

breakaway be redefined to mean a barge that is adrift and is not under the control of or being worked by a towing vessel. It is the Coast Guard's position that the present definition is sufficiently broad to exclude barges that are briefly or temporarily adrift but that are being worked by a tow boat. At the present time, the Coast Guard plans no changes to the definition.

Three commenters recommended that the Coast Guard pursue an aggressive role in monitoring the speed and performance of deep draft vessels operating in the Regulated Navigation Area. The Coast Guard does not have the resources to monitor every deep draft vessel in the Regulated Navigation Area. The Coast Guard relies, in part, on the skill and judgment of the master and pilot to navigate safely. However, the Coast Guard actively investigates barge breakaway incidents involving deep draft vessels if the vessel is clearly identified, and encourages parties to accurately report deep draft vessels navigating unsafely. The Coast Guard will investigate, and, if appropriate, take action against the vessel, the vessel's master or the pilot.

Two comments questioned why the new RNA was extended to mile 240 AHP since the 190 Highway bridge in Baton Rouge at mile 234 AHP is the northern-most point reachable by deep-draft vessel and the interim final rule focuses on deep-draft vessels as the primary cause of barge breakaways. This is an incorrect interpretation of the interim final rule. While deep-draft vessels may contribute to barge breakaways, the main concerns of the Regulated Navigation Area is barge fleeting safety, adequacy of barge moorings, and the additional hazards posed by high water conditions. Although deep-draft vessels cannot transit the Mississippi River further than mile 234 AHP, barge fleeting facilities extend above mile 234 AHP. Both the Port of Baton Rouge and the 190 Highway bridge are at or above mile 234 AHP and a barge breakaway in the river above mile 234 AHP could cause property damage, bridge damage or loss of life. Therefore, the Coast Guard believes the Regulated Navigation Area should remain extended to mile 240 AHP.

Three commenters stated that it would be physically impossible to immediately comply with the stern mooring requirement of 33 CFR 165.803(e)(1) and (2). A number of reasons were cited including high water, availability of contractors and the Army Corps of Engineers permitting process. Two commenters stated that installing stern moorings would be a significant

capital expense, approximately \$8,000 per anchor pile. Three commenters suggested that handling additional and, in many cases, heavier wires would increase the risk of personal injury to crew members. In addition, two commenters stated that the annual operating cost to the facility for maintaining stern wires and boat time for handling stern wires would increase by approximately 10%. For these reasons, as well as those discussed below, at the present time, the Coast Guard will not require stern moorings in the new RNA (mile 127 to mile 240). Stern moorings will still be required in the old RNA (mile 88 to mile 127). Barge fleeting facilities in the old RNA may apply for a waiver of the stern mooring requirement and the COTP, as authorized by 33 CFR 165.803(b), may, if warranted, grant such a waiver. Several commenters made comments which indirectly called into question the usefulness of the stern wires in reducing the likelihood of breakaways. The Coast Guard believes that stern wires do in fact reduce barge breakaways, and is continuing to collect data concerning this issue. However, this requirement will be reviewed as part of the comprehensive review referred to above. Three commenters also requested that enforcement of the interim final rule be postponed until the issues raised during the comment period had been resolved. Based on the comments above concerning the economic impact of stern wire installation and use, the Coast Guard has exercised its enforcement discretion and has not been actively enforcing the requirements of 33 CFR 165.803(e)(1) and (2) in the new RNA. To the best of the Coast Guard's knowledge, no barge fleeting facility in the new RNA has installed stern moorings.

All six commenters took issue with the provisions of 33 CFR 165.803(m)(2)(i) and (iii) and the Coast Guard's interpretation of those provisions. Those provisions require that, during high water, each fleet of between eight and 100 barges be attended by one radar-equipped towboat. The towboat must be immediately operational and within 500 yards of the barges. Those provisions have, in the past, been interpreted to mean that the towboat must stand by and could not perform any work in the fleet. All of the commenters stated that not allowing the stand by tug to work would create an economic hardship. One commenter noted that requiring a stand by boat would cost an additional \$600,000 annually. Another commenter stated the cost of a stand by boat would

be approximately \$180,000 per year per additional standby boat. Both commenters noted that it would be difficult to pass these costs on to the customers. In addition, two commenters noted that there are not enough towboats available. The Coast Guard believes that the goals of promoting safety and preventing barge breakaways in the Regulated Navigation Area can be satisfied if the towboat required by 33 CFR 165.803(m)(2)(i) and (iii) is able to work within the fleet. This is permitted by the language of the existing regulation and no enforcement action will be taken against operators because a boat is being used to work the fleet.

Regulatory Evaluation

In the interim final rule, the Coast Guard asserted that the rule was not a significant regulatory action under section 3(f) of Executive Order 12866 and did not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Coast Guard also asserted that the rule was not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034), February 26, 1979 and that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the Department of Transportation was unnecessary. The Coast Guard received four comments addressing the issue of whether the interim final rule was a significant regulatory action. Two comments generally stated that the interim final rule, with its requirement of stern moorings and additional standby boats could force barge fleeting facilities out of business. One commenter noted that the requirement of stern moorings would require an immediate capital investment of \$400,000 plus additional operating costs of \$150,000. In addition, the commenter noted that requiring a stand-by boat would cost an additional \$600,000 annually. In short, the commenter stated, the interim final rule would cost him \$1,150,000 the first year and \$750,000 each year thereafter and would put him out of business. The commenter stated this rule would catastrophically disrupt the inland river transportation system. Another commenter echoed these comments, stating that these costs would be prohibitive for most fleets. The final rule deletes the requirement for stern moorings in the new RNA. Additionally, the standby boats required by 33 CFR 165.803(m)(2) (i) and (iii) may perform work within the fleet thereby reducing the economic impact of this requirement. No other requirements contained in the Regulated Navigation