DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR PART 401

RIN–2135–AA16

Seaway Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of the statutory civil penalty for violation of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

EFFECTIVE DATE: This rule is effective on November 4, 2002.

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 Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 NOTE, as amended by the Debt Collection Improvement Act of 1996 (Act), Public Law 104–134, April 26, 1996, requires the inflation adjustment of civil monetary penalties (CMP) to ensure that they continue to maintain their deterrent value. The Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every four years thereafter, the head of each agency shall, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for all urban consumers (CPI), published annually by the Department of Labor, for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Nevertheless, the first adjustment to a CMP may not exceed 10 percent of that penalty amount. Any increased penalties shall apply only to violations that occur after the date on which the increase takes effect. 33 U.S.C. 1232(a) imposes a maximum $25,000 civil penalty for a violation of a regulation issued under the authority of the PWSA, which includes the Seaway Regulations and Rules in 33 CFR part 401. The penalty was set in 1978. Under the Act, the penalty amount was adjusted in 1996 to $27,500. The CPI for June 1996, was 156.6. The CPI for June 2002, is 179.2. The inflation factor, therefore, is 179.2/156.6 or 1.15. The maximum penalty amount after the increase and statutory rounding would be $31,625 (1.15 X 27,500). Accordingly, paragraph (a) of section 401.102 is being amended to change the amount of the penalty from $ 27,500 to $31,625.

Regulatory Evaluation

This final rule is exempt from Office of Management and Budget review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As stated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Act for a specific, applicable CMP under the authority of the Corporation. The great majority of individuals, organizations, and entities addressed through the Seaway Regulations and Rules do not commit violations and, as a result, we believe any aggregate economic impact of this revision will be minimal, affecting only those who violate the regulations. As such, the final rule and its inflation adjustment should have no effect on Federal and State expenditures. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed 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 final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate 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 this final rule does not have sufficient federalism implications to warrant the preparation of 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.

Notice and Public Comment

Notice and an opportunity for public comment under the Administrative Procedure Act (APA) (5 U.S.C. 553) are waived. The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with those procedures because they are impracticable, unnecessary, or contrary to the public interest. The Corporation has determined under 5 U.S.C. 553(b)(3) that good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with the statutory authority in the Act with no issues of policy discretion. Accordingly, the Corporation finds that the opportunity for prior comment is unnecessary and contrary to the public interest and is issuing this revised regulation as a final rule that will apply to all future cases under this authority.

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 chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart B—[Amended]

1. The authority citation for 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. Paragraph (a) of § 401.102 is amended by removing the number ''$27,500'' and adding, in its place, the number ''$31,625''.

Issued in Washington, DC on October 28, 2002.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 02–28021 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL—200302; FRL–7403–5]

Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993, for the Birmingham, AL, Marginal Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the determination that the Birmingham, Alabama, marginal ozone nonattainment area attained the 1-hour ozone National Ambient Air Quality Standard by November 15, 1993, the date required by the Clean Air Act to be used for making this determination.

DATES: This final rule is effective on December 4, 2002.

ADDRESSES: Copies of documents relative to this action are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Today's Action

In this final rulemaking, Environmental Protection Agency (EPA) is responding to comments made on EPA's proposed rulemaking published August 21, 2002 (67 FR 54159). In the August 21, 2002, **Federal Register** notice, EPA proposed to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA) to be used for making this determination since it is Birmingham's attainment date.

II. Background

On August 21, 2002, EPA published a proposed rule to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA). The Birmingham area is comprised of Jefferson and Shelby Counties. On July, 10, 2002, the United States District Court for the District of Columbia concluded that EPA failed to exercise its non-discretionary duty to make a final attainment determination for the Birmingham area by May 15, 1994. The Court required that EPA make a formal attainment determination within 120 days from date of opinion. *Sierra Club* v. *Whitman,* No. 00–2206 (D.D.C. July 10, 2002). Therefore, in response to the Court's order, EPA is publishing this rule.

III. Response to Comments

What Comments Did We (EPA) Receive and What Are Our Responses?

EPA received adverse comments from one commenter regarding the proposed determination that Birmingham attained the 1-hour ozone standard as of November 15, 1993. The commenter, Earthjustice, submitted the comments on behalf of the Sierra Club Alabama Chapter, the Sierra Club Cahaba Group, the Alabama Environmental Council, and Alabama Physicians for Social Responsibility. They raised a number of policy and legal issues that EPA has considered and is responding to below.

Comment 1: According to the commenter, ''EPA's proposal flies in the face of the Clean Air Act's mandate to protect * * * people from the health threats posed by smog.''

Response: EPA is not failing to protect the people of Birmingham from the health threats posed by ozone. As described below in response to Comment 5, EPA has already taken steps to require the State of Alabama to deal with Birmingham's ozone problems and the State has taken the necessary steps and adopted additional significant control measures that will be implemented no later than the spring of next year. Furthermore, the State has demonstrated that those additional measures will lead to attainment of the 1-hour ozone standard in Birmingham by November of next year, which is the date for attainment that EPA determined was as expeditiously as practicable. That EPA disagrees with the commenter about the precise statutory mechanism to utilize in achieving attainment of the 1-hour ozone standard in Birmingham does not mean that EPA is not acting to fulfill the objective of the Clean Air Act of achieving attainment of the ozone standard as expeditiously as practicable. To the contrary, EPA has already acted to fulfill that objective and is protecting the people of Birmingham from ozone pollution.

Comment 2: The commenter asserts that EPA proposed to find that the Birmingham area ''has attained'' the 1-hour ozone standard ''solely on the basis of air quality data in the 1991–93 period,'' even though Birmingham has violated the standard since then and continues to do so. The commenter concludes that Birmingham has not attained the ozone NAAQS and that for ''EPA to assert otherwise, based on air quality conditions ten years or more ago, defies reality.''

Response: The pertinent statutory provision of the Clean Air Act clearly and explicitly establishes the criteria to be applied in determining whether a 1-hour ozone nonattainment area classified under subpart 2 of part D of Title I of the Clean Air Act has failed to attain the 1-hour standard and must be reclassified by operation of law. Section 181(b)(2)(A) provides that: ''Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, *the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. * * ** [A]ny area that the