

**DEPARTMENT OF TRANSPORTATION****Saint Lawrence Seaway Development Corporation****33 CFR Parts 401 and 402****[Docket No. SLSDC 2001-8785]****RIN 2135-AA12****Seaway Regulations and Rules and Tariffs of Tolls****AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.**ACTION:** Final rule.

**SUMMARY:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges charged by the SLSMC in Canada starting in the 2001 navigation season and related editorial, format, and substantive changes, the latter of which are effective only in Canada. The SLSDC also is increasing the toll for pleasure vessels charged by the SLSDC for transit through the U.S. locks, which the SLSMC is also doing for Canadian locks. Through agreement with the SLSMC, the SLSDC also is revising its "Preclearance of vessels" regulation to clarify that certain non-commercial vessels are considered pleasure vessels for the purposes of tolls and making a conforming revision to its "Payment of tolls" provision of the joint Seaway Regulations and Rules requiring that pleasure vessel tolls be paid in U.S. funds or the equivalent in Canadian funds at each U.S. lock, instead of at par. Also through agreement with the SLSMC, the SLSDC is clarifying the definition for "flashpoint". Only these four amendments concerning the SLSDC toll for pleasure vessels and the definition of "flashpoint" are of applicability in the United States.

The 2001 Seaway navigation season is scheduled to open on March 23. The Tariff of Tolls will be in effect in Canada on that date. For consistency, because these are, under international agreement, joint regulations, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make this U.S. version of the amendments effective on that date, March 23, 2001.

**DATES:** This rule is effective on March 23, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. (The Tariff is called the Schedule of Fees and Charges in Canada.) A Notice of Proposed Rulemaking was published on February 9, 2001 (66 FR 9752). Interested parties have been afforded an opportunity to participate in the making of the amendments applicable in the United States. No comments were received. The amendments are described in the following summary.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising part 402 to reflect the fees and charges charged by the SLSMC in Canada starting in the 2001 navigation season, a change in the toll for pleasure vessels for both the Canadian and U.S. locks, and related editorial, format, and substantive changes. (Because of the number of edits and format changes, the entire text of part 402 is set out as an amendment below.) This final rule also includes the text of § 402.10, "Operational Surcharges after postponements", which was inadvertently omitted from the Notice of Proposed Rulemaking. This section is applicable only in Canada. With the exception of the change for pleasure vessel tolls, the substantive changes affect the tolls for commercial vessels and are applicable only in Canada as the collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

The SLSDC is also increasing the toll for pleasure vessels charged by the SLSDC for transit through the U.S. locks, which the SLSMC is also doing for Canadian locks. Through agreement with the SLSMC, the SLSDC also is revising § 401.22, "Preclearance of vessels", clarifying that certain non-commercial vessels are considered pleasure vessels for the purposes of tolls and making a conforming amendment to § 401.75, "Payment of tolls", of the joint Seaway Regulations and Rules requiring that pleasure vessel tolls be paid "in U.S. funds or the pre-established

equivalent in Canadian funds" at each U.S. lock, instead of at par. Also through agreement with the SLSMC, the SLSDC is revising § 401.2 to clarify the definition for "flashpoint". Since only the four amendments concerning the SLSDC toll for pleasure vessels at U.S. locks are applicable in the United States, comments were invited on only these. Specifically, § 402.8, "Schedule of tolls", is revised to increase the toll for pleasure vessels for transit through a U.S. lock from \$10 to \$20 in U.S. funds or \$30 in Canadian funds, the current equivalent, instead of at par. Since approximately 97% of pleasure craft tolls are collected in Canadian funds, the SLSDC has been losing a substantial amount of revenue due to the high exchange rate. The SLSDC believes that discounting the Canadian funds at the locks on an *ad hoc* basis would not be practicable. Increasing the tolls at the SLSDC's two locks will offset the loss of revenue due to the exchange and be beneficial to SLSDC future funding requirements. Moreover, lock operations costs for pleasure vessel transits for 1999 has been estimated as \$160,000, resulting in an approximate subsidy of \$127,000 for these transits. The last toll increase for these vessels was in 1991 when the rate was raised from \$5 to \$10. The increase for an estimated 2,500 pleasure vessel transits will result in a toll revenue increase of approximately \$97,000 in U.S. funds, lowering the effective subsidy of these transits to approximately \$63,000. Section 401.22, "Preclearance of vessels", is also revised by adding a new paragraph (c) clarifying that non-commercial vessels with a tonnage displacement of less than 317.5 tons are not eligible to apply for preclearance status, but are considered pleasure craft. The reason for this amendment is that associated costs for these vessels incurred by the SLSMC under their preclearance process is disproportionately larger than the amount of tolls these vessels would pay if precleared. Finally, the SLSDC and SLSMC are making a conforming amendment to paragraph (b) of § 401.75, "Payment of tolls", of the joint Seaway Regulations and Rules, which concerns payment of pleasure vessel tolls. The provision is revised to say that these tolls are payable at each U.S. lock "in U.S. funds or the pre-established equivalent in Canadian funds" and references § 402.8, "The Schedule of tolls", where the precise amounts are stated. This simplifies the SLSDC's ability to amend the tariff amounts each season, if necessary, to reflect changes in the exchange rate. Finally, § 401.75

also is revised to state separately that, for Canadian locks, the tolls remain payable in Canadian or U.S. funds at par.

Also through agreement with the SLSMC, the SLSDC is revising § 401.2 to clarify the definition for "flashpoint", stating that it means the "lowest temperature of a flammable liquid at which its vapor forms an ignitable mixture with air" as determined by the closed-cup method.

### Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

### Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

### Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

### Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that it will not have a substantial, direct effect on the States or on the distribution of power and responsibilities among various levels of government. The rule will not limit the policymaking discretion of the States. Nothing in it would directly preempt any State law or regulation. Because the rule will have no significant effect on State or local governments, no consultations with those governments on this rule were necessary.

### Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

### List of Subjects

#### 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

#### 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends 33 CFR chapter IV as follows:

### PART 401—SEAWAY REGULATIONS AND RULES

#### Subpart A—[Amended]

1. The authority citation for subpart A of part 401 continues to read as follows:

**Authority:** 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. Section 401.2 is amended by revising paragraph (b) to read as follows:

#### § 401.2 Interpretation.

\* \* \* \* \*

(b) *Flashpoint* means the lowest temperature of a flammable liquid at which its vapor forms an ignitable mixture with air as determined by the closed-cup method.

\* \* \* \* \*

3. Section 401.22 is amended by adding a new paragraph (c) to read as follows:

#### § 401.22 Preclearance of vessels.

\* \* \* \* \*

(c) A non-commercial vessel with a tonnage displacement of less than 317.5 tons cannot apply for preclearance status and must transit as a pleasure craft.

4. Section 401.75 is amended by revising paragraph (b) to read as follows:

#### § 401.75 Payment of tolls.

\* \* \* \* \*

(b) Tolls, established by agreement between Canada and the United States and known as the St. Lawrence Seaway Tariff of Tolls, shall be paid by pleasure craft in Canadian or U.S. funds for the transit of each Canadian Seaway lock. At U.S. locks, the toll is paid in U.S. funds or the pre-established equivalent in Canadian funds (see § 402.8 of this chapter).

5. Part 402—Tariff of Tolls is revised to read as follows:

### PART 402—TARIFF OF TOLLS

Sec.

- 402.1 Purpose.
- 402.2 Title.
- 402.3 Interpretation.
- 402.4 Tolls.
- 402.5 Description and weight of cargo.
- 402.6 Post-clearance date operational surcharges.
- 402.7 Coming into force.
- 402.8 Schedule of tolls.
- 402.9 Operational surcharges—no postponements.
- 402.10 Operational surcharges after postponements.

**Authority:** 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.52.

#### § 402.1 Purpose.

This regulation prescribes the charges to be assessed for the full or partial transit of the St. Lawrence Seaway between Montreal, Quebec, and Lake Erie.

#### § 402.2 Title.

This tariff may be cited as the St. Lawrence Seaway Tariff of Tolls (Schedule of Tolls in Canada).

#### § 402.3 Interpretation.

In this tariff,

(a) *Bulk cargo* means cargo consisting of goods, loose or in mass, that generally must be shoveled, pumped, blown, scooped or forked in the handling and includes:

- (1) Cement, loose or in sacks;
- (2) Coke and petroleum coke, loose or in sacks;
- (3) Domestic cargo;
- (4) Liquids carried in vessels' tanks;
- (5) Ores and minerals (crude, screened, sized or concentrated, but not otherwise processed) loose or in sacks, including alumina, bauxite, coal, gravel, phosphate rock, sand, stone and sulphur;

- (6) Pig iron and scrap metals;
- (7) Lumber, pulpwood, poles and logs, loose or bundled;
- (8) Raw sugar, flour, loose or in sacks;
- (9) Wood pulp, loose or in bales; and
- (10) Material for recycling, scrap material, refuse and waste.

(b) *Cargo* means all goods aboard a vessel whether carried as revenue or non-revenue freight or carried for the vessel owner, but does not include:

- (1) Empty containers and the tare weight of loaded containers;
- (2) Ships' fuel, ballast or stores;
- (3) The personal effects of crew or passengers; or
- (4) In transit cargo that is carried both upbound and downbound in the course of the same voyage.

(c) *Containerized cargo* means cargo shipped in a container that is enclosed, permanent, reusable, nondisposable, weather tight.

(d) *Corporation* means the Saint Lawrence Seaway Development Corporation.

(e) *Domestic cargo* means cargo the shipment of which originates at one Canadian point and terminates at another Canadian point, or originates at one United States point and terminates at another United States point, but does not include import or export cargo designated at the point of origin for transshipment by water at a point in Canada or in the United States.

(f) *General cargo* means other than bulk cargo, grain, government aid cargo, steel slabs and coal.

(g) *Government aid cargo* means:

(1) Processed food products that are donated by, or the purchase of which has been financed on concessional terms by, the federal government of the United States or Canada for the purposes of nutrition, economic development, emergency, or disaster relief programs; and

(2) Food cargo that is:

(i) Owned or financed by a non-profit organization or cooperative;

(ii) Intended for use in humanitarian or development assistance overseas; and

(iii) Stamped or otherwise shown to have been declared as such to that is certified by the customs service of the United States or Canada.

(h) *Grain* means barley, corn, oats, flaxseed, rapeseed, soybeans, field crop seeds, buckwheat, dried beans, dried peas, rye, wheat, grain screenings or meal from those grains.

(i) *Manager* means the St. Lawrence Seaway Management Corporation.

(j) *Metric ton* means 1,000 kilograms (2,204.62 pounds).

(k) *Passenger* means any person being transported through the Seaway who has paid a fare for passage.

(l) *Pleasure craft* means a vessel, however propelled, that is used exclusively for pleasure and does not carry passengers.

(m) *Seaway* includes all facilities and services authorized under Public Law 358, 83rd Congress, May 13, 1954, enacted by the Congress of the United States, as amended, (33 U.S.C. 981, *et seq.*) and the meaning ascribed to it under the Canada Marine Act.

(n) *Vessel* ("ship" in Canada) means every type of craft used as a means of transportation on water, except a vessel owned or employed by the or the Corporation.

#### § 402.4 Tolls.

(a) Every vessel entering, passing through or leaving the Seaway shall pay a toll that is the sum of each applicable charge in § 402.8. Each charge is calculated based upon the description set out in column 1 of § 402.8 and the rate set out in column 2 or 3.

(b) The toll is assessed against the vessel, its cargo and its passengers for a complete or partial transit of the Seaway and covers a single trip in one direction.

(c) The toll is due from the representative of the vessel within 45 days after the day on which the vessel enters the first lock of a transit of the Seaway.

#### § 402.5 Description and weight of cargo.

For the purposes of calculating applicable tolls:

(a) A cord of pulpwood is taken to weigh 1,450 kilograms (3,196.70 pounds); and

(b) The cargo tonnage used rounded to the nearest 1,000 kilograms (2,204.62 pounds).

#### § 402.6 Post-clearance date operational surcharges.

(a) Subject to paragraph (b) of this section, a vessel that reports for its final transit of the Seaway from a place set out in column 1 of § 402.9 within a period after the clearance date established by the Manager and the Corporation set out in column 2 of § 402.9 shall pay operational surcharges in the amount set out in column 3 of § 402.9, prorated on a per-lock basis.

(b) If surcharges are postponed for operational or climatic reasons, a vessel that reports for its final transit of the Seaway from a place set out in column 1 of § 402.10 within a period after the clearance date established by the Manager and the Corporation set out in column 2 of § 402.10 shall pay operational surcharges in the amount set out in column 3 of § 402.10, prorated on a per-lock basis.

(c) A vessel that is authorized to transit the Seaway after the period of 96 hours after the clearance date established by the Manager and the Corporation shall pay, in addition to the operational surcharge, an amount equal to the incremental expenses incurred by the Manager to keep the Seaway open for the transit of the vessel.

#### § 402.7 Coming into force.

In Canada, this Tariff and the tolls set forth herein come into force from the date on which this Tariff is filed with the Canadian Transportation Agency.

#### § 402.8 Schedule of tolls.

| Item    | Column 1<br>Description of charges                                                                                                                                                                                                                                                                                                                             | Column 2<br>Rate (\$) Montreal to or from Lake Ontario (5 locks) | Column 3<br>Rate (\$) Welland Canal—Lake Ontario to or from Lake Erie (8 locks) |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 1. .... | Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:                                                                                                                                                                                                                                                                           |                                                                  |                                                                                 |
|         | (1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time. | 0.0866 .....                                                     | 0.1408.                                                                         |
|         | (2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:                                                                                                                                                                                                                                                        |                                                                  |                                                                                 |
|         | (a) bulk cargo .....                                                                                                                                                                                                                                                                                                                                           | 0.8984 .....                                                     | 0.5953.                                                                         |
|         | (b) general cargo .....                                                                                                                                                                                                                                                                                                                                        | 2.1648 .....                                                     | 0.9526.                                                                         |
|         | (c) steel slab .....                                                                                                                                                                                                                                                                                                                                           | 1.9592 .....                                                     | 0.6820                                                                          |
|         | (d) containerized cargo .....                                                                                                                                                                                                                                                                                                                                  | 0.8984 .....                                                     | 0.5953.                                                                         |
|         | (e) government aid cargo .....                                                                                                                                                                                                                                                                                                                                 | n/a .....                                                        | n/a.                                                                            |
|         | (f) grain .....                                                                                                                                                                                                                                                                                                                                                | 0.5520 .....                                                     | 0.5953.                                                                         |
|         | (g) coal .....                                                                                                                                                                                                                                                                                                                                                 | 0.5304 .....                                                     | 0.5953.                                                                         |
|         | (3) a charge per passenger per lock .....                                                                                                                                                                                                                                                                                                                      | 1.2773 .....                                                     | 1.2773.                                                                         |

| Item    | Column 1<br>Description of charges                                                                                                          | Column 2<br>Rate (\$) Montreal to or from Lake Ontario (5 locks)                                                            | Column 3<br>Rate (\$) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)                                             |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
|         | (4) a charge per lock for transit of the Welland Canal in either direction by cargo ships:                                                  |                                                                                                                             |                                                                                                                             |
|         | (a) loaded .....                                                                                                                            | n/a .....                                                                                                                   | 475.42.                                                                                                                     |
|         | (b) in ballast .....                                                                                                                        | n/a .....                                                                                                                   | 351.26.                                                                                                                     |
| 2. .... | Subject to item 3, for partial transit of the Seaway .....                                                                                  | 20 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4). | 13 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4). |
| 3. .... | Minimum charge per ship per lock transited for full or partial transit of the Seaway.                                                       | 15.92 .....                                                                                                                 | 15.92.                                                                                                                      |
| 4. .... | A rebate applicable for the 2001 navigation season to the rates of item 1 to 3.                                                             | Rebate of 1.5% .....                                                                                                        | Rebate of 1.5%.                                                                                                             |
| 5. .... | A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes <sup>1</sup> . | 20.00 .....                                                                                                                 | 20.00                                                                                                                       |

<sup>1</sup> The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) is \$20 U.S. or \$30 Canadian per lock. The other amounts shown are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

#### § 402.9 Operational surcharges—no postponements.

| Item      | Column 1<br>Place in Montreal-Lake Ontario section            | Column 2<br>Period after clearance date           | Column 3<br>Amount (\$) (5 locks) <sup>1</sup> |
|-----------|---------------------------------------------------------------|---------------------------------------------------|------------------------------------------------|
| (a) ..... | Cape Vincent (downbound) or Cap Saint-Michel (upbound).       | (a) 24 hours .....                                | 20,000                                         |
|           |                                                               | (b) 24 hours or more but less than 48 hours ..... | 40,000                                         |
|           |                                                               | (c) 48 hours or more but less than 72 hours ..... | 60,000                                         |
|           |                                                               | (d) 72 hours or more but less than 96 hours ..... | 80,000                                         |
| (b) ..... | Port, dock or wharf within St. Lambert—Iroquois lock segment. | (a) 24 hours .....                                | n/a                                            |
|           |                                                               | (b) 24 hours or more but less than 48 hours ..... | 20,000                                         |
|           |                                                               | (c) 48 hours or more but less than 72 hours ..... | 40,000                                         |
|           |                                                               | (d) 72 hours or more but less than 96 hours ..... | 60,000                                         |

<sup>1</sup>Prorated on a per-lock basis.

#### § 402.10 Operational surcharge after postponements.

| Item      | Column 1<br>Place in Montreal-Lake Ontario                    | Column 2<br>Period after clearance date           | Column 3<br>Amount (\$) (5 locks) <sup>1</sup> |
|-----------|---------------------------------------------------------------|---------------------------------------------------|------------------------------------------------|
| (a) ..... | Cape Vincent (downbound) or Cape Saint-Michel (upbound):      |                                                   |                                                |
|           | (1) If the postponement is for 24 hours .....                 | (a) 24 hours or more but less than 36 hours ..... | 20,000                                         |
|           |                                                               | (b) 36 hours or more but less than 48 hours ..... | 40,000                                         |
|           |                                                               | (c) 48 hours or more but less than 72 hours ..... | 60,000                                         |
|           |                                                               | (d) 72 hours or more but less than 96 hours ..... | 80,000                                         |
|           | (2) If the postponement is for 48 hours .....                 | (a) 48 hours or more but less than 56 hours ..... | 20,000                                         |
|           |                                                               | (b) 56 hours or more but less than 64 hours ..... | 40,000                                         |
|           |                                                               | (c) 64 hours or more but less than 72 hours ..... | 60,000                                         |
|           |                                                               | (d) 72 hours or more but less than 96 hours ..... | 80,000                                         |
|           | (3) If the postponement is for 72 hours .....                 | (a) 72 hours or more but less than 78 hours ..... | 20,000                                         |
|           |                                                               | (b) 78 hours or more but less than 84 hours ..... | 40,000                                         |
|           |                                                               | (c) 84 hours or more but less than 90 hours ..... | 60,000                                         |
|           |                                                               | (d) 90 hours or more but less than 96 hours ..... | 80,000                                         |
| (b) ..... | Port, dock or wharf within St. Lambert—Iroquois lock segment: |                                                   |                                                |
|           | (1) If the postponement is for 24 hours .....                 | (a) 24 hours or more but less than 48 hours ..... | n/a                                            |
|           |                                                               | (b) 48 hours or more but less than 60 hours ..... | 20,000                                         |
|           |                                                               | (c) 60 hours or more but less than 72 hours ..... | 40,000                                         |
|           |                                                               | (d) 72 hours or more but less than 96 hours ..... | 60,000                                         |
|           | (2) If the postponement is for 48 hours .....                 | (a) 48 hours or more but less than 72 hours ..... | n/a                                            |
|           |                                                               | (b) 72 hours or more but less than 80 hours ..... | 20,000                                         |
|           |                                                               | (c) 80 hours or more but less than 88 hours ..... | 40,000                                         |
|           |                                                               | (d) 88 hours or more but less than 96 hours ..... | 60,000                                         |
|           | (3) If the postponement is for 72 hours or more .....         | (a) 72 hours or more but less than 96 hours ..... | n/a                                            |

<sup>1</sup>Prorated on a per-lock basis.

Issued at Washington, D.C. on March 13, 2001.

Saint Lawrence Seaway Development Corporation.

**Albert S. Jacquez,**

*Administrator.*

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