

of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with

objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve Pennsylvania's quality assurance program changes for oversight of the safety inspection program in non-I/M counties may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 18, 2011.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for Revision of the Quality Assurance Protocol for the Safety Inspection Program in Non-I/M Counties at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Revision of the Quality Assurance Protocol for the Safety Inspection Program in Non-I/M Counties.	Non-I/M Program Region, Counties of: Adams, Armstrong, Bedford, Bradford, Butler, Cameron, Carbon, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, McKean, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne, and Wyoming.	5/22/09	6/6/11 [Insert page number where the document begins].	Applicable to SIP-approved safety inspection program regulation for non-I/M counties at Title 67, Part 1, Chapter 175.

\* \* \* \* \*  
 [FR Doc. 2011-13878 Filed 6-3-11; 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 amending the special load line exemption regime for certain river barges operating on Lake Michigan, as established in the final rule published on November 18, 2010. Specifically, the weather restrictions based on Small Craft

Advisory conditions are being replaced with the original weather restrictions implemented in 2002 by an interim rule.

**DATES:** This final rule is effective on June 15, 2011.

**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](mailto: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.

**SUPPLEMENTARY INFORMATION:**

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## I. Abbreviations

ABS American Bureau of Shipping  
DHS Department of Homeland Security  
HazMat Hazardous Material  
NEPA National Environmental Policy Act  
of 1969  
SCA Small Craft Advisory

## II. Regulatory History

On November 18, 2010, the Coast Guard published a final rule in the **Federal Register** (75 FR 70595) (2010 final rule) that finalized the special Lake Michigan load line regime that had been in effect under an interim rule since 2002. The history of this rulemaking, from the initial request by the Port of Milwaukee in 1991 through the publishing of the final rule in 2010, is recounted in the 2010 final rule.

The 2010 final rule revised and clarified some of the interim rule provisions, including substitution of Small Craft Advisory (SCA) conditions as the limiting weather restrictions in place of a variety of weather conditions used under the interim rule.

Subsequent to publishing the 2010 final rule (and before its effective date), we published a notice of delay in the **Federal Register** (75 FR 78928) on December 17, 2010. This notice was prompted by comments from some operators that the use of SCA conditions as the limiting weather restriction would adversely impact barge movements on the Burns Harbor route. To adequately review this issue, we published the notice of delay, which suspended the effective date of the SCA weather restrictions for 6 months. The notice further explained our rationale for using SCA conditions, opened a 30-day comment period, and requested public comment specifically on the issue of weather restrictions. During the delay period, the weather restrictions established in the interim rule remained in effect, but all other provisions in the final rule entered into effect on December 20, 2010, as published.

Under 5 U.S.C. 553(d)(1), the Coast Guard is making this rule effective less than 30 days after publication in the **Federal Register** because the rule relieves the restriction of Small Craft Advisories as the limiting weather restrictions for participation in this regime.

## III. Basis and Purpose

The purpose of this current action is to amend the weather restrictions in 46 CFR 45.171 (Table 45.171), 45.187, and 45.191, as published in the 2010 final rule.

This action is in accordance with 46 U.S.C. 5104(e), which authorizes the Secretary to establish load line regulations for specific geographic areas, taking into account weather and sea conditions, and availability of safe refuge (this authority has been delegated to the Coast Guard per DHS delegation 0170.1).

## IV. Background

This final rule narrowly pertains to the weather restrictions for certain dry cargo river barges operating on Lake Michigan under a special load line regime. Such restrictions are necessary because river barge hull construction is not robust enough for safe unrestricted operation on the Great Lakes. The regime was established under an interim rule in 2002, which prescribed a variety of limiting weather conditions based on route, wind speed and direction, wave heights, and ice conditions, among other factors. As we explained in the notice of delay, we subsequently identified SCA conditions as issued by the National Weather Service Nearshore Marine Forecasts for Lake Michigan as being an equivalent basis for weather restrictions. We believed that the substitution of SCA-based restrictions in the final rule would offer the benefit of simplifying and clarifying the weather restrictions without adversely affecting the level of operations or reducing the level of safety.

However, several towing vessel operators expressed their concerns that the SCA conditions were overly restrictive compared to the original weather restrictions in the interim rule, and would reduce the number of operational days for moving barges, especially on the Burns Harbor route. In order to adequately review these concerns, we delayed the effective date of the SCA weather restrictions for 6 months and solicited public comments, on the issue of weather restrictions.

## V. Discussion of Comments and Changes

### A. Discussion of Public Comments

The notice of delay specifically requested public comment on the issue of weather restrictions. In response, we received 23 comments. The commenters included barge or towboat operators and towboat captains, as well as terminal operators, marine operator associations, and some local businesses. All of the commenters urged reconsideration of the SCA limitation and/or restoration of the previous weather limitations under the interim rule. The comments are categorized and discussed below.

*Effect on towing operations:* Commenters pointed out that the Nearshore Marine Forecasts conservatively assume that wave conditions are the same all across the forecast corridor (*i.e.*, from shoreline to 5 miles out). However, the commenters noted that even under nominal SCA conditions with high winds, if the wind direction is favorable (*i.e.*, southerly or south-westerly on the Burns Harbor route), wave conditions close to shore are still benign even though higher waves develop just a few miles further offshore. Under such high offshore wind conditions, the towboat practice is to stay within approximately 1 mile of the shoreline, a strategy that some of the commenters referred to as “beachcombing.” Two commenters specifically cited personal observations of wave conditions on dates when SCAs had been issued but nearshore conditions were calm enough for tows to safely transit. Some commenters pointed out the relatively short 21-mile distance between Calumet Harbor and Burns Harbor (approximately 3 hours transit) with two ports of refuge along the way, and noted that movements along that route can take place under favorable short-term weather conditions. The commenters stated that “no sail” restrictions under SCA conditions would unnecessarily prevent them from moving barges under safe conditions. The commenters further stated that sailing decisions are best made by experienced towboat captains on the water, observing conditions directly. They supported this position by claiming that making such decisions using the captain’s discretion has been towboat practice for several decades, and that thousands of barges have been moved without weather-related casualties.

The Coast Guard’s governing safety issue is to ensure that wave conditions do not overstress river barge hulls. Small Craft Advisories are issued taking into consideration various factors expected during the forecast period, including wave heights. However, we recognize that wave conditions within the 5-mile-wide nearshore forecast zone can vary significantly depending on wind direction, and that acceptable wave conditions can be found closer to shore even when higher waves might be forecasted. We further recognize the long-term safety record of the towboat operators under the previous “fair weather” restrictions (that have been in effect under a previous rulemaking since 1985), and agree that experienced towboat captains can make safe sailing decisions based on actual weather

conditions for the duration of the voyage. For this reason, we have amended the weather restrictions in 46 CFR 45.171 (Table 45.171), 45.187, and 45.191.

*Effect on other commercial operations:* All commenters discussed the adverse impact of reduced barge movements on local marine terminals, warehouses, and other businesses that rely upon cargo delivered by river barges. The comments variously contended that SCA restrictions would result in delayed shipments, lost production time, and higher costs.

Although the comments did not include specific figures on cost and production, we recognize that reduced barge movements, especially on the Burns Harbor route, could have an adverse impact. To the extent that safety is not compromised, we do not intend to unnecessarily restrict barge operations on the Lake. For this reason, we have amended the weather restrictions in 46 CFR 45.171 (Table 45.171), 45.187, and 45.191.

*Other comments:* Several comments discussed the potential shift of cargo movements to alternate transportation modes, such as trucks and railroads. The comments contended that such a shift would lead to increased highway traffic and higher transportation costs for shippers and customers, and that barge transport is environmentally friendly, as it produces fewer emissions per ton-mile.

We recognize the economic and environmental efficiency of barge transportation of the products and materials carried under this special load line regime and, as stated above, we do not intend to unnecessarily restrict current barge operations. For this reason, we have amended the weather restrictions in 46 CFR 45.171 (Table 45.171), 45.187, and 45.191.

#### *B. Discussion of Changes*

After more than 8 years, the level of safety established by the weather restrictions in the interim rule has proven to be acceptable. Therefore, upon consideration of this record and the public comments, we have decided to restore the original weather limits established under the interim rule. Accordingly, we make the following changes to the final rule published in the **Federal Register** (75 FR 70595) on November 18, 2010:

*§ 45.171 Purpose:* In paragraph (c), we revise Table 45.171 to restore the original weather restrictions that appeared in the interim rule.

*§ 45.187 Weather limitations:* We remove all references to SCA conditions. In paragraph (a), we restore

the original “fair weather conditions” for the Burns Harbor route. In paragraph (b), we restore the original reference to Table 45.171 for the Milwaukee, St. Joseph, and Muskegon routes. We restore paragraph (c) to the original wording that appeared in the interim rule.

*§ 45.191 Pre-departure preparations:* In paragraph (a), we remove a reference to the SCA and restore the original wording that appeared in the interim rule.

#### **VI. Regulatory Analyses**

We developed this final 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. Executive Order 12866 and Executive Order 13563*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. This final rule does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under these Orders.

The purpose of this final rule is to avoid unnecessary disruptions to barge owners and operators by restoring the original weather restrictions, in 46 CFR 45.171, under which the industry has operated river barges on the Lake Michigan routes since 2002, as established in the interim rule (67 FR 19685). Based on public comments, this rule deletes the SCA weather restrictions in the final rule, published November 18, 2010. The restoration of the weather restrictions under the 2002 interim rule will allow owners and operators on Lake Michigan routes to retain the flexibility to move barges and cargo under the original weather criteria in Table 45.171. All other provisions of the published final rule are effective as of December 20, 2010.

##### *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 removal of the SCA weather restrictions will allow small entities the flexibility to move barges on the affected routes using the original weather conditions that were established by the interim rule in 2002. 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 final rule 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 final 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 final 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.

#### H. Civil Justice Reform

This final 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 final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final 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 final 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 final 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 (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 final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this final rule under Department of Homeland

Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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 final 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 final 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 final 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 amended in the final rule published in the **Federal Register** on November 18, 2010 (75 FR 70595), effective June 15, 2011, 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. In § 45.171, revise Table 45.171 in paragraph (c) to read as follows:

#### § 45.171 Purpose.

\* \* \* \* \*

(c) \* \* \*

**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
<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 Unit 555A Plainfield Road, Willowbrook, IL 60527 Fax: (630) 986-2120		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 All weathertight and watertight closures are in proper working condition			
	No age limitation	Not more than 10 years old	No age limitation	
<b>4) Freeboard requirement</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>5) Tow limitations</b>	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		
<b>6) Cargo limitations</b>	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			
<b>7) Weather limitations</b> Voyage may not begin; or if these conditions arise during transit, voyage must be discontinued and tow must proceed to shelter.	"Fair weather" only	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>	Sufficient to handle tow, but at least--			
	(a) Power:	Sufficient to handle tow	1,000 HP	1,500 HP
	(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

■ 3. Revise § 45.187 to read as follows:

**§ 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.

■ 4. Revise § 45.191(a) to read as follows:

**§ 45.191 Pre-departure requirements.**

\* \* \* \* \*

(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.

\* \* \* \* \*

Dated: May 26, 2011.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards.*

[FR Doc. 2011-13754 Filed 6-3-11; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383 and 390**

**Regulatory Guidance on the Designation of Steerable Rear Axle Operators (Tillermen) as Drivers of Commercial Motor Vehicles**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Regulatory Guidance.

**SUMMARY:** FMCSA issues regulatory guidance concerning the applicability of the term "driver" to "tillerman," a person who controls the steerable rear axle on a commercial motor vehicle. The term "driver" is used in FMCSA's commercial