

1. The Study was not conducted according to accepted experimental design practices and principles.

2. The Study did not properly or fully describe the fit-testing results.

3. The Study did not establish the reproducibility of the results generated by the revised PortaCount® QNFT protocols.

4. The Study did not demonstrate that the revised PortaCount® QNFT protocols will identify respirators with unacceptable fit as effectively as the quantitative fit-testing protocols already listed in Part I.C.3 of Appendix A of OSHA's Respiratory Protection Standard.

5. The reported test-sensitivity value of 0.91 indicates that revised PortaCount® QNFT protocol 1 would allow a substantial number of employees to pass fit tests with improperly fitting respirators compared to a protocol that achieves the 0.95 sensitivity value that ANSI Z88.10–2001 lists as a criterion measure for new fit-testing protocols.

6. The Study did not demonstrate that the revised PortaCount® QNFT protocols will accurately determine fit for filtering-facepiece respirators.

Additional validation testing of, or revisions to, the revised PortaCount® QNFT protocols may provide new data that demonstrate the accuracy and reproducibility of the fit-testing results generated by these protocols. OSHA would evaluate any new data and supporting documentation received, and, if appropriate, would submit it to the public for notice and comment. If the revised protocols are to apply to filtering-facepiece respirators, then the resubmission must include appropriate fit-testing results for these respirators.

#### List of Subjects in 29 CFR Part 1910

Fit testing, Hazardous substances, Health, Occupational safety and health, Respirators, Toxic substances.

#### Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues this notice under the following authorities: Section 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2007 (72 FR 31160); and 29 CFR part 1911.

Signed at Washington, DC, on January 22, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–1656 Filed 1–26–10; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF TRANSPORTATION

### Saint Lawrence Seaway Development Corporation

#### 33 CFR Part 401

[Docket No. SLSDC–2010–0001]

RIN 2135–AA30

#### Seaway Regulations and Rules: Periodic Update, Various Categories

**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 Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The proposed changes will update the following sections of the Regulation and Rules: Condition of Vessels; Seaway Navigation; Radio Communications; and General. These proposed amendments are necessary to take account of updated procedures and will enhance the safety of transits through the Seaway. Several of the proposed amendments are merely editorial or for clarification of existing requirements.

**DATES:** Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before February 26, 2010.

**ADDRESSES:** You may submit comments [identified by Docket Number SLSDC 2010–0001] by any of the following methods:

- *Web site:* <http://www.Regulations.gov>. Follow the online instructions for submitting comments/submissions.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–001.

• *Hand Delivery:* Documents may be submitted by hand delivery or courier to West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change at <http://www.Regulations.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.Regulations.gov>; or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

#### FOR FURTHER INFORMATION CONTACT:

Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

**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 Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by updating the Regulations and Rules in various categories. The proposed changes would update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; Radio Communications; and General. These updates are necessary to take account of updated procedures which will enhance the safety of transits through the Seaway. Many of these proposed changes are to clarify existing requirements in the regulations. Where new requirements or regulations are being proposed, an explanation for such a change is provided below.

*Regulatory Notices: Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, *etc.*) You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.Regulations.gov>.

The SLSDC is proposing to amend two sections of the Condition of Vessels portion of the joint Seaway regulations. Under section 401.10, "Mooring lines", the SLSDC is proposing to permit vessels with synthetic lines to transit the Seaway with a spliced eye of 1.8 m instead of the current 2.4 m. The SLSMC has conducted tests regarding the effectiveness of the smaller spliced eye and has determined that a spliced eye of 1.8 m for synthetic lines is sufficient for safety purposes. In addition, two changes are proposed for section 401.12, "Minimum requirements—mooring lines and fairleads". These proposed amendments would set specific requirements for each mooring line to ensure that safety is maintained through proper use of appropriate strength wire specific to vessel size. These changes are being proposed based on tests conducted by the SLSMC in conjunction with relevant stakeholders.

One change is proposed for the Seaway Navigation section. In section 401.52, "Limit of Approach to a Bridge", vessels are required to proceed at a safe speed between whistle posts at bridges in order to come to a controlled stop before the limit of an approach sign. This proposed amendment is due to recent incidents involving vessels proceeding at a speed which did not permit a controlled stop, resulting in damage to the vessel.

In the Radio Communications section, two changes are proposed. The changes to section 401.61, "Assigned frequencies", and section 401.63, "Radio procedure", reflect the requirement that channel 12 is to be used in lieu of channel 13 in the Seaway Sodus sector. This change is based on two years of testing and troubleshooting radio problems on Lake Ontario that determined that channel 12 would provide a more effective communication medium than does channel 13. Corresponding edits have been proposed for Schedule III to reflect the channel change.

Two changes are proposed to the "General" section. In section 401.90, "Boarding for inspection", vessels will be required to provide a safe and approved means of boarding for inspectors. Currently the pigeon holes used by inspectors to board vessels typically fill with ice and snow making access between the tug and barge a

safety hazard. In section 401.94, "Keeping copies of documents", a vessel will be required to keep, in either electronic or paper form: A copy of the vessel's valid inspection report; the rules and procedures; and, Seaway Notices for the current navigation year. The other changes to the joint regulations are merely editorial or to clarify existing requirements.

#### 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

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate 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 the 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 this proposal 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 401

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

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR Part 401, Regulations and Rules, as follows:

### PART 401—SEAWAY REGULATIONS AND RULES

#### Subpart A—Regulations

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. In § 401.10 revise paragraph (a)(3) and (b) to read as follows:

#### § 401.10 Mooring lines.

(a) \* \* \*

(3) Be fitted with a hand spliced eye or Flemish type mechanical spliced eye of not less than 2.4 m long for wire lines and 1.8 m long spliced eye for approved synthetic lines;

\* \* \* \* \*

(b) Unless otherwise permitted by an officer, vessels greater than 150 m shall only use wire mooring lines with a breaking strength that complies with the minimum specifications set out in the table to this section shall be used for securing a vessel in lock chambers.

\* \* \* \* \*

3. In § 401.12 redesignate paragraph (a)(4) as (a)(3)(iii) and revise paragraphs (a)(1) introductory text, (a)(2), (a)(3) introductory text, and (b) introductory text to read as follows:

#### § 401.12 Minimum requirements—mooring lines and fairleads.

(a) \* \* \*

(1) Vessels of 100 m or less in overall length shall have at least three mooring lines—wires or synthetic hawsers, two of which shall be independently power operated and one if synthetic may be hand held.

\* \* \* \* \*

(2) Vessels of more than 100 m but not more than 150 m in overall length shall have three mooring lines—wires or synthetic hawsers, which shall be independently power operated by winches, capstans or windlasses. All lines shall be led through closed chocks or fairleads acceptable to the Manager and the Corporation.

(3) Vessels of more than 150 m in overall length shall have four mooring lines—wires, independently power

operated by the main drums of adequate power operated winches as follows:

\* \* \* \* \*

(b) Unless otherwise permitted by the officer, the following table sets out the requirements for the location of fairleads or closed chocks for vessels of 100 m or more in overall length.

\* \* \* \* \*

4. In § 401.52, add a new paragraph (c) to read as follows:

**§ 401.52 Limit of approach to a bridge.**

\* \* \* \* \*

(c) All vessels are to proceed at a safe speed between the whistle signs at bridges so that a controlled stop, if necessary, can be achieved before the limit of approach sign at bridges.

5. Revise § 401.61 to read as follows:

**§ 401.61 Assigned frequencies.**

The Seaway stations operate on the following assigned VHF frequencies:

156.8 MHz—(channel 16)—Distress and Calling.

156.7 MHz—(channel 14)—Working (Canadian Stations in Sector 1 and the Welland Canal).

156.6 MHz—(channel 12)—Working (U.S. Station in Lake Ontario)

156.6 MHz—(channel 12)—Working (U.S. Stations in Sector 2 of the River).

156.55 MHz—(channel 11)—Working (Canadian Stations in Sector 3, Lake Ontario and Lake Erie).

6. Revise § 401.63 to read as follows:

**§ 401.63 Radio procedure.**

Every vessel shall use the channels of communication in each control sector as listed in the table to this section.

**CHANNELS OF COMMUNICATION**

| Station                  | Control sector No. | Sector limits                         | Call in      | Work         | Listening watch |
|--------------------------|--------------------|---------------------------------------|--------------|--------------|-----------------|
| Seaway Beauharnois ..... | 1                  | C.I.P. No. 2 to C.I.P. No. 6-7 .....  | Ch. 14 ..... | Ch. 14 ..... | Ch. 14.         |
| Seaway Eisenhower .....  | 2                  | C.I.P. No. 6-7 to C.I.P. No. 10-11.   | Ch. 12 ..... | Ch. 12 ..... | Ch. 12.         |
| Seaway Iroquois .....    | 3                  | C.I.P. No. 10-11 to Crossover Island. | Ch. 11 ..... | Ch. 11 ..... | Ch. 11.         |
| Seaway Clayton .....     | 4                  | Crossover Island to Cape Vincent.     | Ch. 13 ..... | Ch. 13 ..... | Ch. 13.         |
| Seaway Sodus .....       | 4                  | Cape Vincent to Mid Lake Ontario.     | Ch. 12 ..... | Ch. 12 ..... | Ch. 16.         |
| Seaway Newcastle .....   | 5                  | Mid Lake Ontario to C.I.P. No. 15     | Ch. 11 ..... | Ch. 11 ..... | Ch. 16.         |
| Seaway Welland .....     | 6                  | C.I.P. No. 15 to C.I.P. No. 16 .....  | Ch. 14 ..... | Ch. 14 ..... | Ch. 14.         |
| Seaway Long Point .....  | 7                  | C.I.P. No. 16 to Long Point .....     | Ch. 11 ..... | Ch. 11 ..... | Ch. 16.         |

7. In § 401.90, add a new paragraph (d) to read as follows:

**§ 401.90 Boarding for inspections.**

\* \* \* \* \*

(d) Vessels shall provide a safe and approved means of boarding. Pigeon holes are not accepted as a means of boarding and an alternate safe means of

access between a tug and a barge shall be provided.

8. In § 401.94, revise paragraph (a) to read as follows:

**§ 401.94 Keeping copies of regulations.**

(a) A copy of these Regulations (subpart A of part 401), a copy of the vessel's valid Vessel Inspection Report and Seaway Notices for the current

navigation year shall be kept on board every vessel in transit. For the purposes of this section, a copy may be kept in either paper or electronic format.

\* \* \* \* \*

9. In the appendix, Schedule III to Subpart A of Part 401—Calling-in Table, revise entries 18, 35, and 36 to read as follows:

**SCHEDULE III TO SUBPART A OF PART 401—CALLING-IN TABLE**

| C.I.P. and checkpoint                     | Station to call         | Message content  |
|---|-------------------------|--|
| 18. Sodus Point .....                     | Seaway Sodus Channel 12 | 1. Name of Vessel.<br>2. Location.<br>3. ETA Mid-Lake Ontario.   |
| 35. Mid-Lake Ontario-Entering Sector 4 .. | Seaway Sodus Channel 12 | 1. Name of Vessel.<br>2. Location.   |
| 36. Sodus Point .....                     | Seaway Sodus Channel 12 | 1. Name of Vessel.<br>2. Location.<br>3. Updated ETA Cape Vincent or Lake Ontario Port.<br>4. Confirm River Pilot Requirement.<br>5. Pilot requirement—Snell Lock and/or Upper Beauharnois Lock (inland vessels only). |

\* \* \* \* \*

Issued at Washington, DC on January 21, 2010.

Saint Lawrence Seaway Development Corporation.

**Collister Johnson, Jr.,**  
Administrator.

[FR Doc. 2010-1608 Filed 1-26-10; 8:45 am]

BILLING CODE 4910-61-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 388

[Docket No. MARAD 2010 0012]

RIN 2133-AB76

#### Administrative Waivers of the Coastwise Trade Laws: New Definition of Eligible Vessels

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD, or we, our, or us) is publishing this proposed rule to change the definition of vessels eligible for a waiver of the coastwise laws under special provisions of the Coast Guard Authorization Act of 1998. Under this measure, and taking into account several factors, MARAD may waive the U.S.-build requirement allowing vessels to operate as small passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. The new definition of “eligible vessel” deletes the requirement that the vessel be five net tons or more. That requirement is not in the enabling statute and, therefore, does not need to be in the regulations.

**DATES:** Comments on the proposed rule are due March 29, 2010.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number MARAD-2010-0012] via any of the following methods:

*Web site/Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments on the electronic docket site.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL-401, Washington, DC 20590-0001.

*Hand Delivery:* Room PL-401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket

number for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room PL-401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, Office of Cargo Preference and Domestic Trade, Maritime Administration, MAR-730, Room W21-203, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-5979 or 800-9US-FLAG; e-mail: [Joann.Spittle@dot.gov](mailto:Joann.Spittle@dot.gov).

**SUPPLEMENTARY INFORMATION:** Public Law 105-383, which authorized the Secretary of Transportation to grant waivers of the U.S.-build requirement for the smallest of passenger vessels (those carrying 12 or fewer passengers) to operate in the coastwise trade, contained a provision that the Secretary of [Homeland Security] may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel in the case of an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect—(1) United States vessel builders; or (2) the coastwise trade business of any person that employs vessels built in the United States in that business.

Until now, the term “eligible vessel” was understood to mean a vessel eligible for U.S. Coast Guard documentation; therefore our regulation contained a five net ton minimum vessel size limit. However, under 46 U.S.C. 12102(b), a vessel of less than five net tons may engage in the coastwise trade without documentation, if the vessel otherwise satisfies the requirements to engage in the trade.

An unintended consequence of the present small passenger waiver regulations is that the Maritime Administration is unable to grant waivers to vessels of less than five net tons, the owners of which may desire to operate them in coastwise trade. There is no indication that the statute

intended this result, because the statute does not prohibit the granting of waivers to vessels of under five net tons.

Accordingly, in this proposed rule, the Maritime Administration will be increasing the number of eligible vessels by removing the 5 net ton minimum requirement for its Small Passenger Vessel Waiver Program.

#### Rulemaking Analysis and Notices

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule is not significant under section 3(f) of Executive Order 12866, and as a consequence, OMB did not review the rule. This proposed rulemaking is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further regulatory impact analysis is necessary. Vessels eligible for a waiver of the coastwise trade laws will be limited to foreign built or foreign re-built small passenger vessels and uninspected passenger vessels as defined by section 2101 of Title 46, United States Code. Additionally, vessels requested for consideration must be greater than three years old. We will not grant waivers in instances where such waivers will have an unduly adverse effect on U.S. vessel builders or U.S. businesses that use U.S. flag vessels. Under Title V, MARAD also has the authority to revoke coastwise endorsements under the limited circumstances in which a foreign-built or foreign-rebuilt passenger vessel, previously allowed into service, is deemed to have obtained such endorsement through fraud.

##### *Executive Order 13132*

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 (“Federalism”) and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations herein have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, MARAD did not consult with State and local officials because it was not necessary.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires MARAD to assess the impact that regulations will have on small