

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 257-0345; FRL-7174-1]

**Withdrawal of Direct Final Rule Revising the California State Implementation Plan, El Dorado County Air Pollution Control District****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of direct final rule.**SUMMARY:** EPA is withdrawing direct final approval of revisions to the California State Implementation Plan (SIP) that were published on March 1, 2002 (67 FR 9403).**DATES:** This direct final rule is withdrawn as of April 23, 2002.**FOR FURTHER INFORMATION CONTACT:** Roger Kohn, Permits Office (Air-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3973.**SUPPLEMENTARY INFORMATION:** On March 1, 2002 (67 FR 9424), EPA proposed to approve El Dorado County Air Pollution Control District (EDCAPCD) Rule 523, New Source Review, into the California State Implementation Plan (SIP).

On the same day (67 FR 9403), EPA also published a direct final rule approving these rules into the SIP. The proposed action provided a 30 public comment period and explained that if we received adverse comments, we would withdraw the relevant direct final action.

We did receive adverse comments, and are therefore withdrawing the direct final approval of EDCAPCD Rule 523. We are not opening an additional comment period. We intend to finalize action on these rules based on the March 1, 2002 proposal.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 11, 2002.

**Nora L. McGee,***Acting Regional Administrator, Region IX.*

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]****Subpart F—California**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.***§ 52.220 [Amended]**

2. Section 52.220 is amended by removing paragraph (c)(291).

[FR Doc. 02-9788 Filed 4-22-02; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION****Coast Guard****46 CFR Part 45**

[USCG-1998-4623]

RIN 2115-AF38

**Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan****AGENCY:** Coast Guard, DOT.**ACTION:** Interim rule with request for comments.**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 upon 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 will allow non-hazardous cargoes originating at inland river ports to be directly transported as far as Milwaukee and Muskegon by river barge.**DATES:** Effective May 23, 2002, except for §§ 45.181 and 45.183 which contain information collection requirements that have not been approved by OMB. We will publish a document in the **Federal Register** announcing the effective date of these two sections. Comments and related material must reach the Docket Management Facility on or before October 23, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 23, 2002.**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-1998-4623), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Thomas Jordan, Office of Marine Safety and Environmental Protection (G-MSE-2), telephone 202-267-2988. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.**SUPPLEMENTARY INFORMATION:****Request for Comments**We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG 1998-4623), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period. We may change this rule in view of them.

### Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Regulatory Information

On November 2, 1998, we published a notice of proposed rulemaking (NPRM) entitled "Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan" in the **Federal Register** (63 FR 58679). On December 28, 1998, we published a follow-up notice that extended the comment period to March 4, 1999 (63 FR 71411). Altogether, we received 51 letters in response to the proposed rule. No public hearing was requested and none was held.

On September 21, 1992 (57 FR 43479), a notice was published in the **Federal Register** establishing a limited service domestic load line route on western Lake Michigan between Chicago, IL (Calumet Harbor) and Milwaukee, WI.

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

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

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

### Background and Purpose

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 Chicago (Calumet Harbor). This transshipment was necessary because the existing load line regulations did not allow vessels onto the Great Lakes without a Great Lakes load line, and 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 and Burns Harbor (as specified in 46 CFR 45.171 through 45.177).

In January 1991, the Port of Milwaukee approached 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 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.

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 venture onto Lake Michigan. In 1992, a special limited service domestic voyage load line regime was implemented for the Milwaukee route. A similar regime was established for the Muskegon route in 1996.

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 about 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 the subsequent years, no other barge operators obtained this special load line.

Meanwhile, the Coast Guard had moved ahead with plans to formally incorporate the special load line regime into Federal regulations, which happened in 1998 when a notice of proposed rulemaking (NPRM) was published (63 FR 58679, Nov. 2, 1998). In its response to the NPRM, industry argued that the cost of obtaining the special load line was still too prohibitive, which discouraged barge operators from entering this service. Industry representatives requested that a risk analysis be conducted to determine if a load line exemption could be developed for the Milwaukee route.

### Risk Assessment of the Milwaukee Route

The risk assessment group was made up of interested parties, representing towboat and barge operators, port authorities, the Coast Guard, U.S. Maritime Administration (MarAd), and port-related businesses (terminal operators, shippers, etc.). The group met twice (September 21, 2000 and November 9, 2000) to discuss various issues. Additional comments were submitted to the group. These documents have been compiled together 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 ABS-assigned load line was perceived to be a major obstacle, the group focused on how that cost could be reduced or eliminated in ways such as "self-certification" by a barge owner (similar to Burns Harbor operators). Several important findings were made:

(1) It is standard practice for the barge building shipyards to build all new barges in accordance with ABS River Rules;

(2) New barges are not likely to seriously deteriorate during the first 7 to 10 years in service;

(3) Marine weather forecasting for the Great Lakes has improved since the Milwaukee route was first established in 1992; and

(4) The viability of Waukegan and Kenosha as ports-of-refuge were affirmed by a towboat operator with extensive experience on that route.

On the basis of these findings, the group recommended that relatively new barges (less than 7 or 10 years of age) be exempted from the load line requirement.

### Discussion of Comments and Changes

The 51 responses to the NPRM were submitted by 42 commenters (some of whom submitted more than one response). Of those commenters, 29 supported the overall proposal, but 17 were specifically concerned about the adverse impact of the proposed regulations on present Burns Harbor operations.

The two major issues discussed by the commenters are as follows:

*High cost of load line assignment:* Most commenters on the load line requirement alleged that the ABS costs are excessively high, and that these costs are the reason why barge service to Milwaukee was discontinued in 1996 and has not been re-established. Several suggestions were offered on how to lower costs to barge owners: regulating

ABS fees, exempting younger barges, allowing a limited number of exempted voyages each year, Coast Guard inspection (on a cost-reimbursable basis), and "self-certification" under Coast Guard oversight.

As a result of a detailed risk review on the Milwaukee route (discussed in the Risk Assessment section in this notice), the Coast Guard has decided to conditionally exempt barges on that route from load line assignment; instead we will accept self-certification by the owner or operator. Barges operating on that route must be registered with the USCG Marine Safety Office in Chicago (just like those on the Burns Harbor route), meet certain design requirements, and cannot be more than 10 years old.

Because such a risk review has not yet been conducted for the St. Joseph and Muskegon routes, we are not exempting those routes at this time. River barges operating on those routes must still obtain the limited service domestic voyage load line assignment from ABS.

*Adverse impact of proposed regulations on the Burns Harbor route:* Because tows to St. Joseph and Muskegon followed the same route as tows to Burns Harbor, the NPRM attempted to consolidate and harmonize the requirements for these three routes as much as possible. As a result, the Burns Harbor route would become subject to several requirements that were not previously required (such as weather restrictions, tow size limits, and horsepower requirements). Many commenters familiar with the Burns Harbor tow operations stated that these requirements would adversely impact the route, particularly the towing limit of three barges. They pointed out that tow sizes for Burns Harbor are decided on other factors (forecast, loaded/unloaded condition of barges, available towboat power, etc.), and typically could be much more than three barges. The proposed 3-barge limit would therefore have a serious impact, resulting in more voyages and increased fuel and labor costs. The commenters stated that Burns Harbor is a short-haul route with nearly 30 years of safe operational history, and that there is no basis for imposing stricter requirements that are intended for the more-exposed long-haul routes.

The Coast Guard accepts these points. It was not our intent to upset well-established practices on the Burns Harbor route; it was merely to harmonize requirements as much as possible. Therefore, proposed regulations have been revised to preserve the Burns Harbor requirements as currently in effect.

As a result of the comments discussed above, as well as further internal review by the Coast Guard, the following changes have been made to the regulations as proposed in the NPRM:

*Editorial changes:* We have made editorial changes throughout to improve clarity, intent, and the plain language writing of the regulations.

*Section 45.15 Exemptions:* Paragraph (d) has been revised to reflect that subpart E provides for load line exemptions for certain routes on Lake Michigan. This paragraph was not originally proposed for revision in the NPRM. However, it is appropriate to revise it since it previously referred only to the Burns Harbor route exemption.

*Section 45.171 Purpose:* New paragraph (b) has been inserted reiterating that barges on Lake Michigan are required to have a Great Lakes load line except as provided in this subpart. This is to ensure that operators understand that non-compliant barges (and operators) are in violation of load line regulations and thereby subject to penalties.

*Table 45.171 Load Line Requirements for Dry Cargo River Barges Operating on Lake Michigan:* This table has been revised to reflect exemption of the Milwaukee route, and changes to the Burns Harbor requirements with respect to weather conditions, tow size limits, and horsepower requirements (as discussed elsewhere in this notice).

*Section 45.173 Eligible barges:* New paragraphs (b) and (c) have been inserted, adding requirements that the barges be designed and built according to ABS River Rules, and that their length-to-depth ratio must be less than 22. Actually, these are not truly new requirements: they have been required in 46 CFR 45.173 since the Burns Harbor exemption was established in 1985, and have been reiterated in each of the **Federal Register** notices establishing the Milwaukee, St. Joseph, and Muskegon routes. However, due to an editorial oversight, they were inadvertently left out of the NPRM and are now being properly included. New paragraph (d) has been added to this section, limiting the barges on the Milwaukee route to less than 10 years old; this is one of the load line exemption conditions for that route.

*Section 45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes:* This section has been revised to include Milwaukee as a load line-exempted route, and to make it clear that this is a conditional exemption. Some of the paragraphs have been titled and editorially re-organized. Some new requirements have been

added to enhance Coast Guard oversight: paragraph (a) now makes it clear that barges are to be registered prior to venturing onto Lake Michigan; paragraph (b) now includes a requirement that the exempted route (Burns Harbor and/or Milwaukee) be identified on the registration; paragraph (e) clarifies the conditions under which the registration becomes invalid; and paragraph (f) reiterates that the Coast Guard is to be notified if a registered barge is withdrawn from exempted service.

*Section 45.185 Tow limitations:* Paragraph (b) has been revised to make sure that Burns Harbor is not included in the 3-barge limit.

*Section 45.187 Weather limitations:* New paragraph (a) has been inserted to restore the original "fair weather only" limit for the Burns Harbor route, and paragraph (b) has been revised to specify the Milwaukee, St. Joseph, and Muskegon routes.

*Section 45.191 Pre-departure requirements:* Paragraph (d) has been revised to include logging of barge freeboards.

*Section 45.193 Towboat power requirements:* Paragraph (b) has been revised to remove the Burns Harbor route.

#### **Coast Guard Oversight and Concerns**

A major provision in this interim final rule is to conditionally exempt the Milwaukee route from load line assignment. It is anticipated that this will greatly encourage barge and towboat operators to establish service on this route. However, it is not possible to predict how many barges will actually become involved, although comments to the docket suggest that a vigorous trade volume could develop.

Accordingly, the Coast Guard will be monitoring activity on this route with three particular concerns in mind:

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

(2) The material condition of the barges. The regulations herein are based on the supposition that freshwater barges up to 10 years of age are not likely to deteriorate severely enough to render them unsuitable for Lake Michigan voyages. However, some comments in the risk analysis suggested there be one of the following age limits: not more than 5 years old, or not more than 7 years old; and

(3) The number of tows actually on Lake Michigan at any given time, with respect to the capacity of the ports-of-refuge to accommodate them should

weather conditions deteriorate unexpectedly. For the time being, it is not expected that this will be a problem and therefore the regulations herein do not require any pre-departure notification to the Coast Guard. However, successful growth of cargo movements on this route may eventually require some program of tow coordination.

Therefore, the Coast Guard reserves its prerogative to revise these regulations if we determine that safety is being seriously compromised.

### 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. It has not been reviewed by the Office of Management and Budget 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 10e of the regulatory policies and procedures of DOT is unnecessary.

This interim rule is revising existing load line regulations in 46 CFR 45.15, and 46 CFR 45.171 through 45.177, pertaining to certain dry cargo river barges operating on Lake Michigan. Under this rule, 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). There are no mandatory costs associated with this rule.

The requirements in this rulemaking are less stringent than the requirements for a normal Great Lakes load line, and serve as cheaper alternatives for qualified barges. This regulatory action imposes costs only on river barge operators who voluntarily decide to obtain the particular load lines as alternatives to the normal Great Lakes load line. Furthermore, this rule reduces the voluntary cost by conditionally exempting barges operating on the Milwaukee route from the limited service domestic voyage load line assignment.

The estimated burden of preparing the submittal for exempting barges on the Milwaukee route from load line assignment is minimal and discussed further in the "Collection of Information" section in this preamble. The rule provides qualified barge operators with more commercial

opportunities to move certain cargoes on Lake Michigan. The economic impact of this rule on the local region is expected to be beneficial, since these regulations should allow certain cargoes to be transported at a lower cost-per-ton-mile than by the overland modes presently used. Also, these new provisions offer increased flexibility to the river barge operators that choose to operate on the Milwaukee route, the conditionally exempted route from the previously required limited service domestic voyage load line assignment.

### 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.

This interim final rule affects the unmanned dry cargo river barge operators who choose to obtain a limited domestic service load line assignment or a conditional load line exemption while operating on certain routes on Lake Michigan.

There are no mandatory costs to small entities associated with this rule. Furthermore, this rule conditionally exempts qualified barges operating on Milwaukee route from the previously proposed limited service domestic voyage load line assignment. The estimated burden of preparing the submittal to the Coast Guard for exempting barges on the Milwaukee route from load line assignment is minimal and discussed further under "Collection of Information" in this preamble. Companies will tend to choose to obtain a limited domestic service load line assignment or conditional load line exemptions while operating on Lake Michigan only if they expect its costs to be offset by increased profits.

Therefore, 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. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what

degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Thomas Jordan, Office of Marine Safety and Environmental Protection (G-MSE-2), telephone (202) 267-2988.

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 a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The regulations resulting from this rulemaking are within 46 CFR part 45, which pertains to load line regulations for the Great Lakes. The OMB control number for 46 CFR part 45 is 2115-0043.

This rulemaking will modify the population of vessels subject to collection of information by creating a business opportunity for additional vessels to voluntarily enter this service. The NPRM for this rulemaking specifically solicited comments on the collection of information burden; however, none of the responses included any comments on this subject.

The NPRM originally estimated that 12 barges per year would seek load line assignment, at a burden of 9.33 hours per vessel (112 hours total per year). The regulations herein require a much simpler information submittal to the Coast Guard, than that proposed in the NPRM. As a result of the estimated burden hour reduction, a larger number of barges are likely to enter this service (35 barges, instead of the original 12 barges).

The revised Collection of Information estimate is as follows:

*Title:* Plan Approval and Records for Load Lines

*OMB Control Number:* 2115-0043.

*Summary of the Collection of Information:* This rule contains collection of information requirements for 46 CFR 45.181 and 45.183 (load line regulations for vessels operating on the Great Lakes).

*Need for Information:* For the Coast Guard to carry out its load line administration responsibilities for vessels operating on the Great Lakes.

*Proposed Use of Information:* For the Coast Guard to verify a barge's compliance/non-compliance with the regulations.

*Description of the Respondents:* Owners of dry cargo river barges voluntarily seeking to operate on certain Lake Michigan routes; they must submit certain information about each barge in order for it to be eligible for a limited domestic service load line assignment or a conditional exemption from any load line assignment at all.

*Number of Respondents:* The existing OMB-approved collection number of respondents is 3,410. This rule will increase the number of respondents by 35 to a total of 3,445. We estimated that 30 barges will apply for a conditional exemption and 5 barges will apply for a limited domestic service load line.

*Frequency of Response:* The existing OMB-approved collection annual number of responses is 20,460. This rule will increase the number of responses by 35 to a total of 20,495. The owners of dry cargo river barges need to respond only one time per barge for the conditional exemption. The initial load line certificate for barges with limited domestic service load line is to be issued for a term of 5 years, or until the barge reaches 10 years of age, whichever occurs first.

*Burden of Response:* The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) for existing vessels with load lines and 155 minutes (for new vessels with load lines (2.583 hours). This rule will increase the burden of response by 120 minutes (2 hours) for the load line exemption

requirements for the Burns Harbor and Milwaukee route and by 35 minutes (0.583 hours) for the load line requirements for the St. Joseph and Muskegon routes.

*Estimate of Total Annual Burden:* The existing OMB-approved collection total annual burden is 1,916 hours. This rule will increase the total annual burden by 63 hours to a total of 1,979 hours.

(a) Barges operating on the Burns Harbor and Milwaukee routes may be conditionally exempted from load line assignment if the owner registers the barge (in writing) with the Officer in Charge, Marine Inspection (OCMI), U.S. Coast Guard Marine Safety Office. The registration may be faxed to the OCMI in advance, with the original following by mail. The registration will be kept on file.

The owners for barges operating on the Burns Harbor and Milwaukee routes have to register the barge (in writing) with the OCMI, U.S. Coast Guard Marine Safety Office, only once, prior to its first voyage onto Lake Michigan. The registration may be faxed to the OCMI in advance, with the original following by mail. The registration will be kept on file. The registration is valid until the tenth anniversary of the delivery date (for Milwaukee route), or the barge no longer is fit for this service (due to damage, or the barge changes ownership). The burden associated with the renewal of the registration is minimal.

The Coast Guard estimates approximately 30 river barges per year would seek a conditional exemption from any load line assignment at all. We, also, estimate about 2 hours per barge to gather required information, compile it into a single document and send it to the Coast Guard. Under these assumptions, the annual hour burden to the respondents is the following: Hour Burden: 60 hours = (2 hours/barge) × (30 barges per year).

(b) Barges operating on the St. Joseph and Muskegon routes are required to have a limited-service, domestic voyage load line certificate. The Coast Guard estimates approximately 5 river barges per year would seek a limited domestic load line assignment. The initial load line certificate is to be issued for a term of 5 years, or until the barge reaches 10 years of age, whichever occurs first.

We assume it takes approximately 30 minutes to complete an initial survey application letter.

Under these assumptions, the annual hour burden to the respondents is the following: Hour Burden: 2.5 hours = (0.5 hours/barge) × (5 barges per year).

Furthermore, drafting the load line certificate is assumed to take

approximately 5 minutes. Under these assumptions, the annual hour burden to respondents is the following: Hour Burden: 0.42 hours = (0.0833 hour) times (5 barges times 1 certificate).

The total hour burden is: 63 hours = 60 hours plus 2.5 hours plus 0.50 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

#### **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.

#### 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, the effects of this rule are discussed elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect 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, paragraphs (34)(d) and (e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Exclusion under paragraph (34)(d) applies because this rule pertains to regulations concerning inspection of vessels (*i.e.*, load line requirements). Exclusion under paragraph (34)(e) applies because this rule pertains to regulations concerning carriage requirements (*i.e.*, cargoes are limited to dry, non-hazardous materials). Therefore, this action will not result in substantial change to existing environmental conditions. A "Categorical Exclusion Determination" is 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 set out 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 is revised to read as follows:

**Authority:** 46 U.S.C. 5104, 5108; 49 CFR 1.46.

2. In § 45.15, revise paragraph (d) to read as follows:

#### § 45.15 Exemptions.

\* \* \* \* \*

(d) Unmanned dry cargo river barges carrying non-hazardous cargoes on certain routes on Lake Michigan may be exempted from load line requirements in accordance with the conditions specified in subpart E of this part.

3. Revise subpart E to read as follows:

#### Subpart E—Unmanned River Barges on Lake Michigan Routes

Sec.

- 45.171 Purpose.
- 45.173 Eligible barges.
- 45.175 Applicable routes.
- 45.177 Freeboard requirements.
- 45.179 Cargo limitations.
- 45.181 Load line exemption requirements for the Burns Harbor and Milwaukee routes.
- 45.183 Load line requirements for the St. Joseph and Muskegon routes.
- 45.185 Tow limitations.
- 45.187 Weather limitations.
- 45.191 Pre-departure requirements.
- 45.193 Towboat power requirements.
- 45.195 Additional equipment requirements for the Muskegon route.
- 45.197 Operational plan requirements for the Muskegon route.

#### Subpart E—Unmanned River Barges on Lake Michigan Routes

##### § 45.171 Purpose.

(a) This subpart establishes a special load line regime under which certain unmanned, river-service, dry-cargo barges may be exempted from the normal Great Lakes load line requirements while operating on certain Lake Michigan routes. Depending upon the route, the barge may only need a limited service domestic voyage load line, or may be conditionally exempted from load line assignment.

(b) Except as provided in this subpart, barges operating on Lake Michigan must have either an international load line assignment issued in accordance with the International Convention on Load Lines, 1966, as amended, or a Great Lakes load line assignment issued in accordance with the requirements of this part.

(c) The requirements of this subpart are summarized in Table 45.171:

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

		<b>Voyages between Chicago (Calumet Harbor), IL and :</b>		
		<b>Burns Harbor, IN</b>	<b>Milwaukee, WI</b>	<b>St. Joseph, MI</b>
		<b>Muskegon, MI</b>		
<b>1) Load line requirement</b>		Conditionally exempted from load line assignment (must meet requirements below)		"Limited service domestic voyage" load line
<b>2) Where to register/apply</b>		Exempted barges must be registered with the USCG Marine Safety Office 215 W. 83 <sup>rd</sup> St., Suite D Burr Ridge, IL 60521		Apply for load line to ABS Americas 16855 Northchase Dr. Houston, TX 77060
<b>3) Eligible barges</b>		Dry cargo river barges Built and maintained in accordance with ABS River Rules Length-to-depth ratio less than 22		
<b>4) Freeboard requirement</b>		No age limitation	Not more than 10 years old	No age limitation
<b>5) Tow limitations</b>		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)		
<b>6) Cargo limitations</b>		Barges must be unmanned Not more than 5 nautical miles from shore Not more than 3 barges per tow		
<b>7) Weather limitations</b>	If conditions exceed these limits, voyage may not begin, or must be discontinued and vessel must proceed to shelter	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 Ice conditions: adverse conditions that imperil tow or access to shelter Waves: 4 feet (1.2 m) Sustained winds: 16 kts from NE, E, SE 21 kts from N, NW, W, SW, S Sustained winds: 16 kts from N, NW, W, SW 21 kts from NE, E, SE, S		
<b>8) Pre-departure preps:</b>		Required -- as specified in § 45.191		
<b>9) Towboat requirements</b>	(a) Power:	Sufficient to handle tow, but at least-- 1,000 HP 1,500 HP		
	(b) Communication system:	Recommended -- § 45.195(a) Required -- § 45.195(a)		
	(c) Cutting gear:	Recommended -- § 45.195(b) Required -- § 45.195(b)		
	(d) Operational plan:	Recommended -- § 45.197 Required -- § 45.197		

**§ 45.173 Eligible barges.**

Only barges meeting the following requirements are eligible for the special load line regime under this subpart:

(a) Unmanned, river service, dry-cargo barges;

(b) Barges that have been designed and built to at least the minimum scantlings of the American Bureau of Shipping River Rules which were in effect at the time of construction;

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

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

**§ 45.175 Applicable routes.**

This subpart applies to the following routes on Lake Michigan, between Chicago (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”).

**§ 45.177 Freeboard requirements.**

(a) All barges must have a minimum freeboard of 24 inches (610 mm).

(b) Additionally, open hopper barges must have a combined freeboard plus cargo box coaming height of at least 54 inches (1,372 mm).

**§ 45.179 Cargo limitations.**

(a) Only dry cargoes may be carried. Liquid cargoes, even in drums or tank containers, may not be carried.

(b) Hazardous materials, as defined in part 148 of this chapter and 49 CFR chapter 1, subchapter C, may not be carried.

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

Barges operating on the Burns Harbor and Milwaukee routes may be conditionally exempted from load line assignment provided that the following requirements are met:

(a) *Registration.* Before the barge's first voyage onto Lake Michigan, the owner or operator must register the barge (in writing) with the Officer in Charge, Marine Inspection (OCMI), U.S. Coast Guard Marine Safety Office, 215 W. 83rd St—Suite D, Burr Ridge, IL, 60521. The registration may be faxed to the OCMI 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) The registration must include the following information:

(1) Barge name and official number (or other identification number);

(2) Owner and operator (points-of-contact, company addresses and telephone numbers);

(3) Service route (Milwaukee and/or Burns Harbor);

(4) Design type (covered/uncovered hopper, deck, etc.);

(5) External dimensions;

(6) Types of cargo; and

(7) Place built and original delivery date.

(c) The registration must include a statement certifying that:

(1) The barge has been designed and built to at least the minimum scantlings of the ABS River Rules which were in effect at the time of construction; and

(2) The owner or operator agrees to maintain the barge in serviceable condition and comply with the applicable provisions of 46 CFR part 45, subpart E.

(d) *Expiration.* Registration is valid only until the earliest of the following events:

(1) The tenth anniversary of the delivery date (for barges on the Milwaukee route),

(2) The barge no longer is fit for this service (due to damage), or

(3) The barge changes ownership or operators (registration is not transferable to new owners or operators; the barge must be re-registered if it is to continue in Lake Michigan service).

(e) *Notification.* The owner or operator of an exempted barge must notify the OCMI of the transfer of ownership or change of operator, withdrawal from Lake Michigan service (due to damage, age, or other circumstances), or other disposition of the barge.

**§ 45.183 Load line requirements for the St. Joseph and Muskegon routes.**

(a) *Load line certificate.* (1) The load line issued under this subpart must be a limited-service, domestic-voyage load line.

(2) Except as provided under paragraph (b)(2)(vi) of this section, the term of the certificate is five years.

(3) The load line certificate is valid for the St. Joseph and Muskegon routes, and intermediate ports. However, operators must comply with the route-specific requirements on the certificate.

(4) The freeboard assignment, operational limitations, and towboat requirements of this subpart must appear on the certificate.

(b) *Conditions of assignment.* (1) An initial load line survey under § 42.09–25 of this chapter and subsequent annual

surveys under § 42.09–40 of this chapter are required.

(2) At the request of the barge owner, the initial load line survey may be conducted with the barge afloat if the following conditions are met:

(i) The barge is less than 10 years old;

(ii) The draft during the survey does not exceed 15 inches (380 millimeters);

(iii) The barge is empty and thoroughly cleaned of all debris, excessive rust, scale, mud, and water. All internal structure must be accessible for inspection;

(iv) Gaugings are taken to the extent necessary to verify that the scantlings are in accordance with approved drawings;

(v) The hull plating (bottom and sides) and stiffeners below the light waterline are closely examined internally. If the surveyor determines that sufficient cause exists, the surveyor may require that the barge be drydocked or hauled out and further external examination conducted; and

(vi) The initial load line certificate is to be issued for a term of 5 years or until the barge reaches 10 years of age, whichever occurs first. Once this certificate expires, the barge must be drydocked or hauled out and be fully examined internally and externally.

**§ 45.185 Tow limitations.**

(a) Barges must not be manned.

(b) No more than three barges per tow on the Milwaukee, St. Joseph, and Muskegon routes.

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

**§ 45.187 Weather limitations.**

(a) Tows on the Burns Harbor route must operate during fair weather conditions only.

(b) The weather limits (ice conditions, wave height, and sustained winds) for the Milwaukee, St. Joseph, and Muskegon routes are specified in § 45.171, table 45.171.

(c) If weather conditions are expected to exceed these limits 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.

**§ 45.191 Pre-departure requirements.**

Before beginning each voyage, the towing vessel master must conduct the following:

(a) *Weather forecast.* Determine the marine weather forecast along the planned route, and contact the dock operator at the destination port to get an update on local weather conditions.

(b) *Inspection.* Inspect each barge of the tow to ensure that they meet the following requirements:

(1) A valid load line certificate, if required, is on board;

(2) The barge is not loaded deeper than permitted;

(3) The deck and side shell plating are free of visible holes, fractures, or serious indentations, as well as damage that would be considered in excess of normal wear;

(4) The cargo box side and end coamings are watertight;

(5) All manholes are covered and secured watertight;

(6) All voids are free of excess water; and

(7) Precautions have been taken to prevent shifting of cargo.

(c) *Verifications.* On voyages north of St. Joseph, the towing vessel master must contact a mooring/docking facility in St. Joseph, Holland, Grand Haven, and Muskegon to verify that sufficient space is available to accommodate the tow. The tow cannot venture onto Lake Michigan without confirmed space available.

(d) *Log entries.* Before getting underway, the towing vessel master must note in the logbook that the pre-departure barge inspections, verification of mooring/docking space availability, and weather forecast checks were performed, and record the freeboards of each barge.

#### **§ 45.193 Towboat power requirements.**

The towing vessel must meet the following requirements:

(a) *General.* The towing vessel must have adequate horsepower to handle the tow, but not less than the amount specified for the routes below.

(b) *Milwaukee and St. Joseph routes:* a minimum of 1,000 HP.

(c) *Muskegon route:* a minimum of 1,500 HP.

#### **§ 45.195 Additional equipment requirements for the Muskegon route.**

Towboats on the Muskegon route must meet these additional equipment requirements:

(a) *Communication equipment.* Two independent voice communication systems in operable condition, such as Very High Frequency (VHF) radio, radiotelephone, or cellular phone. At least two persons aboard the vessel must be capable of using the communication systems.

(b) *Cutting gear.* Equipment that can quickly cut the towline at the towing vessel. The cutting gear must be in operable condition and appropriate for the type of towline being used, such as wire, polypropylene, or nylon. At least two persons aboard the vessel must be capable of using the cutting gear.

#### **§ 45.197 Operational plan requirements for the Muskegon route.**

Towing vessels on the Muskegon route must have aboard an operational plan that is available for ready reference by the master. The plan must include the following:

(a) The cargo limitations, the general operational requirements, and the special operational requirements of this subpart.

(b) A list of mooring and docking facilities (with phone numbers) in St. Joseph, Holland, Grand Haven, and Muskegon, that can accommodate the tow.

(c) A list of towing firms (with phone numbers) that have the capability to render assistance to the tow, if required.

(d) Guidelines for possible emergency situations, such as barge handling under adverse weather conditions, and other emergency procedures.

Dated: April 12, 2002.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.*

[FR Doc. 02-9834 Filed 4-22-02; 8:45 am]

BILLING CODE 4910-15-U

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[DA 02-893, MM Docket No. 00-138, RM-9896]

#### **Digital Television Broadcast Service; Boca Raton, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of The School Board of Broward County, Florida, substitutes DTV channel \*40 for DTV channel \*44 at Boca Raton, Florida. See 65 FR 50951, August 22, 2000. DTV channel \*40 can be allotted to Boca Raton in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (25-59-34 N. and 80-10-27 W.) with a power of 1000, HAAT of 310 meters and with a DTV service population of 3989 thousand.

With this action, this proceeding is terminated.

**DATES:** Effective June 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report

and Order, MM Docket No. 00-138, adopted April 17, 2002, and released April 22, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

#### **List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### **§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel \*44 and adding DTV channel \*40 at Boca Raton.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02-9952 Filed 4-22-02; 8:45 am]

BILLING CODE 6712-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 573**

[Docket No. NHTSA-2002-12111]

RIN 2127-AI30

#### **Motor Vehicle Safety; Prohibitions on Sale or Lease of Defective and Noncompliant Motor Vehicles and Items of Motor Vehicle Equipment**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document implements section 8 of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act) and section 2504 of the Intermodal Surface Transportation Efficiency Act (ISTEA)