

Dated: August 26, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-02-090]

RIN 2115-AE84

Safety Zone; East River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in a portion of the waters of the East River, Western Channel, between Manhattan and Roosevelt Island, NY. This action is necessary to provide for the safety of construction crews and motorists during rehabilitation of a portion of the Franklin Delano Roosevelt (FDR) Drive between East 56th Street and East 63rd Street in Manhattan, NY. This action is intended to prevent vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone.

DATES: This rule is effective at 7 a.m. on September 16, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-02-090) and are available for inspection or copying at room 205, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luis E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354-4193.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; East River, Manhattan, NY", in the **Federal Register** (67 FR 48832). We received no letters commenting on the proposed rule. No

public hearing was requested, and none was held.

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**. Due to the date the final construction and vessel restriction plans were completed and reviewed by the Port of NY/NJ Harbor Operations Committee and Harbor Pilots, there was insufficient time to draft and publish both an NPRM and final rule more than 30 days before the effective date. Rather than shorten the NPRM comment period, our NPRM advised the public that the rule would take effect on or about September 1, 2002—less than 30 days following its anticipated publication. Further, the safety zone is intended to protect vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect construction crews and motorists during rehabilitation of a portion of the FDR Drive between East 56th Street and East 63rd Street in Manhattan, NY.

Background and Purpose

The New York State Department of Transportation (NYSDOT) is undertaking the rehabilitation of the FDR Drive in Manhattan, NY. The project is scheduled to begin on September 16, 2002 and to continue until approximately June 2007. It will include the building of a temporary Outboard Detour Roadway (causeway) adjacent to the northbound lanes of a portion of the FDR Drive that will provide three lanes of motor vehicle traffic over the Western Channel of the East River between East 56th Street and East 63rd Street in Manhattan.

The temporary Outboard Detour Roadway will be protected from marine traffic interference by a fendering system positioned adjacent to and just outside the western edge of the navigable channel in the East River's Western Channel. The fendering system will run the length of the Outboard Detour Roadway. It is designed to withstand an allision by a vessel displacing 38,000 long tons (38,610 metric tons) striking at a speed of 6.8 knots and a 7.5 degree angle of approach.

The rule will exclude all vessels from the immediate vicinity of the Outboard Detour Roadway during the construction, operation and disassembly of the structure and its protective fendering system. By excluding marine traffic, the zone will protect maritime users from the hazards associated with the construction, operation and disassembly of those structures and protect Outboard Detour Roadway users from the risk of vessel allision or interference with that structure. The safety zone will commence on September 16, 2002.

In order to provide further protection for roadway users, we contemplate the subsequent establishment of a Regulated Navigation Area (RNA) in the Western Channel of the East River between 23rd Street, Manhattan (Poorhouse Flats Range) and East 96th Street, Manhattan (Hells Gate). No vessel with a displacement of greater than 38,000 long tons would be permitted to enter the RNA without tugboat assistance. That RNA will be the subject of separate rulemaking process as we draw closer to the projected opening of the Outboard Detour Roadway in 2004.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

Regulatory Evaluation

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. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant as it will not prevent maritime traffic from navigating the East River, Western Channel. The safety zone merely prevents vessels from entering a relatively small area of water west of the navigable channel to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

Small Entities

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

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. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to enter a small portion of the East River, Western Channel, during the times the safety zone is in effect.

This rule will not have a significant economic impact on a substantial number of small entities because it will not prevent maritime traffic from navigating the East River. The safety zone merely prevents vessels from entering a relatively small area of water west of the navigable channel in order to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We received no further requests for assistance from small entities.

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).

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).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

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.

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.

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.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under ADDRESSES.

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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.167 to read as follows:

§ 165.167 Safety Zone: East River Western Channel, Manhattan, NY.

(a) *Location.* The waters of the East River enclosed by the following boundaries are established as a safety zone: beginning on the Manhattan riverbank at a point 40°45′35.7″ N, 073°57′25.2″ W (Point A), thence southeasterly to a point 40°45′34.8″ N, 073°57′23.2″ W (Point B), thence southwesterly along the western boundary of the federal navigable channel to a point 40°45′09.5″ N, 073°57′46.3″ W (Point C), then northwesterly to the Manhattan riverbank at a point 40°45′10.5″ N, 073°57′48.9″ W (Point D), thence northeasterly along the riverbank to the place of beginning (Point A). All coordinates are North American Datum 1983.

(b) *Regulations.* The general regulations contained in § 165.23 of this part apply.

Dated: August 27, 2002.

N.E. Merkle,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2002-0227; FRL-7197-7]

Cypermethrin and an Isomer Zeta-cypermethrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and its inactive R-isomers in or on flax (seed and meal) and mustard seed in connection with crisis exemptions declared by the state of North Dakota under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on flax and mustard. This regulation establishes a maximum permissible levels for residues of zeta-cypermethrin and its inactive R-isomers in these food commodities. The tolerances will expire and are revoked on June 30, 2005.

DATES: This regulation is effective September 4, 2002. Objections and requests for hearings, identified by docket ID number OPP-2002-0227, must be received on or before November 4, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP-2002-0227 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (703) 308-9364; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

2. *In person.* The Agency has established an official record for this

action under docket ID number OPP-2002-0227. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and its inactive R-isomers, in or on flax (seed and meal) and mustard seed at 0.2 parts per million (ppm). These tolerances will expire and are revoked on June 30, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical