



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 45

[Docket No. USCG-2013-0954]

Special Load Line Exemption for Lake Michigan/Muskegon Route:

Petition for Rulemaking

AGENCY: Coast Guard, DHS.

ACTION: Notice of decision.

SUMMARY: On May 27, 2014, the Coast Guard published a Notice of Availability and Request for Public Comment regarding a petition for a rulemaking action. The petition requested that the Coast Guard establish a load line-exempted route on Lake Michigan, along the eastern coast to Muskegon, MI. Upon review of the comments as well as analysis of safety considerations and other factors described in the discussion section, the Coast Guard has decided not to proceed with the requested rulemaking. The public comments, and the Coast Guard's reasoning for its decision, are discussed in this notice.

DATES: The petition for rulemaking published on May 27, 2014 (79 FR 30061) is denied.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Thomas Jordan, Naval Architecture Division (CG-ENG-2), U.S. Coast Guard Headquarters, at telephone 202-372-1370, or by e-mail at thomas.d.jordan@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

All Federal Register notices, public comments, and other documents cited in this notice may be viewed in the on-line docket at www.regulations.gov (enter docket number "USCG-2014-0954" in the search box).

SUPPLEMENTARY INFORMATION:

Regulatory History and Background:

The purpose of a load line (LL) assignment is to ensure that a vessel is seaworthy for operation on exposed coastal and offshore waters, including the Great Lakes. In general, LL assignment requires that vessels are robustly constructed, fitted with watertight and weathertight closures, and are inspected annually to ensure that they are being maintained in a seaworthy condition. (A more-detailed discussion of LL assignment is given in our previous Notice of Availability, 79 FR 30061 on May 27, 2014.)

Because river barges are not typically constructed to the required hull strength standards for load line assignment, nor

subject to the same periodic inspections, they are not normally allowed to operate on the Great Lakes. However, certain river barges are allowed on carefully-evaluated routes, under restricted conditions as follows. There are currently three such routes on Lake Michigan:

Burns Harbor route: In 1985, a LL-exempted route was established along the southern shore of Lake Michigan to allow river barges to operate under fair weather conditions between Calumet (Chicago), IL, and Burns Harbor, IN, a distance of 27 nautical miles (NM), with several ports of refuge along the way (the longest distance between them is just 11 NM). The tows must remain within 5 NM of shore, and the barges are prohibited from carrying liquid or hazardous cargoes, and must have a minimum freeboard of 24 inches.

Milwaukee route: In 1992, a special LL regime was established along the western shore of Lake Michigan, between Calumet and Milwaukee, WI, a distance of 92 NM (the longest distance between ports of refuge is 33 NM). This special LL regime revised the normal robust construction requirements for a Great Lakes LL, in conjunction with similar cargo restrictions, weather limitations, and freeboard assignment as for the Burns Harbor route. Barges more than 10 years old are required to have an initial dry-dock inspection to verify the material condition of the hull, but a newer barge could obtain the

special LL provided it passed an initial afloat inspection by the American Bureau of Shipping (ABS). All barges were subject to annual ABS inspections to verify that they were being maintained in a seaworthy condition. Tows are limited to three barges, and the towing vessel must be least 1,000 HP.

Milwaukee route risk assessment study: However, the towing industry still considered the cost of the special LL assignment to be too prohibitive for establishing river barge service to Milwaukee. Accordingly, in 2000, the Port of Milwaukee organized a risk assessment (RA) working group that included port officials, towing & barge companies, and terminal operators (the Risk Assessment report can be viewed on-line in the docket). The RA group reviewed meteorological information and evaluated the viability of the ports of refuge along the route, and concluded that restricting the age of eligible rivers barges to 10 years, in conjunction with self-inspection and self-certification by barge owners/operators, provided the same level of seaworthiness assurance as LL assignment by ABS.

The RA meetings were attended by USCG representatives, and the recommendations were reviewed by the Ninth Coast Guard District, which endorsed them. The Milwaukee route exemption went into effect in 2002.

Muskegon route: Meanwhile, in 1996, the special LL regime for the Milwaukee route was extended along the eastern shore of Lake Michigan to Muskegon, a distance of 119 NM beyond Burns Harbor. River barges can still operate as far as Burns Harbor without any LL, but must obtain the special LL to proceed beyond that point to Muskegon. Recognizing the longer distance and more severe weather conditions on the eastern side of Lake Michigan, there were some additional requirements pertaining to the towing vessel.

Because the Muskegon route was not evaluated as part of the Milwaukee risk assessment study, it was not included in the exemption.

Petition for LL exemption on the Muskegon route: In October 2013, the Coast Guard received two letters requesting that we establish a load line exemption for river barges on the Muskegon route. The basis for the request was that the LL requirements (route restrictions and load line inspection requirements) were preventing Michigan from transporting agricultural products on river barges via the Mississippi-Illinois River system.

In response to the petition request, the Coast Guard opened a public docket USCG-2014-0954 and published a Notice of Availability and Request for Public Comment (79 FR 30061, May

27, 2014) with a 90-day comment period. The comment period closed on August 25, 2014.

Discussion of Comments:

In response to the notice, 92 comments were posted in the docket, submitted by 42 individuals, 16 commercial companies (mostly agricultural-associated), several trade associations, resolutions signed by various Michigan municipal organizations as well as state and Congressional representatives. All comments can be viewed on-line in the docket.

To summarize, the comments fall into three categories:

Supportive: 59 comments supported the petition on general principles. They commented on the potential economic benefits, such as reduced shipping costs for northbound cargoes (fertilizer was mentioned) and southbound cargoes (grain), as well as employment/job creation. However, none of these comments included any specific details or estimates with respect to shipment costs, cargo volumes, employment levels, etc.

One supportive commenter reported that a local steel fabricator could not compete on a contract for steel tanks that could have been transported by a non-LL river barge from Muskegon for downriver delivery to the Gulf of Mexico. Because of the extra cost of using a LL barge to get the steel tanks to Calumet and then transshipping it onto a river barge, the company could not compete.

Another supportive comment mentioned the impending shut-down of the B. C. Cobb power plant in Muskegon, which burns 640,000 tons of coal per year, delivered by Lake freighters. Without the annual tonnage of coal delivery, the port would no longer qualify for dredging support by the Army Corps of Engineers. The commenter viewed the route exemption as a possible means of encouraging new cargo movements through the port (such as fertilizer and grain), and thereby maintain its dredging eligibility.

Opposed: 23 comments opposed the petition, typically over concerns about catastrophic environmental impact if a cargo were lost (especially a load of fertilizer). Several mentioned the Lake Erie algae bloom in the summer of 2014, which shut down the Toledo municipal water supply for several days.

Other opposing comments expressed concern that the route would cause the spread of Asian carp and/or other invasive species from the Mississippi River system.

From a vessel safety perspective, several opposing commenters stated that the eastern side of Lake Michigan has the most unpredictable weather and is the most-exposed. One commenter pointed out that the voyage distance to Muskegon was approximately 114 miles, which would take 16 to 23 hours, more than enough time (in their opinion) for the weather to change unexpectedly. Another commenter (an experienced Lake tug &

barge operator) stated that attempting to get a string of three barges into any of the ports-of-refuge under adverse weather conditions would be very difficult and risky; they felt that the tug master would be more likely to take a chance and try to ride out the weather on the open Lake rather than risk entry into a refuge, thus exposing river barges to storm conditions and increasing the likelihood of a casualty.

Conditionally supportive, or concerned: 10 commenters either expressed conditional support for the petition provided that the environmental risks were addressed, or simply expressed their concerns about possible adverse effects (without clearly supporting or opposing the petition).

Discussion of Decision:

Upon review of the petition itself and the docket comments, the Coast Guard has decided to deny the rulemaking petition. The Coast Guard will not amend the regulations to provide for the requested route exemption, for reasons discussed below.

The Coast Guard recognizes that there are similarities between the two Lake Michigan routes, which invites comparison between the LL-exempted Milwaukee route and the LL-required Muskegon route. For example, barges on both routes are built to the same structural (river-service) standards and subject to the same level of weather restrictions. However, there are some significant differences between the routes that affect

operational safety, as further explained below. The public comments submitted to the docket did not provide sufficient information that alleviates the operational safety concerns found on this route.

Weather/Safety considerations: Although several comments spoke of "improved forecasting technology" over the years since the earlier rulemakings, no specific details were provided. The evaluations conducted during consideration of the earlier exempted or conditional load line routes noted that the prevailing weather patterns on the eastern side of Lake Michigan are generally more severe than the western side. The survey/certification requirements in the existing special LL regime provide an additional, necessary safety net to account for risks associated with severe weather. An exemption from the special LL regime could be detrimental to safety.

Ports-of-refuge: the Muskegon route extends approximately 119 NM beyond Burns Harbor. There are three large harbors along the route (St. Joseph, Holland, and Grand Haven), and two smaller harbors that might be suitable ports-of-refuge. However, the current viability of these harbors has not been verified (Army Corps of Engineering fact sheets for these ports mention that several of them have experienced channel shoaling due to winter storms and Hurricane Sandy). Furthermore, the intermediate distance between Burns Harbor and St Joseph is 41

NM, and between St Joseph and Holland is 47 NM. These distances are much longer than the longest intermediate distance on the Milwaukee route (33 NM). The availability of and distance to a port of safe refuge is a critical element in the evaluation of load line conditional or exempted routes. The ability to reach a port of safe refuge is important if unexpected weather or damage causes the need to seek safety from the open Lake.

Economic benefits: Although several comments suggested that further reductions/relaxation of certain loadline requirements could result in economic, operational benefits. These economic benefits have not been quantified and may be offset by the costs associated with other safety requirements necessary to protect river barges operating along this exposed route, for example, costs associated with complying with mandatory maximum age-restrictions on the barges, similar to the Milwaukee route. As such, the Coast Guard is unable to verify the claims of economic benefits. The existing special LL regime on the Muskegon route is a less restrictive LL regime than that required for an unrestricted Great Lakes LL. River barges are already permitted to operate on this route, under certain controlled conditions.

Risk assessment: Unlike the Milwaukee route, no risk assessment has been performed for the Muskegon route. In the

absence of such a risk assessment, and in consideration of the more-volatile weather patterns and the longer transit times between ports of refuge, the Coast Guard believes that the initial and annual LL surveys, undertaken per the special loadline requirements for this route, provide a necessary margin of seaworthiness assurance.

For the reasons above, the Coast Guard denies the petition and will not undertake the requested rulemaking.

This notice is issued under authority of 5 U.S.C. 553(e), 555(e) and 46 U.S.C. 5108.

Dated: April 21, 2015.

J. G. LANTZ,
Director of Commercial Regulations and Standards,
U.S. Coast Guard

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