



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0890]

RIN 1625-AA00

Safety Zone; Highway 99 Partial Bridge Replacement, Stanislaus River, Ripon, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Stanislaus River. This action is necessary to provide for the safety of life on the Stanislaus River near the Highway 99 Bridge in Ripon, CA, during partial bridge replacement scheduled to occur between June 15, 2020 and November 7, 2020. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 12:01 a.m. on June 15, 2020 through 11:59 p.m. on November 7, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0890 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Jennae N. Cotton, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone 415-399-3585, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On October 18, 2019, the California Department of Transportation notified the Coast Guard that it will be conducting partial bridge replacement of the Highway 99 Bridge in Ripon, CA. In response, on March 16, 2020, the Coast Guard published an NPRM titled “Safety Zone; Highway 99 Partial Bridge Replacement, Stanislaus River, Ripon, CA” (85 FR 14840) proposing a safety zone around the bridge replacement to be effective from June 15, 2020 until November 7, 2020. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this partial bridge replacement. During the comment period that ended April 15, 2020, we received two comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because this rule is needed to protect mariners, commercial and recreational waterway users, and construction

workers from the potential safety hazards associated with construction and replacement of the Highway 99 Ripon Bridge. It is necessary for this rule to be in effect when construction commences on June 15, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. During this bridge construction project, approximately 200 feet of the existing concrete, double-arch bridge on Southbound Highway 99 over the Stanislaus River will be demolished, removed, and replaced. Bridge construction hazards include reduced bridge clearance and the potential for falling debris, such as steel beams and other construction materials from demolition and crane operations. The COTP has determined that potential hazards associated with the Highway 99 Ripon Bridge replacement will be a safety concern for anyone within the navigable waters of the Stanislaus River around or under the bridge construction project. The purpose of this rule is to ensure the safety of vessels and mariners in the navigable waters surrounding the Highway 99 Bridge in Ripon, CA during construction.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published March 16, 2020. One comment identified the safety zone as a necessity to protect mariners, commercial and recreational waterway users, and construction workers during the bridge replacement, which will improve traffic conditions for an average of 112,000 vehicle transits each day. Due to hazards associated with the bridge demolition and replacement, the COTP is implementing this rule to protect members of the public in the waters of the Stanislaus River surrounding the project.

The other comment challenged the reason this rule is being enforced, asserting the rule is not for the safety of life on the navigable waters of the Stanislaus River. The Coast Guard disagrees with this comment. The Coast Guard is enforcing this rule to protect and ensure the safety of all vessels and waterway users on the waters of the Stanislaus River near Ripon, CA from to the potential hazards associated with the bridge construction project noted in section III of this rule.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. Between 12:01 a.m. on June 15, 2020 through 11:59 p.m. on November 7, 2020, the safety zone will encompass all navigable waters of the Stanislaus River surrounding the Highway 99 Bridge in Ripon, CA, from surface to bottom, between the Union Pacific Railway Bridge to the west and the Stanislaus River pedestrian crossing bridge to the east of the Ripon Highway 99 Bridge, within the area formed by connecting the following approximate latitude and longitude points in the following order:

37°43'47.7" N, 121°06'36.0" W, thence to 37°43'49.9" N, 121°06'38.6" W, thence to 37°43'51.3" N, 121°06'36.1" W, thence to 37°43'49.2" N, 121°06'33.6" W (NAD 83), and thence to the point of beginning; or as announced via Broadcast Notice to Mariners. The duration of this zone is intended to ensure the safety of mariners, vessels, and the navigable waters during the bridge construction project. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location of the safety zone. Vessel transits in the area are limited to recreational vessels and personal watercraft, including small recreational vessels used for fishing, kayaks, and inner tubes. Notice would be provided to mariners via Notice to Mariners and posted at the construction site and adjacent river entry locations 30 days in advance.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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. The Coast Guard received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Notice will be provided 30 days in advance of the safety zone. River entry and exit points will be identified on both sides of the safety zone, and markers will provide mariners with clear instruction throughout the duration of the project. Depending on operations and river level parameters, mariners will be provided a transit lane on weekends between July 25, 2020 and November 7, 2020.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

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). 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.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry to the area surrounding the bridge construction site and will last approximately five months with intermittent weekend openings. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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: 46 U.S.C 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-019 to read as follows:

§165.T11-019 Safety Zone; Highway 99 Partial Bridge Replacement, Stanislaus River, Ripon, CA.

(a) *Location.* The following is a safety zone: the navigable waters of the Stanislaus River, from surface to bottom, between the Union Pacific Railway Bridge to the west and the Stanislaus River pedestrian crossing bridge to the east of the Highway 99 Ripon Bridge, within the area formed by connecting the following approximate latitude and longitude points in the following order: 37°43'47.7" N, 121°06'36.0" W, thence to 37°43'49.9" N, 121°06'38.6" W, thence to 37°43'51.3" N, 121°06'36.1" W, thence to 37°43'49.2" N, 121°06'33.6" W (NAD 83), and thence to the point of beginning; or as announced via Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced from June 15, 2020 through November 7, 2020.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7. Additionally, signage will be posted beginning 30 days prior to the start of the project and will remain posted for the duration of the project. River markers will be provided on the Stanislaus River on each side of the safety zone to direct mariners.

Dated: May 14, 2020

Marie B. Byrd
Captain, U.S. Coast Guard
Captain of the Port, San Francisco
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