

DEPARTMENT OF TRANSPORTATION**Saint Lawrence Seaway Development Corporation****33 CFR Part 401**

[Docket No. SLSDC 2002-13698]

RIN 2135-AA15

Seaway Regulations and Rules: Automatic Identification System**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 Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

The 2003 Seaway navigation season is scheduled to open on March 25. These amendments will be in effect in Canada on that date. For consistency, because these are joint regulations under international agreement 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 25, 2003.

DATES: This rule is effective on March 25, 2003.

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 Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make use of Automatic Identification System (AIS) in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie mandatory effective at the

beginning of the 2003 navigation season, which is scheduled for March 25, 2003.

Background and Purpose

Since the opening of the Saint Lawrence Seaway in 1959, the Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Management Corporation Vessel Traffic Services (VTS) system has been responsible for monitoring the progress of commercial traffic to ensure the safe and expeditious passage of vessels operating in Seaway sectors under their control. Procedures in use today include limits on vessel speed and requirements for all commercial traffic to report by voice on marine VHF radio to the Vessel Control (VTC) centers. These reports are made at designated "call-in-points" along the river. Traffic managers at VTC centers use the vessel reports to monitor traffic patterns, including one-way vessel traffic restricted areas and project the estimated times of arrival (ETA) of vessels at locks in the Seaway.

SLSDC and SLSMC sponsored successful prototype demonstrations and evaluations of a Global Positioning System based VTS system in the fall of 1994 and during the 1995 shipping season. The demonstrations established that a VTS using AIS technology was both feasible and cost effective and can improve the efficiency and safety of operations. In the 1999 shipping season, SLSDC and SLSMC deployed a modernized vessel Traffic Management System (TMS). Now, for the first time, all vessel control centers in the Saint Lawrence Seaway share a common vessel information database. Presently, vessel positions, derived from simulations based on transit histories of vessels, are entered manually into the TMS system by traffic controllers and then updated by voice reports from the vessels during actual transits.

AIS is a broadcast system, operating in the VHF maritime mobile band. It is capable of sending and receiving ship information such as identification, position, course, speed and more, to and from other ships and to and from shore. The Seaway TMS will send pertinent navigation information such as local wind speed and direction, water levels, ice conditions, availability of next lockage, and safety-related messages to vessels.

With the capabilities of ship-to-ship, ship-to-shore and shore-to-ship communications, AIS will greatly enhance the safety, improve the efficiency of the traffic management and increase the vessel security and emergency response capabilities. Specifically, the potential benefits of AIS for the Seaway entities include

providing a more efficient vessel traffic management as a result of knowing accurate location and speed of the vessels, monitoring vessel speeds especially for hazardous cargo and deeper draft vessels and faster response time to vessels in case of security concerns and vessel accidents or incidents. The potential benefits to the carrier users include the reduction of overall transit time as a result of better scheduling of lockages and other services timely dispatching of pilots. It also provides real-time position, speed, heading and other pertinent information of the vessel, which will allow master or pilot to better coordinate on the meeting or overtaking in critical reaches of the Seaway.

Comments and Modifications

On November 27, 2002, the SLSDC published a Notice of Proposed Rulemaking asking for public comment. The SLSDC received three comments. All three noted that the joint SLSDC-SLSMC rule would require use of AIS in the Seaway System in advance of the dates set by the International Maritime Organization (IMO) for certain commercial vessels to be permanently equipped with AIS units. One commenter also noted that the joint SLSDC-SLSMC requirement would also be in advance of the same requirement for the navigable waters of the United States under the "Maritime Transportation Security Act of 2002" (Pub. L. 107-295) (U.S. Act). The same commenter voiced concern that production of integrated AIS equipment would not be sufficient to ensure installation within the rule's timeframe. Another commenter also recommended that, since the SLSDC-SLSMC requirement would precede the IMO and the Act's effective dates, portable equipment be made available and its use allowed. The St. Lawrence Seaway is jointly operated under an International Agreement between the United States and Canada. It is an inland waterway to which the IMO requirements do not apply. Furthermore, the U.S. Act's does not apply in the navigable waters of Canada, transit through which is inextricably necessary for passage through the Seaway System. Thus, even if the requirement were not to apply in the navigable waters of the United States, ships would still be required to use it in Canadian waters. Entry into the Seaway System in either direction is only through Canada. Thus, making the rule applicable only in Canadian waters would be impractical. Moreover, the Shipping Federation of Canada, representing approximately 95% of the commercial oceangoing vessels using

the Seaway, has actively supported the Seaway AIS initiative. In addition, according to the SLSMC, the Canadian Shipowners Association, representing the commercial non-oceangoing vessels (lakers) using the Seaway, expects 100% AIS equipage among its members. Notwithstanding, the SLSDC-SLSMC rule does not require permanent installation of integrated AIS equipment as required by the IMO and the U.S. Act before the effective dates of those two requirements. The rule will allow the use of temporary or, in some cases, portable equipment, for those vessels not permanently equipped at considerably less cost. The SLSDC and SLSMC have been working with private navigation equipment and service vendors in Montreal to ensure that rental, temporary AIS units will be available for vessels that do not have permanent shipboard AIS installation. Thus, even if permanent, integrated units were not available as alleged, these temporary units would be. Temporary AIS installation will meet all carriage requirements as specified for vessels required to be fitted with a gyro compass under the Seaway Regulations and Rules. In this regard, subparagraph (b)(6) of the rule has been changed to require "temporary" units meeting the requirements of subparagraphs (b)(1) through (5) for these vessels, as opposed to "portable units," since portable units do not have the gyro compass connection. For vessels that do not have to meet the gyro compass requirement, use of portable units compatible to the requirements of subparagraphs (b)(1) through (3) and (b)(5) still will be allowed under a new subparagraph (b)(7). In addition, to be consistent with the IMO and U.S. Act requirements, subparagraph (a)(1) has been changed to apply only to "commercial" vessels that require pre-clearance and have a 300 gross tonnage or greater, have a Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire. Another comment was concerned about a possible lack of type approved AIS equipment. There are at least six major AIS transponder manufacturers in the world that have already obtained type approved certificates for AIS equipment from the IMO recognized testing houses such as BSH of Germany and Qinetiq of the United Kingdom. Finally, the reference in paragraph (b)(4) to the "International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 2 April 2002, as amended" has been changed to reflect the final version of "6 January 2003."

Final Rule

The SLSDC and the SLSMC are promulgating a new § 401.20 that requires mandatory use of AIS in Seaway waters from St. Lambert, Quebec to Long Point, mid-Lake Erie effective at the beginning of the 2003 navigation season, which is scheduled for March 25, 2003. All commercial vessels that require pre-clearance and have a 300 gross tonnage or greater, have Length Over All (LOA) over 20 meters, or carry more than 50 passengers for hire, will have to use an AIS transponder to transit the Saint Lawrence Seaway. Dredges and floating plants and towing vessels over 8 meters in length will also be required to use AIS, except only each lead unit of combined and multiple units (tugs and tows) will have to use it. Each vessel will have to meet the following international recommendations, standards, and guidelines:

1. International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

2. International Telecommunication Union, ITU-R Recommendation M.1371-1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

3. International Electrotechnical Commission, IEC 61993-2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

4. International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18, 6 January 2003, as amended, and for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

5. Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services.

6. The use of a temporary AIS unit in compliance with Class A AIS transponder specifications and

standards, as specified in 1 through 5 above, is permissible.

7. For each vessel less with LOA than 30 meters, the use of portable AIS unit compatible with AIS transponder specifications and standards, as specified in 1, 2, 3 and 5 above, is permissible.

Regulatory Evaluation

This 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 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 reg.*) because it is not a major federal action significantly affecting the quality of human environment. All nine AIS shore base stations (three in U.S. and six in Canada) are co-located with the existing Seaway VHF radio or private telephone towers.

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 does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this 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 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 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 would continue 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. Part 401 is amended by adding a new § 401.20 to read as follows:

§ 401.20 Automated Identification System.

(a) Each of the following vessels must use an Automatic Identification System (AIS) transponder to transit the Seaway:

(1) each commercial vessel that requires pre-clearance in accordance with § 401.22 and has a 300 gross tonnage or greater, has a Length Over All (LOA) over 20 meters, or carries more than 50 passengers for hire; and

(2) each dredge, floating plant or towing vessel over 8 meters in length, except only each lead unit of combined and multiple units (tugs and tows).

(b) Each vessel listed in paragraph (a) of this section must meet the following requirements to transit the Seaway:

(1) International Maritime Organization (IMO) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne AIS, as amended;

(2) International Telecommunication Union, ITU-R Recommendation M.1371-1: 2000, Technical Characteristics For A Universal Shipborne AIS Using Time Division Multiple Access In The VHF Maritime Mobile Band, as amended;

(3) International Electrotechnical Commission, IEC 61993-2 Ed.1, Maritime Navigation and Radio Communication Equipment and Systems—AIS—Part 2: Class A Shipborne Equipment of the Universal AIS—Operational and Performance Requirements, Methods of Test and Required Test Results, as amended;

(4) International Maritime Organization (IMO) Guidelines for Installation of Shipborne Automatic Identification System (AIS), NAV 48/18,

6 January 2003, as amended, and, for ocean vessels only, with a pilot plug, as specified in Section 3.2 of those Guidelines, installed close to the primary conning position in the navigation bridge and a standard 120 Volt, AC, 3-prong power receptacle accessible for the pilot's laptop computer; and

(5) Computation of AIS position reports using differential GPS corrections from the U.S. and Canadian Coast Guards' maritime Differential Global Positioning System radiobeacon services; or

(6) The use of a temporary unit meeting the requirements of paragraphs (b)(1) through (5) of this section is permissible; or

(7) For each vessel less than 30 meters, the use of portable AIS compatible with the requirements of paragraphs (b)(1) through (3) and paragraph (5) of this section is permissible.

Issued at Washington, DC on February 25, 2003.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquesz,

Administrator.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 4

RIN 0651-AB12

Complaints Regarding Invention Promoters

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) has added rules of practice to implement the USPTO's procedures for acceptance of complaints under the Inventors' Rights Act of 1999 (the "Act"). The Act requires the USPTO to provide a forum for the publication of complaints concerning invention promoters. The USPTO provided the public with an opportunity to comment on the new rules, received comments, and considered comments in drafting this final rule.

DATES: Effective Date: February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Commissioner for Patents, Ms.

Cathie Kirik, (703) 305-8800 or cathie.kirik@uspto.gov.

SUPPLEMENTARY INFORMATION: An interim final rule and request for comments was published in the **Federal Register** (65 FR 3127) on January 20, 2000. That interim rule implemented regulations 37 CFR part 4, concerning complaints regarding invention promoters.

Three (3) individuals, three (3) law firms, and two (2) organizations submitted written comments regarding the proposal to implement Part 4.

Section 4.2: Definitions Section

With regard to the definition of "invention promoter" in § 4.2(a), Commentator wants to know whether the Act is being interpreted to end protection once a regular application is filed under the exclusion in § 4.2(a)(3). Commentator believes any business that collects compensation for doing "an evaluation to determine commercial potential of * * * patent application" should be included within the scope of the Act.

Response: The rule and the Act contain an identical definition of "invention promoter."

With regard to § 4.2(d), Commentator believes the use of the term "procurement" could be confusing because it is often used as a synonym for "acquire" and suggests replacing the term with "locate or identify" or "procurement of an arrangement or contract."

Response: This definition of "invention promotion services" is identical to that contained in the Act. The definition is unambiguous.

Section 4.3: Submitting Complaints Section

Since § 4.3(b)(5)¹ requires that the complaint identify the name of the mass media in which the invention promoter advertises, Commentators believe that the address of the mass media entity should also be included in the complaint so that complainant or USPTO could send a copy of the complaint and reply to the media entity.

Response: This is an additional requirement beyond the requirements of the Act. See additional comment below under section 4.5.

Commentator suggests a "Sunset provision" which provides that complaints will not be "made public after three years from the date first received." Commentator believes this is necessary in order to preclude stale complaints and complaints that do not

¹ It appears that Commentators mistakenly refer to § 4.3(a)(5). The correct citation is § 4.3(b)(5).