

(1) *Affiliate*—(i) *Generally*. Affiliates are includible corporations—

(A) That are members of the same affiliated group, as defined in section 1504(a); or

(B) That would be members of the same affiliated group, as defined in section 1504(a) if—

(1) Any non-includible corporation meeting the ownership test of section 1504(a)(2) with respect to any such includible corporation was itself an includible corporation; or

(2) The constructive ownership rules of section 1563(e) were applied for purposes of section 1504(a).

(ii) *Rules for consolidated groups*. Affiliates that are members of the same consolidated group are treated as a single affiliate for purposes of this section. The provisions of paragraph (a) of this section shall not apply if the only affiliates under this definition are already members of the same consolidated group without operation of this section.

(iii) *Exception for newly acquired affiliates*—(A) With respect to acquisitions after December 7, 1995, an includible corporation acquired from unrelated third parties (First Corporation) will not be considered an affiliate of another includible corporation (Second Corporation) during the taxable year of the First Corporation beginning before the date on which the First Corporation originally becomes an affiliate with respect to the Second Corporation.

(B) With respect to acquisitions on or before December 7, 1995, an includible corporation acquired from unrelated third parties will not be considered an affiliate of another includible corporation during its taxable year beginning before the date on which the first includible corporation first becomes an affiliate with respect to that other includible corporation.

(C) This exception does not apply where the acquisition of an includible corporation is used to avoid the application of this section.

(2) *Includible corporation*. The term *includible corporation* has the same meaning it has in section 1504(b).

(c) *Taxable years*. If all of the affiliates use the same U.S. taxable year, then that taxable year must be used for purposes of applying this section. If, however, the affiliates use more than one U.S. taxable year, then an appropriate taxable year must be used for applying this section. The determination whether a taxable year is appropriate must take into account all of the relevant facts and circumstances, including the U.S. taxable years used by the affiliates for general U.S. income tax purposes. The

taxable year chosen by the affiliates for purposes of applying this section must be used consistently from year to year. The taxable year may be changed only with the prior consent of the Commissioner. Those affiliates that do not use the year determined under this paragraph (c) as their U.S. taxable year for general U.S. income tax purposes must, for purposes of this section, use their U.S. taxable year or years ending within the taxable year determined under this paragraph (c). If, however, the stock of an affiliate is disposed of so that it ceases to be an affiliate, then the taxable year of that affiliate will be considered to end on the disposition date for purposes of this section.

(d) *Consistent treatment of foreign taxes paid*. All affiliates must consistently either elect under section 901(a) to claim a credit for foreign income taxes paid or accrued, or deemed paid or accrued, or deduct foreign taxes paid or accrued under section 164. See also § 1.1502-4(a); § 1.905-1(a).

(e) *Effective date*. Except as provided in paragraph (b)(1)(iii) of this section (relating to newly acquired affiliates), this section is effective for taxable years of affiliates beginning after December 31, 1993.

Approved: September 27, 1995.
Margaret Milner Richardson,
Commissioner of Internal Revenue.
Leslie Samuels,
Assistant Secretary of the Treasury.
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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Navy, Defense.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PELICAN (MHC 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as

a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332-2400, Telephone Number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PELICAN (MHC 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations, and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six (6) degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2, certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605, is amended by adding the following ship to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *
 Table Four.
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Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
PELICAN	MHC 53	59.5° to 78.3°	281.7° to 300.5°

Dated: 24 July 1995.
 Approved:
 K.P. McMahon,
Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).
 [FR Doc. 95-27474 Filed 11-6-95; 8:45 am]
 BILLING CODE 3810-FF-P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. To improve the competitiveness of the Seaway, the Corporation and the Authority have established that the Tariff charges for the 1995 season under the Tariff Schedule are the same as for the 1994 season. In addition, the Corporation and the Authority have continued, for competitive purposes, the Incentive Tolls Program and revised the volume rebate to broaden the base years and clarify the reporting requirements for the volume rebate.

EFFECTIVE DATE: November 7, 1995.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-0091.

SUPPLEMENTARY INFORMATION: In an effort to improve the Seaway's

competitiveness, the section 402.8, the Schedule of Tolls, charges are continued for the 1995 at the 1994 season levels. Accordingly, no change is required to the Schedule as it now appears. The Corporation and the Authority also are continuing and revising, for competitive purposes, the Incentive Tolls Program. In section 402.9, the discount for new business, subsection (a) is amended to reflect its applicability to the 1995 navigation season and subsection (c) is amended in part to change the base years for calculating the discount from 1991 through 1993 to 1992 through 1994. In section 402.11, volume rebates, subsection (a) are amended to reflect its applicability to the 1995 navigation season and subsections (b) and (c) are amended to change the base years for calculating the rebate from three years, 1991 through 1993, to four years, 1991 through 1994. The base years for the subsection (c) proviso on mergers or take-overs are also changed from 1991 through 1994 to 1991 through 1995. Finally, subsection (d) is amended to change the submission date for the traffic history description for the purposes of calculating the rebate to the end of the 1995 season and to clarify what specific information is required, i.e., the shipper's or receiver's Seaway traffic history for 1991, 1992, 1993, 1994, and 1995 by port, vessel name, transit date, commodity description, and tonnage.

An exchange of diplomatic notes between Canada and the United States approving this amendment occurred on October 18, 1995.

Regulatory Evaluation

This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12866 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and 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 final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of 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 final rule 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 final rule under the principles and criteria in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends Part 402—Tariff of Tolls (33 CFR Part 402) as follows:

PART 402—[AMENDED]

1. The authority citation for 33 CFR Part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981-990.

2. Section 402.9 is amended by revising paragraph (a) and the first sentence of paragraph (c) introductory text as follows:

§ 402.9 Incentive tolls.

(a) Notwithstanding anything contained in this Tariff, the portion of the composite toll related to charges per metric ton of cargo charged on new business shall be reduced by fifty percent for a Seaway transit beginning and ending during the 1995 navigation year.

* * * * *

(c) For the purposes of this section, "new business" means cargo that has not moved through a Seaway lock between an origin and a destination as defined in this paragraph (c) during the navigation seasons of 1992, 1993, and 1994 or cargo that has moved through a Seaway lock in quantities representing less than five percent of the average of Seaway traffic between an origin and a destination during the navigation seasons of 1992, 1993, and 1994. * * *

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3. Section 402.11 is amended by revising the first sentence of paragraph (a) and paragraphs (b), (c), and (d) as follows:

§ 402.11 Volume discount.

(a) A volume rebate shall be granted to a shipper of downbound cargo or to a receiver of upbound cargo at the end of the 1995 navigation season after