

barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the Inland River Vessel Movement Center (IRVMC) for the protection against sabotage and terrorist acts. The temporary final rule was published May 2, 2003, in the **Federal Register** (68 FR 23393) and expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are proposing to issue an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Eighth Coast Guard District. The proposed rule would allow the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

Discussion of Comments and Changes

As of July 9, 2003, we received six written comments on the temporary rule. The American Waterways Operators requested a meeting with the Coast Guard regarding the rule. The meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA. All comments received focused generally on: (1) Changes and clarification of the definitions; (2) use of marine chemist certification; (3) location and amount of reporting points; (4) CDC barges in fleeting areas (5) need, use and validity of the information being collected; (6) availability of the information being collected from other sources; (7) use of technology such as electronic reporting; (8) cost and burden of the reporting requirements; (9) justification of the regulation; and (10) consistency with existing regulations. Each of these groups of comments is discussed in more detail in the following paragraphs.

Definitions. Several comments suggested some of the definitions lead to confusion and should be clarified or removed.

Three comments were received regarding the definition of "certain dangerous cargoes (CDCs)" and how they were determined. CDCs have specific characteristics that make them a higher risk compared to the other cargoes listed in 49 CFR parts 171 and 172. The list of cargoes includes cargoes that have not been traditionally carried on the river but which are not prohibited from carriage. One comment addressed the inconsistency between the CDC definition of ammonium nitrate

as stated in the temporary rule and the CDC definition as stated in 33 CFR 160.204, published February 28, 2003 in *Notification of Arrival in U.S. Ports* (68 FR 9537, 9544). The CDC list published in 33 CFR 160.204 applies to packaged cargoes listed in 49 CFR chapter I, subchapter C. As such, ammonium nitrate in bulk is currently not considered a CDC. The Coast Guard proposes to use the same definition as set out in 33 CFR 160.204 with the addition of propylene oxide.

Three comments received stated that the definitions of "empty", "gas free" and "loaded" were confusing and misleading. We agree. The proposed rule will apply to barges carrying CDCs or CDC residue and the terms "empty", "gas free" and "loaded" will no longer be used. We received one comment suggesting that the definition for "final destination" could be removed if the regulation section was amended to simply require a report upon dropping off a CDC barge at a fleeting area or facility. We agree and propose to remove the term "final destination" and have changed the regulation accordingly. We received two comments stating that the definition of "operator" is vague. We agree. We propose to change the word "operator" to "towing vessel operator". Towing vessel operator would be defined as "Captain or pilot who is on watch." Also, we propose that a "company representative" or "dispatcher" may report the specific information required by the purpose of the rule to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Marine Chemist Certification. We received one comment regarding the use of a marine chemist to certify barges are "gas free." As we stated in the preceding paragraph, the terms "empty", "gas free", and "loaded" are not used in this proposed rule. We have made the proposed rule applicable only to barges carrying CDCs or CDC residue. A barge is not carrying CDCs or CDC residue when it has never carried CDCs or when it has been certified as "gas free" by a marine chemist.

Location and Number of Reporting Points. We received several comments related to the location and number of reporting points. One comment asked us why the RNA did not continue to, or beyond, New Orleans, Louisiana. The proposed RNA is the same as the regulated area in the temporary rule. The regulated area in the temporary rule does not extend below mile 235.0 on the Lower Mississippi River (Baton Rouge, Louisiana) because the NOA regulations published February 28, 2003, in the **Federal Register**, apply to all domestic

barges carrying CDCs operating below mile 235.0 on the Lower Mississippi River. Making this proposed rule continue to, or beyond, New Orleans, Louisiana would result in duplicative reporting to the National Vessel Movement Center (NVMC) and the Inland River Vessel Movement Center (IRVMC). Therefore the location for the proposed RNA remains unchanged from the regulated area in the temporary rule currently in effect.

Three comments were received regarding several reporting points being located at a turn or in other hazardous areas of the waterway. The comments recommended changing the location of the reporting points. We agree. We have proposed to have a segment of the waterway serve as a reporting point (that is, the towing vessel operator would be required to report to the IRVMC when transiting upbound between mile 235.0 and mile 240.0 on the Lower Mississippi River). The proposed reporting points, based on recommendations from the waterway users, are reflected in table 165.830(e).

One comment recommended the reporting points should be the same for upbound and downbound. We agree, with the exception of seven reporting points, and the appropriate changes are reflected in the reporting points proposed in table 165.830(e).

Two comments recommended using the Captain of the Port (COTP) boundaries as reporting points because the COTP would be able to determine when a CDC barge enters and departs the zone, allowing for a reduction in the number of reporting points. We disagree. The IRVMC requires reporting within a COTP zone to monitor CDC barge movement through densely populated areas and other areas of concern. This information is disseminated to the appropriate COTP in which the CDC barge is located.

Fleeting Areas. We received two comments that the responsibility of reporting movements of CDC barges in fleeting areas was unclear. We agree and propose to change the regulatory text to specifically address CDC barges in fleeting areas. The Coast Guard proposes that fleeting managers or operators would not be required to report to the IRVMC when moving CDC barges within a fleet using a fleet towing vessel. However, they would be required to report to the IRVMC when a fleet towing vessel moves one or more CDC barges from one fleeting area to another fleeting area or to a facility. The Coast Guard also proposes to add the requirement that fleeting managers report all CDC barges in the fleeting area once a day to the IRVMC. This