late comments, and they were considered by this agency.

ERHC also commented the FAA did not perform the required full regulatory evaluation under Executive Order 12866 and Department of Transportation Order 2100.5. ERHC argued that the FAA incorrectly concluded that the cost of the NPRM would be so minimal as to not require full review and that the NPRM was "not a significant regulatory action" and therefore exempt from

<sup>10</sup> See Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The North Shore Helicopter Route is located entirely within Suffolk County, New York, which has been designated under the Clean Air Act as a nonattainment area for particulate matter (PM-2.5) and a moderate nonattainment area for ozone. See U.S. Environmental Protection Agency (EPA), "Currently Designated Nonattainment Areas for All Criteria Pollutants," available at <http://www.epa.gov/oapss001/greenbk/ancl.html>. In addition, the state of New York is within the Ozone Transport Region established in section 184(a) of the Clean Air Act, 42 U.S.C. 7511c(a). EPA has determined that for such nonattainment areas, emissions of less than 50 tons per year of volatile organic compounds and 100 tons per year of nitrogen oxides, PM-2.5, or sulfur dioxide are *de minimis*. 40 CFR 93.153(b)(1). Using conservative assumptions, an analysis by the FAA (a copy of which has been placed in the docket for this rulemaking), indicates that emissions of these pollutants from combustion of an additional 117,000 gallons of fuel would be well below these *de minimis* levels.

<sup>11</sup> See: 33 FR 11748; August 20, 1968 (final rule designating special air traffic rule for Lorain County Regional Airport, Lorain, Ohio to route low altitude terminal traffic away from the Oberlin College Conservatory of Music to avoid audible disturbances; 35 FR 5466; April 2, 1970 (final rule designating Prohibited Airspace (P-66) Mount Vernon, VA based on a concern over the danger to irreplaceable historic structures and the noise nuisance caused by the low flying aircraft, including helicopters, over Mount Vernon grounds); 62 FR 1192; January 8, 1997 (final rule temporarily banning commercial air tour operations over Rocky Mountain National Park in order to prevent any potential adverse noise impact from these sightseeing aircraft).

<sup>12</sup> 5 U.S.C. 551 *et seq.*

review of the Office of Management and Budget (OMB).

As further discussed in the section addressing economic concerns, at the NPRM stage and now, the action was—and is—not expected to result in more than minimal additional costs on the affected helicopter operators. Consequently, the FAA properly determined that the proposal was not a significant regulatory action, as defined under Executive Order 12866, was not significant in accordance with DOT's policy, and did not require a full regulatory evaluation under either document. Upon OMB appraisal of the NPRM, it agreed with FAA that it was non-significant.

ERHC commented that the regulatory text is “unconstitutionally vague” and that the “NPRM's lack of clarity would almost certainly result in inadvertent violations and inconsistent enforcement of the rule,” which violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

The FAA notes that ERHC was instrumental in working with the FAA to develop the North Shore Helicopter Route. Since this route was charted in 2008, the FAA is not aware of complaints from any operator about inability to navigate along the route, or any concern with the route as designed and charted. Unlike a route designed for IFR use, a VFR route does not have lateral dimension. The mandatory portion of the route follows the northern shoreline of Long Island from the VPLYD waypoint point to the northern tip of Long Island at Orient Point. As stated previously, the FAA chose waypoints that were based on the proximity to easily identifiable visual landmarks. The FAA believes that the route was developed using visual references that pilots can easily identify. We do not conclude that the requirements of this rule are vague and will result in inconsistent enforcement.

As with any other rule, the FAA will enforce this rule to the best of its capabilities. Reports of violations will be investigated to determine if the operator deviated for reasons of safety, weather, or to transit to its destination. While operators will be given the maximum latitude for deviations related to safety, a pattern of deviations would indicate that an operator was interested more in cutting short the route rather than any legitimate safety concerns. Any violation of this rule may result in a civil penalty or the suspension or revocation of the pilot's airman certificate.

#### F. Economic Evaluation

The FAA received several comments on our regulatory evaluation and the small business impact. These commenters included ERHC, GAMA, HAI, NATA, and NBAA, who stated the potential economic impact of the proposed regulatory changes, particularly on small businesses, is significant. The commenters believed the rulemaking's cost is significant because the change in flight procedures would drive longer flight paths for rotorcraft operating in the North Shore airspace. This in turn would have an impact on fuel consumed. They also believed that the final rule would force costs for additional avionics equipage.

ERHC asserted that mandating use of the North Shore Helicopter Route, as proposed, would increase the average flight of operations not currently using the route by 10 minutes. It estimated that 15 percent of current operations (approximately 2,250 operations) do not follow the voluntary route. Based on these assumptions, ERHC argued (assuming an 85 percent compliance rate) that the rule would result in the additional consumption of slightly less than 117,000 gallons of fuel per year.

The FAA cannot confirm that the route is currently being used 85 percent of the time. However, for the sake of estimating the cost of the rule, the FAA assumes that ERHC is correct. Using ERHC's numbers, the FAA calculated the cost associated with the use of the additional fuel. The nominal fuel price per gallon from the latest FAA fuel price forecast for the second half of 2012 through the first half of 2014 is \$3.17.<sup>13</sup> Multiplying the average fuel price by ERHC's estimate of the additional fuel burn, over 2 years, that nominal cost equals \$745,875, or \$714,569 at a 7 percent discount rate. Applying the nominal value on a per flight basis, the nominal increase in fuel costs on a per flight basis is approximately \$150. However, as noted in footnote 12, the FAA calculated the increase in travel time from the VPLYD and Alexanders East Heliport, which the FAA believes represents the worst case in terms of additional travel time, and found that the increase in time should be approximately 7 minutes. Assuming ERHC's estimate of the amount of fuel burned per minute of flight time is correct, then with an increase in flight time of 7 minutes there would be an increase in fuel cost of \$105 for that flight. Since an operation between these two points represents the worst case, the

average of all affected flights would be somewhat lower. Thus the total discounted cost over a 2-year period would be significantly lower than \$714,569.

The FAA has determined that this action is not expected to result in more than minimal additional costs on the affected helicopters. Operators that cannot comply with the route as published due to operational limitations, performance factors, weather conditions, or safety considerations are allowed to deviate from the provisions of Subpart H.

#### G. Sunset Provision

As discussed above, it is both impractical and imprudent to require all helicopters to fly along the entire North Shore Helicopter Route. Operators must land at some point, and will have to deviate from the route for that reason. Additionally, safety considerations make use of the route imprudent under some circumstances and for some aircraft. As has also been noted above, the FAA does not know what the current rate of compliance with the route is or the circumstances surrounding decisions not to use it. ERHC contends that the current rate of compliance is already very high. There is no reason to retain this rule if the FAA determines that it is not actually improving the noise situation along the north shore of Long Island.

The FAA has decided to sunset this rule in 2 years if we determine there is no meaningful improvement in the effects of helicopter noise on quality of life or that the rule is otherwise unjustified. Should there be such an improvement, the FAA may, after appropriate notice and opportunity for comment, decide to make the rule permanent. Likewise, should the FAA determine that reasonable modifications could be made to the route to better address noise concerns (and any other relevant concerns), we may choose to modify the rule after notice and comment.

The FAA recognizes that we did not contemplate a sunset provision when we published the NPRM. The FAA has decided to finalize this provision without providing an additional opportunity to comment because we have determined that providing such a comment period is unnecessary. The FAA has already received hundreds of comments on the advisability of finalizing this rule. Commenters fall squarely into three camps: those who oppose the rule as burdensome and unnecessary, those who oppose the rule because they believe it does not go far enough, and those who support the rule.

<sup>13</sup> [http://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/aviation\\_forecasts/aerospace\\_forecasts/2012-2032/](http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/aerospace_forecasts/2012-2032/).

The FAA does not anticipate that providing an opportunity to comment on a sunset provision will generate any discussion beyond that which has already been provided in the comments received on the NPRM. The FAA does note that any decision to extend the rule beyond 2 years or to modify the existing route will be subject to notice and an opportunity to comment.

#### IV. Regulatory Notices and Analyses

##### A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires 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 \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This action is not expected to result in more than minimal additional costs on the affected helicopter operators because many of the existing operators already comply with the final rule requirements. Further, no new systems

are required. Thus, the rule imposes no more than minimal cost. However, given the number of comments submitted in response to the NPRM, this final rule has been designated as significant under Executive Orders 12866 and 13563.

##### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

ERHC has 35 members who provide commercial operations. According to ERHC's comments to the NPRM, the majority of these operators fly over Long Island and could be impacted in some way by this final rule. The FAA presumes that all 35 commercial operators have fewer than 1,500 employees. However, assuming ERHC's estimates of current compliance are correct, somewhere between zero and fifteen percent of total operations are likely to be directly affected by this rule.

As noted above, the FAA believes those changes would result in an estimated increase in costs of \$105 to \$150 dollars per affected flight. The costs of commercial operations between Manhattan and the east end of Long Island generally range between \$3,500 and \$9,500 per trip, depending on the number of engines and available seats. The FAA believes that the vast majority of operators conduct operations on

behalf of paying customers because of the cost associated with owning and maintaining a helicopter for personal use. Accordingly, we base our determination that the impact on small entities will not be significant on the additional cost associated with flying along the North Shore Helicopter Route. At an additional \$150, the increase per affected operation would range between 4 and 1.5 percent. At an additional \$105, the increase per affected operation would range between 3 and 1.1 percent. The FAA also believes that, given the cost of the overall operation to a paying customer, much of that cost is likely to simply be passed on to the customer. To the extent private operators incur the additional fuel cost, the FAA believes those costs the operators will turn to additional forms of transportation only if they determine the additional cost in fuel justifies the longer times required to reach their destination by other forms of transportation. Given the cost between commercial helicopter rates and the cost to take a train or drive, the FAA believes private operators will likely absorb the additional cost because they value their time at a rate that already far exceeds the existing cost difference between helicopter travel and other forms of transportation. The rule does not require the purchase of additional equipment and allows pilots to deviate from the provisions if necessary, due to operational limitations of the helicopter, performance factors, weather conditions, or safety considerations. Therefore, the rule imposes only minimal operating cost.

The FAA received several comments from the private sector and industry based on our regulatory evaluation and the small business impact. ERHC, GAMA, HAI, NATA, and NBAA commented that the potential economic impact of the regulatory changes, particularly on small businesses, is significant. These commenters believed the rulemaking's cost is significant because the change in flight procedures will drive longer flight paths for helicopters operating in the North Shore airspace, which will have an impact on fuel consumed. They also believed that the final rule would force costs for additional avionics equipment.

The FAA notes that numerous small business helicopter charter operators commented that they were already in compliance with the final rule. The FAA further notes that operators that cannot comply with the route as published due to safety, weather conditions, or transitioning to or from a destination or point of landing are allowed to deviate from the provisions of Subpart H. Therefore, this action is

not expected to result in more than minimal additional costs on the affected helicopters because those operators are allowed to deviate from the provisions of the final rule.

Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no current or new requirement for information collection associated with this amendment.

#### E. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

#### F. Environmental Analysis

Under regulations issued by the Council on Environmental Quality, Federal agencies are required to establish procedures that, among other things, identify agency actions that are categorically excluded from the requirement for an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 because they do not have a significant effect on the human environment. See 40 CFR 1507.3(b)(2)(ii), 1508.4. The required agency procedures must also "provide for extraordinary

circumstances in which a normally excluded action may have a significant environmental effect." See 40 CFR 1508.4. For FAA actions, these "categorical exclusions" and "extraordinary circumstances" are listed in Chapter 3 of FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures."

The FAA has determined that this final rule qualifies for the categorical exclusion identified in paragraph 312f of FAA Order 1050.1E. That categorical exclusion applies to "[r]egulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)." The existing New York North Shore Helicopter Route is a VFR route, use of which is voluntary. Additionally, the route is located entirely over water and away from noise-sensitive locations. Furthermore, the number of helicopter operations along the north shore of Long Island is not high enough for this rule to have any potential to result in significant noise impacts. An analysis of emissions based on an overly conservative fuel burn estimate shows that the resulting air emissions would be well below levels determined by the EPA to be *de minimis*.<sup>14</sup>

Therefore, implementation of this final rule is not expected to result in significant adverse impacts to the human environment. Moreover, implementation of the final rule will not involve any of the extraordinary circumstances listed in Section 304 of FAA Order 1050.1E.

#### V. Executive Order Determinations

##### A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The

<sup>14</sup> See Long Island North Shore Helicopter Route Environmental Study, John A. Volpe National Transportation Systems Center. The North Shore Helicopter Route is located entirely within Suffolk County, New York, which has been designated under the Clean Air Act as a nonattainment area for particulate matter (PM-2.5) and a moderate nonattainment area for ozone. See U.S. Environmental Protection Agency (EPA), "Currently Designated Nonattainment Areas for All Criteria Pollutants," available at <http://www.epa.gov/oaqps001/greenbk/ancl.html>. In addition, the state of New York is within the Ozone Transport Region established in section 184(a) of the Clean Air Act, 42 U.S.C. 7511c(a). EPA has determined that for such nonattainment areas, emissions of less than 50 tons per year of volatile organic compounds and 100 tons per year of nitrogen oxides, PM-2.5, or sulfur dioxide are *de minimis*. 40 CFR 93.153(b)(1). Using conservative assumptions, an analysis by the FAA (a copy of which has been placed in the docket for this rulemaking), indicates that emissions of these pollutants from combustion of an additional 117,000 gallons of fuel would be well below these *de minimis* levels.

agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

##### B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### VI. How To Obtain Additional Information

##### A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/) or
3. Access the Government Printing Office's Web page at <http://www.gpo.gov>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

##### B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

##### C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local

FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

## VII. The Amendment

### List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

### PART 93—SPECIAL AIR TRAFFIC RULES

- 1. The authority citation for part 93 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

- 2. Add subpart H to part 93 to read as follows:

#### Subpart H—Mandatory Use of the New York North Shore Helicopter Route

Sec.  
93.101 Applicability.  
93.103 Helicopter operations.

#### Subpart H—Mandatory Use of the New York North Shore Helicopter Route

##### § 93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between August 6, 2012 and August 6, 2014.

##### § 93.103 Helicopter operations.

(a) Unless otherwise authorized, each person piloting a helicopter along Long Island, New York's northern shoreline between the VPLYD waypoint and Orient Point, shall utilize the North Shore Helicopter route and altitude, as published.

(b) Pilots may deviate from the route and altitude requirements of paragraph (a) of this section when necessary for safety, weather conditions or transitioning to or from a destination or point of landing.

Issued in Washington, DC, on July 2, 2012.

**Ray LaHood,**  
Secretary of Transportation.

**Michael P. Huerta,**  
Acting Administrator.

[FR Doc. 2012-16667 Filed 7-3-12; 4:15 pm]

BILLING CODE 4910-13-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 74

[Docket No. FDA-2011-C-0050]

#### D&C Red No. 6 and D&C Red No. 7; Change in Specification

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is revising its requirements for D&C Red No. 6 and D&C Red No. 7 by replacing the current specification for “Ether-soluble matter” with a maximum limit of 0.015 percent for the recently identified impurity 1-[(4-methylphenyl)azo]-2-naphthalenol. This action is in response to a petition filed by Sun Chemical Corp.

**DATES:** This rule is effective August 7, 2012, except as to any provisions that may be stayed by the filing of proper objections. Submit either electronic or written objections and requests for a hearing by August 6, 2012. See section XI of this document for information on the filing of objections.

**ADDRESSES:** You may submit objections and requests for a hearing, identified by Docket No. FDA-2011-C-0050, by any of the following methods:

*Electronic Submissions:* Submit electronic objections in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Written Submissions:* Submit written objections in the following ways:

- *Fax:* 301-827-6870.
- *Mail/Hand delivery/Courier (for paper or CD-ROM submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and Docket No. FDA-2011-C-0050 for this rulemaking. All objections received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting objections, see section XI of this document.

*Docket:* For access to the docket to read background documents or objections received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the

heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Teresa A. Croce, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 240-402-1281.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

In a notice published in the **Federal Register** of April 14, 2011 (76 FR 20992), FDA announced that Sun Chemical Corp., 5020 Spring Grove Ave., Cincinnati, OH 45232, had filed a color additive petition (CAP 1C0290) requesting that FDA amend its regulations for D&C Red No. 6 and D&C Red No. 7 by replacing the current specification for “Ether-soluble matter” with a maximum limit of 0.015 percent for the recently identified impurity 1-[(4-methylphenyl)azo]-2-naphthalenol. As part of CAP 1C0290, Sun Chemical Corp. also requested that FDA remove Appendix A in part 74 (21 CFR part 74), which pertains to the ether-soluble matter specification.

D&C Red No. 6 and D&C Red No. 7 are principally monosulfo monoazo dyes prepared by the coupling of diazotized 2-amino-5-methylbenzenesulfonic acid with 3-hydroxy-2-naphthalenecarboxylic acid in alkaline medium. D&C Red No. 6 is produced as the disodium salt, whereas D&C Red No. 7 is the corresponding monocalcium salt. D&C Red No. 6 is listed in § 74.1306 for use in coloring drugs and in § 74.2306 for use in coloring cosmetics. D&C Red No. 7 is listed in § 74.1307 for use in coloring drugs and in § 74.2307 for use in coloring cosmetics. The identity and specifications in §§ 74.1306 and 74.1307 are referenced by §§ 74.2306 and 74.2307. Both color additives are required to be batch certified by FDA before they may legally be used in drugs and cosmetics marketed in the United States.

#### II. Regulatory History

In the **Federal Register** of December 28, 1982 (47 FR 57681), FDA published a final rule that permanently listed D&C Red No. 6 and D&C Red No. 7 for use in coloring drugs and cosmetics. The final rule described how D&C Red Nos. 6 and 7 contained ether-soluble matter for which the proponents of the color additives were not able to determine the chemical identity. FDA's final rule established a specification for ether-