recertifications every five years (the next being scheduled to begin in March 2014), review of DOE reports on conditions and activities at WIPP, assessment of waste characterization and QA programs at waste generator sites, announced and unannounced inspections of WIPP and other facilities, and, if necessary, modification, revocation, or suspension of the certification.

Although not required by the Administrative Procedures Act (APA), the WIPP LWA, or the WIPP Compliance Criteria, EPA intends to continue docketing all inspection or audit reports and annual reports and other significant documents on conditions and activities at WIPP.

EPA plans to conduct future recertification processes using a similar process to that completed by EPA for this recertification, as described in today's action. For example, EPA will publish a **Federal Register** notice announcing its receipt of the next compliance application and our intent to conduct such an evaluation. The application for recertification will be placed in the docket, and at least a 30-day period will be provided for submission of public comments. Following the completeness determination, EPA's decision on whether to recertify the WIPP facility will again be announced in a **Federal Register** notice (§ 194.64).

Dated: November 9, 2010.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2010–28806 Filed 11–17–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 45

[Docket No. USCG–1998–4623]

RIN 1625–AA17

Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special load line regime for certain unmanned dry-cargo river barges to be exempted from the normal Great Lakes load line assignment while operating on Lake Michigan. Depending on the route, eligible barges may obtain a limited domestic service load line assignment or be conditionally exempted from any load line assignment at all. This special load line regime allows river barges operating under safe conditions to directly transport non-hazardous cargoes originating at inland river ports as far as Milwaukee and Muskegon, resulting in significant cost savings.

DATES: This final rule is effective December 20, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–4623 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–1998–4623 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Thomas Jordan, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), Coast Guard; telephone 202–372–1370, e-mail *Thomas.D.Jordan@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

ABS American Bureau of Shipping
COI Collection of Information
DHS Department of Homeland Security
HazMat Hazardous Material
HP Horsepower
IR Interim Rule
ITB Integrated tug/barge
MarAd (United States) Maritime Administration
MSO Marine Safety Office
MSU Marine Safety Unit
NEPA National Environmental Policy Act of 1969
NPRM Notice of proposed rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OCMI Officer in Charge, Marine Inspection
SCA Small Craft Advisory
Stons Short tons
VHF Very High Frequency

II. Regulatory History

On May 29, 1992, the Coast Guard published a notice in the **Federal Register** (57 FR 22663) establishing a limited service domestic load line route on western Lake Michigan between Chicago, IL (Calumet Harbor), and Milwaukee, WI, and authorizing the American Bureau of Shipping (ABS) to issue load line certificates accordingly. The notice also requested public comment. On September 21, 1992, we published a follow-up notice (57 FR 43479) discussing the public comments that we received, and making minor revisions to the requirements.

On March 31, 1995, we published a notice in the **Federal Register** (60 FR 16693) establishing a second route along the east side of Lake Michigan between Chicago, IL, and St. Joseph, MI. In the notice, we specified that the lead barge in the tow must have a raked bow, but allowed the initial load line survey of barges that were less than 10 years old to be conducted afloat.

On September 28, 1995, we published a notice in the **Federal Register** (60 FR 50234) removing the raked bow requirement.

On August 26, 1996, we published a notice in the **Federal Register** (61 FR 43804) extending the St. Joseph route farther up the east side of Lake Michigan to Muskegon, MI.

On November 2, 1998, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled "Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan" (63 FR 58679). This NPRM proposed to incorporate the above-described Lake Michigan load line

provisions into the Great Lakes load line regulations in 46 CFR part 45.

On December 28, 1998, we published a follow-up notice that extended the comment deadline to March 4, 1999 (63 FR 71411). We received 51 letters commenting on the proposed rule. No public hearing was requested and none was held.

On April 23, 2002, we published an interim rule (IR) with request for comments (67 FR 19685), which established the load line regulations for river barges on Lake Michigan (*i.e.,* the special service load lines for the St. Joseph and Muskegon routes, and the conditional exemption regime for the Milwaukee route) in 46 CFR 45.171 through 45.197. These interim regulations have been in effect since 2002 and are being finalized by this final rule.

III. Basis and Purpose

The origin of this rulemaking dates back to a request from the Port of Milwaukee in 1991 to establish a special load line provision that would allow river barges to transit on Lake Michigan between Chicago (Calumet Harbor) and Milwaukee. The Coast Guard subsequently received a request to establish a similar route on the eastern side of Lake Michigan to Muskegon, MI.

The Coast Guard initially established these special routes via non-regulatory notices published in the **Federal Register**. However, it was eventually determined that these notices needed to be formally incorporated with the Great Lakes load line regulations of 46 CFR part 45. The rulemaking was initiated with publication of the NPRM on November 2, 1998.

A vessel may be granted an exemption from load line requirements by alternative means under the provisions of 46 U.S.C. 5108. The exemptions in this rule are specifically authorized under 46 U.S.C. 5108(a)(2). The provisions require regulations and a finding of good cause for the exemption.

As prescribed in 46 U.S.C. 5108(a)(2), the Coast Guard determines that good cause exists for granting a load line exemption for the Milwaukee route as specified in these final regulations. This determination is based on the relatively short transit, limitations on the distance offshore and forecasted weather conditions, the availability of nearby harbors to seek safe refuge, registration and self-examination by the barge owners and tow vessel operators, limitations on the number of barges in the tow, the requirement that the pre-departure inspection must ensure that all weathertight and watertight closures are operating properly, and limitations on the age of the barges to be used on the route.

IV. Background

Before the establishment of this special load line regime for Lake Michigan, barge cargoes originating at inland river ports and destined for Lake Michigan ports had to be transferred to a Great Lakes load-lined vessel at Calumet Harbor in Chicago. This transshipment was necessary because the existing load line regulations did not allow vessels onto the Great Lakes without a Great Lakes load line; river barges typically do not meet all the requirements for unrestricted service on the Great Lakes.

The only exception to this has been an exemption for certain river barges operating between Chicago, IL, and Burns Harbor, IN, as provided in 46 CFR 45.171–45.177.

A. Initial Request From the Port of Milwaukee

In January 1991, the Port of Milwaukee asked the Coast Guard to explore the possibility of establishing a relaxed domestic load line that would allow river barges to operate along the western shore of Lake Michigan between Chicago and Milwaukee. Later that year, a barge company made a similar request for an eastern Lake Michigan route between Chicago, IL, and Muskegon, MI. The motivation for these route requests was economic: River barges offer relatively low costs per ton-mile to move cargo and can therefore deliver cargoes to the Lake ports less expensively than can other modes of transportation.

The American Bureau of Shipping (ABS), the Coast Guard, and industry worked together to determine the appropriate operational restrictions and other requirements that would allow river barges to safely operate on Lake Michigan. In 1992, a special limited service domestic voyage load line regime was implemented for the Milwaukee route. A similar regime was established in 1996 for the Muskegon route.

Initially, 30 barges obtained the special load line and began service between Chicago and Milwaukee. From 1993 to 1996, more than 300 barge trips were made, delivering approximately 502,000 tons of grain, animal feed, steel, machinery, graphite, aggregate, and other materials. However, the cost and logistics of managing a relatively small number of load-lined barges over a large river system worked against the economics of this service and, when the original barges were sold in 1996, the new owner discontinued the Milwaukee service. Over subsequent years, no other barge operators pursued this special load line regime.

Meanwhile, the Coast Guard moved ahead with plans to formally incorporate the special load line regime into Federal regulations and, on November 2, 1998, published an NPRM (63 FR 58679). In its response to the NPRM, industry argued that the cost of obtaining the special load line was still prohibitive and discouraged barge operators from entering into this service. Industry representatives requested that a risk assessment be conducted to determine if a load line exemption could be developed for the Milwaukee route.

B. Risk Assessment of the Milwaukee Route

A risk assessment group was established, comprised of interested parties representing towboat and barge operators, port authorities, the Coast Guard, the U.S. Maritime Administration (MarAd), and port-related businesses, such as terminal operators and shippers. The group met twice, once on September 21, 2000, and again on November 9, 2000, to discuss various issues. Stakeholders submitted additional comments to the risk assessment group. The group compiled its memos, letters, and other documents into a report, "Risk Assessment for River Barges Operating between Chicago, IL and Milwaukee, WI," dated September, 2001, which is available in the docket.

Because the cost of the load line assigned by ABS was perceived as a major economic obstacle, the risk assessment group focused on how that cost could be reduced or eliminated in ways such as "self-certification" by a barge owner (similar to the existing self-registration requirements for barge operators on the Burns Harbor route). The group made several important findings:

- It is standard practice for the barge-building shipyards to build all new barges in accordance with ABS River Rules;
- New barges are not likely to seriously deteriorate during the first 7 to 10 years of service;
- Marine weather forecasting for the Great Lakes has improved since the Milwaukee route was first established in 1992; and
- A towboat operator with extensive experience on the Chicago/Milwaukee route affirmed the viability of Waukegan, IL, and Kenosha, WI, as ports-of-refuge.

On the basis of these findings, the group recommended that relatively new barges (those under 10 years of age)

should be exempted from the load line requirement.

C. Interim Rule and Conditional Exemption

On the basis of the Risk Assessment, the Coast Guard published the IR on April 23, 2002 (67 FR 19685), that established the conditional load line exemption for the Chicago/Milwaukee route and the special service load lines for the St. Joseph and Muskegon routes.

The conditional load line exemption regime principally relies on self-compliance by the barge operators, who are allowed great flexibility in selecting non-load-lined river barges for service on that route, provided that the barges meet certain age and condition requirements and are registered with the Coast Guard Marine Safety Unit (MSU), Chicago. The tows are limited to "fair weather only" conditions.

At this time, the IR has been in effect for 8½ years, and has fostered a modest but economically beneficial level of commercial activity for Milwaukee (chiefly in grain shipments and transport of oversized industrial equipment).

D. Subsequent Operational Experience

On the afternoon of August 7, 2003, a two-barge tow loaded with wheat departed from Milwaukee and traveled southbound for Chicago. Although the 48-hour weather forecast was within allowable limits, the tow encountered unexpectedly rough seas. Because the prevailing weather conditions were from the north, the towboat captain decided to continue southwards rather than turn back into rough seas, and shifted the barges to a towline. During the night, the barges were observed taking on water and listing. By morning, one barge was listing heavily with only a foot of freeboard. The captain decided to head to Waukegan for shelter, but as the tow was making the turn, one of the barges nosedived into the waves and broke free of the tow. This barge eventually sank in 117 feet of water approximately 4.7 miles offshore from Waukegan. The surviving barge was brought safely into Waukegan with significant flooding in several void compartments. The subsequent Coast Guard investigation determined that:

- Each barge was operated by a different company. Although both barge operators submitted the required barge registrations prior to departing Milwaukee, there were no previous registrations on record for their original northbound voyages from Chicago. Therefore, the Coast Guard initiated civil penalty proceedings against both barge operators for operating the barges without a valid load line exemption;
- Inspection of the surviving barge revealed that 44 of the 48 hatch securing devices (dogs) on the void hatch covers were either seized or broken. Not one of the barge's 12 void spaces had a functioning weathertight cover. A flooded stability analysis of the barge that sank determined that its voids must have been similarly compromised, since the barge should not have sunk if its voids had been dry. Therefore, the Coast Guard initiated civil penalty proceedings against both barge operators for falsely declaring on the registrations that the barges met all the required conditions for the load line exemption; and
- Although the towboat captain inspected the barges prior to departure (as required) and noticed that several of the covers were not operating properly, he proceeded with the voyage anyway. The Coast Guard initiated Suspension and Revocation proceedings against the captain's license.

Although the above-described incident resulted in a sunken barge and lost cargo, the Coast Guard views it as an overall confirmation of the environmental safety provisions incorporated in the exemption regime. The barge sank because it was clearly not up to the seaworthiness standard required by the regulations. Despite this, however, there was no adverse environmental impact since the grain cargo did not constitute a hazardous spill. Also, the tug and surviving barge found shelter in Waukegan as contemplated by the risk assessment (the three-barge tow limitation ensures that tows can be accommodated in the ports-of-refuge along the Milwaukee route). From this, the Coast Guard concludes that the current exemption requirements provide an adequate level of safety if properly complied with.

E. Coast Guard Oversight and Concerns

As discussed in the IR, the Coast Guard reviewed barge activity on Lake Michigan with three particular concerns in mind. These concerns, and our conclusions, are as follows:

(1) Industry compliance with the conditions of the load line exemption (such as barge registration, pre-departure inspections, logbook entries, etc.).

The load line exemption regime depends on self-compliance by towboat operators and barge operators, with limited Coast Guard oversight. However, there is evidence that barge operators are not fully complying with the conditions of exemption, especially the registration requirements. As noted in the casualty discussion above, neither barge had been registered for its upbound voyage to Milwaukee. Conversely, MSU Chicago reported that some operators have "registered" their barges by submitting lengthy lists of dozens of barges in their fleet. Such wholesale submittals cannot accurately reflect a proper inspection of each barge on the list. The Coast Guard has conducted spot-checks of barge names in Milwaukee against registration records in Chicago, and will continue to monitor registration compliance. However, if self-compliance is found to be unreliable, we may implement other compliance measures, such as third-party verification.

(2) The material condition of the barges.

The interim regulations allow barges up to 10 years of age to participate in the load line exemption regime. This age limit is based on the assumption that barges in freshwater service will not deteriorate so badly in 10 years as to render them unseaworthy for Lake Michigan voyages under fair weather conditions. The 2003 casualty revealed that although this might be true for the hull structure, it is not necessarily true for weathertight closures (*i.e.,* hatch covers, gaskets, and dogs).

Consequently, we are revising the regulations to clarify that all weathertight and watertight closures must be verified to be in working condition as part of the barge registration (by the barge operator) and the pre-departure inspection (by the towboat operator). This clarification is intended to ensure that the towing vessel master is fully aware of his responsibilities, already in the regulations, to verify the watertight integrity of the barge(s) prior to departure. If these verification procedures still do not prove to be effective, we may review and revise these regulations in the future as necessary.

(3) The number of tows on Lake Michigan at any given time.

The Coast Guard is concerned that participation in the load line exemption regime might grow so large that the number of barges en route between Chicago and Milwaukee on any given day will exceed the capacity of the ports-of-refuge (Kenosha and Waukegan) to accommodate them, should weather conditions deteriorate unexpectedly. A review of vessel traffic data from the Port of Milwaukee indicates that 43 river barges called at the port in 2002 (the first year of the exemption regime). In 2004, the number peaked at 91 barges. Since then, the level of activity has dropped: 36 barges in 2006 and 40

barges in 2007 (the latest year for which data is available). The bulk of cargo movements has been outbound grain, although some industrial equipment has been transported as well. The current level of barge activity is not yet a concern; however, we may establish a voyage coordination program at some future time if we deem it necessary.

(4) The use of Coast Guard resources.

The amount of enforcement resources the Coast Guard has dedicated to investigations of oftentimes avoidable marine casualties and the resulting penalty proceedings, and to ensuring that operators are in compliance with the exemption regime, is considerable. The extent of our involvement in these efforts goes against our regulatory goal of relying on self-compliant operators. We will continue to monitor barge activity on Lake Michigan. However, we may further amend the exemption regime in the future if we feel it is necessary to do so.

V. Discussion of Comments and Changes

A. Discussion of Interim Rule (IR) Changes

The Coast Guard has made the following changes to the regulations in 46 CFR 45.171 through 45.197 established in the IR based upon consideration of comments received during the rulemaking and to clarify existing requirements:

Section 45.171 Purpose: In paragraph (c), Table 45.171 has been revised to reflect the changes in this final rule, discussed below.

Paragraph (d) has been added to clarify that the provisions of this subpart pertain only to load line regulations, and do not exempt the participating barges from other applicable regulations (such as the documentation requirements of 46 CFR part 67). Although Certificates of Documentation are not required for barges operating on U.S. rivers, they are required for all vessels of 5 gross tons or more that operate on the Great Lakes. This requirement, therefore, applies to river barges operating under the provisions of 46 CFR part 45.

Section 45.173 Eligible barges: Paragraph (e) has been added stating that weathertight and watertight closures must be in proper working condition. This addition clarifies the existing requirement in § 45.191(b)(5) that manhole covers be secured watertight as part of the pre-departure inspection.

Section 45.175 Applicable routes: This section has been revised to clarify that intermediate ports are allowed on the applicable routes.

Section 45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes: Paragraph (a) has been revised to reflect the Coast Guard's organizational re-designation of Marine Safety Offices (MSOs), which includes the Officer in Charge, Marine Inspection (OCMI), as Marine Safety Units (MSUs). It also updates the MSU mailing address.

Paragraph (b)(1) has been revised to require the official documentation number of the barge in order to provide better identification of the vessel.

Section 45.185 Tow limitations: Paragraph (b) has been revised to emphasize the current requirement that the maximum number of barges on the Milwaukee, St. Joseph, and Muskegon routes is three. This limitation is necessary because of the limited dockage at the intermediate ports of refuge and the possibility that more than one tow might need to seek shelter at the same port.

Paragraph (c) now clarifies that the 5-mile limit applies to the tow as a whole, not just to the barges.

Section 45.187 Weather limitations: Because hull construction of river barges is not robust enough to operate on Lake Michigan under all weather conditions, river barges cannot operate under adverse weather conditions. The weather limits as written in the interim regulations, however, were either subjective (i.e., "fair weather only" as decided by the towing vessel master) or a complex set of limiting wind speed/directions and wave heights. These limits are now being simplified by establishing Small Craft Advisory (SCA) conditions as the limiting adverse weather condition. The National Weather Service issues special Great Lakes nearshore marine forecasts that cover all coastal lake waters within 5 miles of shore (more information can be found at *http://www.nws.noaa.gov/om/marine/zone/usamz.htm*). Lake Michigan nearshore SCAs are generally based on wind speeds of 20 knots and 4-foot waves, but also take into account wave conditions that will develop during the forecast period based on wind direction. The Coast Guard believes that these nearshore forecasts provide a clear, unequivocal "fair weather" threshold to towing vessel captains when reviewing weather conditions along the route as they prepare to sail or while they are underway. The original weather regulations in this section have been revised accordingly:

Paragraph (a) now establishes SCA conditions as the limiting adverse weather condition for all routes.

Paragraph (b) establishes that ice conditions that imperil the tow or impede its access into a port of refuge are also considered to be adverse weather conditions.

Section 45.191 Pre-departure requirements: Paragraph (a) has been revised by removing the original requirement to contact the dock operator at the destination port and replacing it with the requirement that the towing vessel master must check the Lake Michigan Nearshore Marine Forecast and confirm that adverse weather conditions (i.e., SCAs or ice conditions) are not developing.

Paragraph (b)(5) has been revised to clarify that the pre-departure inspection must confirm that hatch and manhole dogs are in proper working condition and that all covers are closed and secured, as discussed above.

Sections 45.183, 45.193, and 45.197 have been revised for grammar and other non-substantive reasons.

B. Discussion of Interim Rule (IR) Comments

The IR requested public comment on the interim regulations. Only two comments were submitted, both from the same commenter.

(1) The first comment opposed the Chicago/Milwaukee load line exemption because it eliminates third-party inspection and verification (such as by an ABS surveyor) of a barge's material condition.

The commenter also felt that there were other items in the interim regulations that should be changed; namely that the requirement for pre-departure verification of sufficient docking space should include Waukegan and Kenosha harbors, and that the special equipment and operational plan requirements should also be applied to the Milwaukee route.

With respect to the third-party verification issue, the Coast Guard recognizes the value of such verification, especially where the shipboard inspection is relatively infrequent (*e.g.,* once a year) and involves numerous watertight and weathertight closures (*e.g.,* piping penetrations of the hull, hatch and ventilation covers, doors, etc.). When inspecting such closures, professional judgment must be used when evaluating their fitness for service until the next annual inspection. However, river barges are simpler vessels, with fewer weathertight closures and watertight voids to inspect. We believe that the pre-departure inspection before each

voyage by the towboat master can provide sufficient verification of weathertight integrity for the short-haul, fair-weather transit on Lake Michigan. As explained elsewhere in this rule, we have increased certain inspection and material condition requirements in response to a marine casualty in 2003, and we reserve our right to revise the exemption regime, including imposition of third-party verification, if barge operators do not comply with these inspection measures.

With respect to the commenter's suggestion that pre-departure verification of sufficient docking space should include Waukegan and Kenosha harbors, we do not believe that this is necessary at this point, but we may implement it in the future if necessary.

(2) The second comment (from the same commenter) included a summary from a casualty report involving an integrated tug/barge (ITB) on Lake Michigan in October 2000. This incident was separate from the sinking casualty discussed elsewhere in this rule. The incident occurred under storm conditions with 12- to 15-foot waves, during which two vessels bumped into each other during an emergency disconnect from the notch, causing serious hull damage to both vessels. The commenter cited this as an example of the "extreme variableness" of weather in lower Lake Michigan, and reiterated concern for the safety of tows with barges.

The ITB mentioned above sailed under marginal weather conditions, even for load-lined vessels. As explained previously in this rule, we are now establishing SCA conditions, as issued in National Weather Service Nearshore Marine Forecasts for Lake Michigan, as the limiting weather condition. While establishing SCA conditions does not guarantee that weather conditions exceeding the forecast will not occur, we believe that the SCA forecast is the best and most consistent benchmark for weather prediction, and should generally keep the tow out of extreme conditions.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

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. A final Regulatory Assessment follows:

This rule finalizes the requirements of the interim rule where eligible barges may qualify for either a limited domestic service voyage load line (Burns Harbor route, St. Joseph route, and Muskegon route), or a conditional load line exemption (Milwaukee route). Under this final rule, river barge owners will continue to be able to take part in the load line regime. River barge owners that seek either a Great Lakes limited service load line or a conditionally exempted load line will continue to incur the minor costs associated with obtaining a certificate.

This final rule also revises existing load line regulations in 46 CFR 45.171 through 45.197 pertaining to certain dry-cargo river barges operating on Lake Michigan. The regulatory changes add clarifying language to the affected sections, including:

- A requirement that weathertight and watertight closures must be in proper working condition and that pre-departure inspection must confirm that hatch and manhole dogs are in proper working condition and that all covers are closed and secured.
- The establishment of SCA conditions and ice conditions that imperil the tow or impede its access to a port of refuge as the limiting adverse weather condition for all routes.

The applicable barges that operate on Lake Michigan are currently required under the IR to conduct a pre-departure inspection. This final rule clarifies that confirmation that hatch and manhole dogs are in proper working condition and that all covers are closed and secured should be part of the pre-departure inspection. A thorough pre-departure inspection should already include these activities. As such, the clarification should not result in new costs to barge owners who take part in the load line regime.

The current IR restricts operation of barges during adverse weather conditions, but either leaves the determination to the towing vessel master or involves a complex set of limiting wind speed/directions and wave heights. This final rule simplifies the determination by establishing SCA conditions as the limiting adverse weather condition. We do not have any information to indicate that using the SCA will result in any additional costs to barge owners and may, in fact, reduce ambiguity.

The remaining changes are administrative or clarifications and would not result in additional costs.

Affected Population

Based on industry information, about 35 barges annually have taken part in the load line exemption regime since 2002, and this number has remained fairly constant.

Costs

Barge owners who seek a conditional exemption must submit a one-time registration to the Coast Guard, and barge owners who seek a limited load line exemption must complete an initial survey letter and obtain a limited service certificate.

Based on data in the existing collection of information, "Plan Approval and Records for Load Lines," OMB Control Number 1625–0013, we estimate the preparation time for the application of conditional exemption and submission to the Coast Guard to be about 2 hours. We expect someone at the managerial level will prepare the conditional exemption application at a fully loaded labor rate of $83/hour. A managerial level employee of the barge company is necessary to perform this duty because this person must sign the application in order to certify the barge owner or operator will maintain the operational condition of its barges. We estimate the cost for a single barge owner or operator to prepare a conditional exemption application to be about $166 (2 hours × $83 fully loaded labor rate/hour).[1] We estimate that owners or operators of about 30 barges annually will seek conditional exemptions for a continued annual cost of about $4,980 ((2 hours × $83 fully loaded labor rate/hour) × 30 barges annually).

Also based on the existing collection of information mentioned above, for barge owners and operators who choose to seek a limited domestic service load line, we estimate it will take about 0.5 hours to complete the application. We expect a mid-level employee will prepare the limited domestic service load line application at a fully loaded labor rate of $42/× hour. A mid-level employee can perform this duty because this application contains basic design information about the barge. The application is then submitted by the barge owner or operator to the authorized classification society, who then issues the load line certificate. We estimate the cost for a single barge

[1] Source for time and labor rate: Collection of Information, OMB Control Number 1625–0013, "Plan Approval and Records for Load Lines."

owner or operator to prepare the limited domestic service load line application to be about $21 (0.5 hours × $42 fully loaded labor rate/hour). We estimate that owners or operators of about 5 barges annually will seek the limited domestic service load line for a cost of about $105 ((0.5 hours × $42 fully loaded labor rate/hour) × 5 barges annually). We estimate the total annual cost of this final rule to be about $5,000.[2]

Benefits

We expect the regulations to continue to have a positive economic impact on the local region because they will allow certain cargoes to be transported at a lower cost per ton-mile than by the alternative overland modes presently used. Also, the provisions offer increased flexibility to river barge operators that choose to operate on the Milwaukee route as well as the conditionally exempted route from the previously required limited service domestic voyage load line assignment.

As a direct benefit, river barge owners and qualified river barge operators will likely gain business and commercial opportunities as a result of having the option of continuing to take part in this regime for the movement of certain cargoes.

We also expect the regulatory changes in the affected CFR sections to have a safety benefit by reducing the risk of an accident for barge owners that take part in the load line regime as illustrated by the marine casualty incident that occurred August 7, 2003 on Lake Michigan (see the Background section of this preamble for further information on this marine casualty incident). This incident directly resulted in the regulatory changes in 46 CFR 45.191(b)(5) that require manhole and hatch dogs to be in working condition and all covers to be closed and secured watertight.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 has reviewed this final rule for its potential economic impact on small entities. This final rule affects unmanned dry-cargo river barge owners and operators who voluntarily choose to obtain a limited domestic service load line assignment or a conditional load line exemption while operating on certain routes on Lake Michigan.

We expect the costs of this rule to small entities to be minimal for river barge owners who choose to take part in the Great Lakes load line regime. We estimate that 35 river barges use the Great Lakes load line regime annually at a cost of about $140 per barge.[3] Furthermore, this rule conditionally exempts qualified barges operating on the Milwaukee route from the previously proposed limited service domestic voyage load line assignment. The estimated hour burden of preparing the submittal to the Coast Guard for exempting barges on the Milwaukee route from load line assignment is minimal for river barge owners who choose to take part in this regime. Small entities will likely choose to obtain limited domestic service load line assignments or conditional load line exemptions while operating on Lake Michigan only if they expect to gain an economic benefit by using the less costly form of water transportation as opposed to land transportation. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. 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.

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).

D. 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). We received no additional information to alter the existing collection of information.

E. 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. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko v. Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This rulemaking concerns load line assignments for vessels under U.S. jurisdiction. This is a category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

F. 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.

G. Taking of Private Property

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

[2] The figure $5,000 is rounded from $5,085 = $4,980 + $105, for the conditional exemption and the limited domestic service load line.

[3] The figure $140 is rounded from $143 = $5,000/35 barges.

H. 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.

I. 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.

J. 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.

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(d) of the Instruction and under section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244, July 23, 2002). Exclusion under paragraph (34)(d) applies because this rule pertains to regulations concerning inspection of vessels (*i.e.,* load line requirements). Exclusion under 6(a) of the **Federal Register** Notice applies because this rule pertains to regulations concerning vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 45

Great Lakes, Reporting and recordkeeping requirements, Vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 45 as follows:

PART 45—GREAT LAKES LOAD LINES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 46 U.S.C. 5104, 5108; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 45.171 to revise Table 45.171 in paragraph (c) and add new paragraph (d) to read as follows:

§ 45.171 Purpose.

* * * * *

(c) * * *

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Table 45.171:
Load Line Requirements for Dry Cargo River Barges Operating on Lake Michigan

	Voyages between Calumet Harbor, IL and:			
	Burns Harbor, IN	**Milwaukee, WI**	**St. Joseph, MI**	**Muskegon, MI**
1) Load line requirement	Conditionally exempted from load line assignment (must meet requirements below)		"Limited service domestic voyage" load line	
2) Where to register/apply	Exempted barges must be registered with the USCG Marine Safety Unit 555A Plainfield Road Willowbrook, IL 60527 Fax: (630) 986-2120		Apply for load line to ABS Americas 16855 Northchase Dr. Houston, TX 77060	
3) Eligible barges	Dry cargo river barges Built and maintained in accordance with ABS River Rules Length-to-depth ratio less than 22 All weathertight and watertight closures are in proper working condition			
	No age limitation	Not more than 10 years old	No age limitation	
4) Freeboard requirement	All barges: freeboard must be at least 24 inches (610 mm) Open hopper barges: coaming height + freeboard must be at least 54 inches (1,372 mm)			
5) Tow limitations	Barges must be unmanned Not more than 5 nautical miles from shore			
	No limit on number of barges	Not more than 3 barges per tow		
6) Cargo limitations	Dry cargoes only. Liquid cargoes, even in drums or tank containers, are prohibited No hazardous materials. HazMats are defined in 46 CFR part 148 and 49 CFR chapter 1, subchapter C			
7) Weather limitations Voyage may not begin; or if these conditions arise during transit, voyage must be discontinued and tow must proceed to shelter	"Small Craft Advisory" conditions or worse (as issued by the NWS Lake Michigan Nearshore Marine Forecast) are not in effect or forecasted for the duration of the transit. Tow master must confirm forecast before departure. Ice conditions do not imperil tow or impede access to shelter			
8) Pre-departure preps:	Required -- as specified in § 45.191			

9) Towboat requirements	Sufficient to handle tow	Sufficient to handle tow, but at least--	
		1,000 HP	1,500 HP
(a) Power:			
(b) Communication system:	Recommended -- § 45.195(a)	Recommended -- § 45.195(a)	Required -- § 45.195(a)
(c) Cutting gear:	Recommended -- § 45.195(b)	Recommended -- § 45.195(b)	Required -- § 45.195(b)
(d) Operational plan:	Recommended -- § 45.197	Recommended -- § 45.197	Required -- § 45.197

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(d) The provisions in this subpart pertain only to load line regulations. Nothing here waives or exempts participating barges from other requirements for vessels operating on Lake Michigan, such as Certificate of Documentation requirements per 46 CFR part 67.

■ 3. Amend § 45.173 to revise paragraphs (c) and (d) and add new paragraph (e) to read as follows:

§ 45.173 Eligible barges.

* * * * *

(c) Barges with a length-to-depth ratio less than 22;

(d) Barges on the Milwaukee route must not be more than 10 years old; and

(e) All weathertight and watertight closures (dogs, gaskets, covers, etc.) must be in proper working condition.

■ 4. Revise § 45.175 to read as follows:

§ 45.175 Applicable routes.

This subpart applies to the following routes, including intermediate ports, on Lake Michigan, between Calumet Harbor, IL, and—

(a) Milwaukee, WI (the "Milwaukee route");

(b) Burns Harbor, IN (the "Burns Harbor route");

(c) St. Joseph, MI (the "St. Joseph route"); and

(d) Muskegon, MI (the "Muskegon route").

■ 5. Amend § 45.181 to revise paragraphs (a) and (b)(1) to read as follows:

§ 45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes.

* * * * *

(a) *Registration.* Before the barge's first voyage onto Lake Michigan, the owner or operator must register the barge in writing with the Commanding Officer, Marine Safety Unit Chicago, 555A Plainfield Road, Willowbrook, IL, 60527. The registration may be faxed to MSU Chicago in advance at (630) 986–2120, with the original following by mail. The registration may be in any form, but must be signed by the owner or operator. No load line exemption certificate will be returned. However, the registration will be kept on file.

(b) * * *

(1) Barge name and official documentation number;

* * * * *

§ 45.183 [Amended]

■ 6. Amend § 45.183 to read as follows:

■ a. In paragraph (a)(2), remove the word "five" and add, in its place, the numeral "5"; and

■ b. In paragraph (b)(2)(vi), remove the words "and be fully" and add, in their place, the words "and fully".

■ 7. Amend § 45.185 to revise paragraphs (b) and (c) to read as follows:

§ 45.185 Tow limitations.

* * * * *

(b) No more than a total of three barges per tow may operate on the Milwaukee, St. Joseph, and Muskegon routes. A mixed tow of load-lined and exempted barges is still limited to three barges on those routes.

(c) Tows must not be more than 5 nautical miles from shore.

■ 8. Revise § 45.187 to read as follows:

§ 45.187 Weather limitations.

(a) Tows may not operate under Small Craft Advisory (SCA) conditions or worse, as issued by the National Weather Service in Lake Michigan Nearshore Marine Forecasts.

(b) Tows may not operate when adverse ice conditions may imperil the tow or impede its access to shelter.

(c) If SCA conditions are forecasted to develop at any time during the voyage, the tow must not leave harbor or, if already underway, must proceed to the nearest appropriate harbor of safe refuge.

■ 9. Amend § 45.191 to revise paragraphs (a) and (b)(5) to read as follows:

§ 45.191 Pre-departure requirements.

* * * * *

(a) *Weather forecast.* Determine the Lake Michigan Nearshore Marine Forecast along the planned route, and confirm that adverse weather conditions (Small Craft Advisory or worse, or ice conditions) are not forecasted to develop.

(b) * * *

(5) All hatch and manhole dogs are in working condition, and all covers are closed and secured watertight;

* * * * *

§ 45.193 [Amended]

■ 10. In § 45.193(a), add the text "(HP)" after the word "horsepower".

§ 45.197 [Amended]

■ 11. In § 45.197, in the introductory text, remove the word "aboard" and add, in its place, the words "on board".

Dated: November 12, 2010.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2010–28993 Filed 11–17–10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; FCC 10–176]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules to require wireless licensees subject to standards for wireless Enhanced 911 (E911) Phase II location accuracy and reliability to satisfy these standards at either a county-based or Public Safety Answering Point (PSAP)-based geographic level. The Commission takes this step in order to ensure an appropriate and consistent compliance methodology with respect to location accuracy standards.

DATES: The rule is effective January 18, 2011, except for §§ 20.18(h)(1)(vi), 20.18(h)(2)(iii), and 20.18(h)(3), which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–2413.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* (Order) in PS Docket No. 07–114, FCC 10–176, adopted September 23, 2010, and released September 23, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. One of the most important opportunities afforded by mobile telephony is the potential for the American public to have access to emergency services personnel during times of crisis, wherever they may be. To ensure this benefit is realized, however, public safety personnel must have accurate information regarding the location of the caller. Without precise location information, public safety's ability to provide critical services in a