

may have also contributed to this reduction.

EFFECTIVE DATE: This rule is effective on July 25, 1995.

FOR FURTHER INFORMATION CONTACT: CDR Harvey R. Dexter, Marine Safety Division, Eighth Coast Guard District, telephone: (504) 589-6271.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Jeff Novotny, project officer for the Captain of the Port, New Orleans, Louisiana, LT Verne Gifford, project officer, Eighth Coast Guard District Marine Safety Division, and LT Elisa Holland, project attorney, Eighth District Legal Office.

Regulatory History

On April 28, 1994, the Coast Guard issued an Interim Final Rule extending the upper limits of the Mississippi River Regulated Navigation Area, 33 CFR 165.803, to cover the area between river miles 88 and 240, above Head of Passes, up to the Port of Baton Rouge. (59 FR 21933) This rule was published as an interim rule, effective on the date of publication. The original comment period expired on June 27, 1994. The Coast Guard received three comments during this period. In response to requests from some commenters who wished to gather and provide additional information prior to the issuance of the final rule, the Coast Guard announced a public hearing and reopened the comment period for an additional 90 days on August 12, 1994. (59 FR 41407). Four written comments were received. A public hearing was held on September 2, 1994. Nine persons made oral comments. Of those nine oral commenters, four also provided their comments in written form, two during the original comment period and two during the reopened comment period. Based upon oral testimony and written comments, the Coast Guard prepared this final rule. This rule is being made effective on the date of publication. The interim final rule, effective since April 28, 1994, has contributed to a decrease in barge breakaways. In addition, high water conditions have recently developed and are expected to continue throughout the summer. Therefore, the Coast Guard for good cause finds, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Background and Purpose

The regulation was published as an interim final rule in April 1994 due to barge fleet breakaways on the

Mississippi River within the Captain of the Port New Orleans zone, high water conditions and higher than normal river stages which were expected to continue during the summer of 1994. The interim final rule extended the then-existing Regulated Navigation Area (mile 88 to mile 127) (hereinafter referred to as the old RNA) to mile 240 above Head of Passes. The regulation consisted of general procedural and equipment requirements for mooring of barge fleets on the Mississippi River and also outlined additional specific fleeting requirements during periods of high water.

The Regulated Navigation Area extension from mile 127 to mile 240 (hereinafter referred to as the new RNA) was deemed necessary due to data showing that more barge fleet breakaways were occurring in the new RNA than in the old RNA. Casualty investigations appeared to indicate that a majority of the breakaways occurred as the result of a passing tow or deep draft vessel striking the fleet or from large wakes generated by passing vessels. Both of those causal factors increase during high water conditions. Coast Guard fleet inspectors also found that many of the fleeting operations located in the new RNA not only did not conform with the mooring regulations in the old RNA, but also had weak and inadequate moorings and therefore were more vulnerable to breakaways during high water. At the public hearing held on September 2, 1994, the Coast Guard provided statistics showing barge breakaways for the period 1990-July 1994 in both the old and new RNA's. Those statistics supported, in part, the assertions in the interim final rule.

Discussion of Comments and Changes

Seven written comments were received in response to the interim final rule. Six comments contain significant criticism of the interim final rule and the seventh comment supported the Coast Guard's decision to extend the Regulated Navigation Area. Nine oral comments were received at the hearing. Of those nine oral comments, four were also provided in written form. Specific comments are discussed below.

One commenter pointed out that the regulations adopted in the Interim Final Rule were twenty years old and suggested that the regulatory requirements should be reviewed throughout the entire Regulated Navigation Area due to changes in the industry. Four other commenters also made recommendations that a comprehensive review of the regulations was in order. The Coast Guard agrees. Changes in the barge industry, marine

traffic within the RNA, and barge handling and mooring technology make it appropriate to conduct a comprehensive review of these regulations. One commenter recommended the formation of a quality action team composed of industry and Coast Guard personnel to undertake such a review. At a future date, the Coast Guard will publish an advance notice of proposed rulemaking to solicit public comment and participation in comprehensive review of the rules in place throughout the RNA. At that time, a decision will be made concerning the best mechanism for obtaining public input and participation. However, until such time as this review has been completed and changes, if any, are made, the safety of persons and vessels operating within the RNA as well as the environment require that the existing Interim Final Regulations, as modified in this Final Rule, remain in effect.

One commenter stated that the present rule (33 CFR 165.803(d)(2)) allows for subjective determination of the condition of mooring wires and lines and recommended that the Coast Guard work with industry to establish guidelines to be used by Coast Guard inspectors and fleet personnel in determining whether a line is worn or defective. One commenter suggested that the captain of the vessel rather than the person actually inspecting the mooring be able to initial each inspection in the vessel log as required by 33 CFR 165.803 (h) and (i). The Coast Guard will work with industry to arrive at some general guidelines for determining when a line is excessively worn or defective and will examine the possibility of having the master of the tug rather than the person conducting the inspection as part of the comprehensive review of these regulations referred to above. However, we feel that if the person actually completing the inspection were to document the inspection by initiating the log, it will engender a greater sense of responsibility and will result in better inspection of the lines. One commenter recommended that the Regulated Navigation Area should include all fleets, not just those with eight or more barges, that different regulations should be established for different size fleets, and that the regulation should also cover dock facilities. This recommendation will be considered as part of the comprehensive review referred to above.

"Breakaway" is presently defined as "a barge that is adrift and is not under the control of a towing vessel". 33 CFR 165.803(a)(1). One commenter recommended that the definition of