

From	To	Changeover points	
		Distance	From
<b>§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V-259 Is Amended To Add Changeover Point</b>			
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[FR Doc. E9-23752 Filed 10-1-09; 8:45 am]  
BILLING CODE 4910-13-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2009-0311]

RIN 1625-AA00

**Direct Final Rule; Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** By this direct final rule, the Coast Guard is amending existing regulations with a set of coordinates which will better reflect the safety and security zone around the Pilgrim Nuclear Power Plant. This action will prohibit entry into, or movement within, the safety and security zones located in Cape Cod Bay and adjacent shore areas. This action is necessary to ensure public safety and prevent sabotage or terrorist acts. The safety and security zones will close certain waters of Cape Cod Bay near the Pilgrim Nuclear Power Plant and land adjacent to those waters.

**DATES:** This rule is effective December 31, 2009, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before December 1, 2009 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by December 1, 2009, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0311 using any one of the following methods:

- (1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.
- (2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, e-mail or call Chief Eldridge McFadden, U.S. Coast Guard, Sector Boston, Waterways Management Division; telephone 617-223-5160, e-mail [Eldridge.C.McFadden@uscg.mil](mailto:Eldridge.C.McFadden@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

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**I. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting

comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**A. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0311), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0311" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

**B. Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0311" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140

on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### C. Privacy Act

Anyone can search the electronic form of comments received into any of our 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.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## II. Abbreviations

DHS Department of Homeland Security;  
FR **Federal Register**;  
§ Section symbol;  
U.S.C. United States Code.

## III. Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by December 31, 2009, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (*e.g.*, to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an

adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

## IV. Background

Safety and security zones were established to safeguard the Pilgrim Nuclear Power Plant in light of terrorist attacks on New York City and Washington, DC on September 11, 2001. The zones were implemented to protect persons at the facility, the public, and surrounding communities from sabotage or other subversive acts, accidents, or other similar events. The Pilgrim Nuclear Power Plant is a possible target of terrorist attack due to the potential catastrophic impact an attack would have on such a plant. Established safety and security zones prohibit entry into or movement within the specified areas. The rulemaking regarding this site, published in the **Federal Register** [67 FR 37689], established security and safety zones having identical boundaries delineated as follows: All waters of Cape Cod Bay and land adjacent to those waters enclosed by a line beginning at position 41°57'5" N, 070°34'42" W; then running southeast to position 41°56'40.5" N, 070°34'4.5" W; then running southwest to position 41°56'55.5" N, 070°34'52" W; then returning to its point of origin. These positions were incorrect (one of the positions is in fact 6 miles inland). This regulation aims to correct the previous regulation.

Buoy markers, which serve as a visual reminder of the safety and security zone surrounding the Nuclear Power Plant, have already been placed at the intended coordinates surrounding the plant. This regulation will amend the existing coordinates, to reflect the originally intended parameters.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. All persons and vessels in a safety and security zone must obey all directions and orders made by the Captain of the Port, or any other designated on-scene Coast Guard representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No

person may board, take or place any article or thing on board any vessel, or waterfront facility, in a security zone without permission of the Captain of the Port.

These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226. Violations of safety or security zone described herein, are punishable by, among others, civil penalties (not to exceed \$25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$100,000), in rem liability against the offending vessel, and license sanctions.

## V. Discussion of the Rule

The current safety and security zone regulation is erroneous as it cites incorrect coordinates. This regulation will correct the existing one by adding coordinates which reflect the actual safety and security zones delineated by the buoys already put in place by the Pilgrim Power Plant. The new regulation will change the safety and security zone from:

41°57'5" N, 070°34'42" W; then running southeast to position 41°56'40.5" N, 070°34'4.5" W; then running southwest to position 41°56'55.5" N, 070°34'52" W; then returning to its point of origin to:

41°56'59.3" N, 070°34'58.5" W; thence to 41°57'12.2" N, 070°34'41.9" W; thence to 41°56'42.3" N, 070°34'00.1" W; thence to 41°56'29.5" N, 070°34'14.5" W.

## VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize 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. This rule is not a significant regulatory action because it seeks only to update the previous regulation with the correct and intended coordinates. These coordinates have already been marked by buoys, and mariners in the surrounding area already know to avoid this zone.

### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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.

This rule would affect the following entities, some of which might be small entities: Fishermen, and the owners or operators of vessels intending to transit, fish or anchor in a portion of Cape Cod Bay, Massachusetts. However, as stated above, because mariners have already been maintaining a certain distance from the plant, with the assistance of buoys as visual markers, little to no effect will be realized once the new regulation is implemented.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the “Regulatory Information” section of this preamble.

### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Chief Eldridge McFadden, U.S. Coast Guard, Sector Boston, Waterways Management Division; telephone 617–223–5160, e-mail [Eldridge.C.McFadden@uscg.mil](mailto:Eldridge.C.McFadden@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### 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 the rule 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. We 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 expenditure, we 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

We 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 may 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

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We 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, we did not consider the use of voluntary consensus standards.

### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(g) of the Instruction.

This rule involves the correction of safety and security zones which were implemented in a previous regulation. An environmental analysis checklist and a categorical exclusion determination are available in the

docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.115(a) to read as follows:

#### § 165.115 Safety and Security Zones; Pilgrim Nuclear Power Plant, Plymouth, Massachusetts.

(a) *Location.* All waters of Cape Cod Bay and land adjacent to those waters

enclosed by a line beginning at position 41°56'59.3" N, 070°34'58.5" W; thence to 1°57'12.2" N, 070°34'41.9" W; thence to 41°56'42.3" N, 070°34'00.1" W; thence to 41°56'29.5" N, 070°34'14.5" W.

\* \* \* \* \*

Dated: July 29, 2009.

**Nathan E. Knapp,**

*Commander, U.S. Coast Guard, Captain of the Port Boston, Acting.*

[FR Doc. E9–23754 Filed 10–1–09; 8:45 am]

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