

3. Section 1.368-2 is amended by:

1. Adding three sentences at the end of paragraph (f).

2. Revising paragraph (k).

The additions and the revision read as follows:

**§ 1.368-2 Definition of terms.**

\* \* \* \* \*

(f) \* \* \* If a transaction otherwise qualifies as a reorganization under section 368(a)(1)(B) or as a reverse triangular merger (as defined in § 1.358-6(b)(2)(iii)), the target corporation (in the case of a transaction that otherwise qualifies as a reorganization under section 368(a)(1)(B)) or the surviving corporation (in the case of a transaction that otherwise qualifies as a reverse triangular merger) remains a party to the reorganization even though its stock or assets are transferred in a transaction described in paragraph (k) of this section. If a transaction otherwise qualifies as a forward triangular merger (as defined in § 1.358-6(b)(2)(i)), a triangular B reorganization (as defined in § 1.358-6(b)(2)(iv)), a triangular C reorganization (as defined in § 1.358-6(b)(2)(ii)), or a reorganization under section 368(a)(1)(G) by reason of section 368(a)(2)(D), the acquiring corporation remains a party to the reorganization even though its stock is transferred in a transaction described in paragraph (k) of this section. The two preceding sentences apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

\* \* \* \* \*

(k) *Certain transfers of assets or stock in reorganizations*—(1) *General rule.* A transaction otherwise qualifying as a reorganization under section 368(a) shall not be disqualified as a result of the transfer or successive transfers to one or more corporations controlled in each transfer by the transferor corporation in part or all of—

(i) The assets of any party to the reorganization; or

(ii) The stock of any party to the reorganization other than the issuing corporation (as defined in § 1.368-1(b)).

(2) *Control.* Control is defined under section 368(c).

(3) *Examples.* The following examples illustrate the application of this paragraph (k). P is the issuing corporation and T is the target corporation. P has only one class of stock outstanding. The examples are as follows:

*Example 1. Transfers of acquired assets to controlled corporations after a reorganization under section 368(a)(1)(C).* (i) *Facts.* T operates a bakery that supplies delectable pastries and cookies to local retail stores. The

acquiring corporate group produces a variety of baked goods for nationwide distribution. P owns 80 percent of the stock of S-1. Pursuant to a plan of reorganization, T transfers all of its assets to S-1 solely in exchange for P stock, which T distributes to its shareholders. S-1 owns 80 percent of the stock of S-2, and S-2 owns 80 percent of the stock of S-3, which also makes and supplies pastries and cookies. Pursuant to the plan of reorganization, S-1 transfers all of the T assets to S-2, and S-2 transfers all of the T assets to S-3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by reason of the fact of the successive transfers of all of the T assets to S-2, and from S-2 to S-3 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

*Example 2. Transfers of acquired assets to controlled corporations after a reorganization under section 368(a)(1)(D).* (i) *Facts.* The facts are the same as *Example 1* except that P also owns 100 percent of the stock of T before the transaction, and T transfers all of its assets to S-1 solely in exchange for S-1 stock, which T distributes to P.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(D), is not disqualified by reason of the fact of the successive transfers of all of the acquired assets from S-1 to S-2, and from S-2 to S-3 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

*Example 3. Transfer of acquiring stock to controlled corporation after a reorganization under section 368(a)(1)(A).* (i) *Facts.* The facts are the same as *Example 1* except that P owns 80 percent of the stock of S-4 and, pursuant to the plan of reorganization, S-1 acquires all of the T assets as a result of the merger of T with and into S-1. In addition, in the merger, the T shareholders receive consideration 50 percent of which is stock of P and 50 percent of which is cash. Finally, pursuant to the plan of reorganization, P transfers all of the S-1 stock to S-4.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of all of the S-1 stock to S-4 because, in the transfer, the transferee corporation is controlled by the transferor corporation.

*Example 4. Transfers of acquired stock to controlled corporations after a reorganization under section 368(a)(1)(B).* (i) *Facts.* The facts are the same as *Example 1* except that S-1 acquires all of the T stock rather than the T assets, and as part of the plan of reorganization, S-1 transfers 50 percent of the T stock to S-2, and S-2 transfers that T stock to S-3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by the successive transfers of part of the acquired stock from S-1 to S-2, and from S-2 to S-3 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

*Example 5. Transfers of acquiring corporation stock to controlled corporations after a reorganization under section 368(a)(1)(B).* (i) *Facts.* The facts are the same as *Example 4* except that P owns 80 percent of the stock of S-4, and S-4 owns 80 percent of the stock of S-5, and, as part of the plan of reorganization, following the acquisition of T stock by S-1, P transfers 10 percent of its S-1 stock to S-4, and S-4 transfers that S-1 stock to S-5.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by reason of the successive transfers of S-1 stock to S-4, and from S-4 to S-5 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

*Example 6. Transfer of acquired stock to a partnership.* (i) *Facts.* The facts are the same as in *Example 4*. However, as part of the plan of reorganization, S-2 and S-3 form a new partnership, PRS. Immediately thereafter, S-3 transfers all of its T stock to PRS in exchange for an 80 percent partnership interest, and S-2 transfers cash to PRS in exchange for a 20 percent partnership interest.

(ii) *Analysis.* This paragraph (k) describes the successive transfers of T stock to S-3, but does not describe S-3's transfer of T stock to PRS. Therefore, the characterization of this transaction must be determined under the relevant provisions of law, including the step transaction doctrine. See § 1.368-1(a). The transaction fails to meet the control requirement of a reorganization described in section 368(a)(1)(B) because immediately after the acquisition of the T stock, the acquiring corporation does not have control of T.

(4) *Effective date.* This paragraph (k) applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF TRANSPORTATION**

**Saint Lawrence Seaway Development Corporation**

**33 CFR Part 402**

**[Docket No. SLSDC 04-17202]**

**RIN 2135-AA19**

**Tariff of Tolls**

**AGENCY:** Saint Lawrence Seaway Development Corporation, DOT.

**ACTION:** Notice of proposed rulemaking.

**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 will be revising its regulations to reflect the fees and charges charged by the SLSMC in Canada starting in the 2004 navigation season, which are effective only in Canada. The SLSDC also proposes an amendment to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since this latter proposed amendment would be of applicability in the United States, comments are invited on only on this. (See **SUPPLEMENTARY INFORMATION.**)

**DATES:** Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before April 1, 2004.

**ADDRESSES:** Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. Written comments may also be submitted electronically at <http://dmses.dot.gov/submit/BlankDSS.asp>. All comments received will be available for examination between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-6823.

**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.) The proposed 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 proposing to revise § 402.8, "Schedule of Tolls," to reflect the fees and charges charged by the SLSMC in Canada starting in the 2004 navigation season. With one exception, the 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)). Accordingly, no notice and comment is necessary on these amendments. The SLSDC also proposes an amendment to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since only this latter proposed amendment would be of applicability in the United States, comments are invited on only on this. The specific change proposed is to amend § 402.8, "Schedule of Tolls", to increase the per lock charge for transit through a U.S. lock from \$16.44 to \$16.77. This increase is due to higher operating costs at the locks.

**Regulatory Evaluation**

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

**Regulatory Flexibility Act Determination**

The Saint Lawrence Seaway Development Corporation certifies that this proposed 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 proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major Federal action significantly affecting the quality of human environment.

**Federalism**

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that it does not have sufficient federalism implications to warrant a Federalism Assessment.

**Unfunded Mandates**

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

**Paperwork Reduction Act**

This proposed 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 in 33 CFR Part 402**

Vessels, Waterways.  
Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 402, Tariff of Tolls, as follows:

**PART 402—TARIFF OF TOLLS**

1. The authority citation for part 402 would continue to read as follows:

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

2. Section 402.8 would be revised to read as follows:

**§ 402.8 Schedule of tolls.**

Item	Description of charges  Column 1	Rate (\$) Montreal to or from Lake Ontario (5 locks)  Column 2	Rate (\$) Welland Canal— Lake Ontario to or from Lake Erie (8 locks)  Column 3
1. ....	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		

