

conduct an advisory review of the Agency's Environmental Radiation Ambient Monitoring System (ERAMS) in a public meeting on Thursday, July 13 and Friday, July 14, 1995. The review will take place at the Agency's National Air and Radiation Environmental Laboratory (NAREL), 540 South Morris Avenue, Montgomery, Alabama 36115-2601 [Tel. No. (334) 270-3400]. The meeting will begin at 9:00 a.m. on Thursday, July 13 and end no later than 3:00 p.m. Friday, July 14, 1995. The RAC was introduced to the topic of this review at its public meeting of May 25, 1995 in which a preliminary discussion occurred on the upcoming advisory review of the Environmental Radiation Ambient Monitoring System (ERAMS) [See **Federal Register** Vol. 60, No. 80, Wednesday, April 26, 1995, pages 20491-20492]. This meeting is open to the public, but seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana L. Pozun at (202) 260-6552 or FAX (202) 260-7118 no later than 12 noon eastern time on July 10, 1995.

The ERAMS is a continuous monitoring network operating throughout the U.S. and its territories. The basic goals of the network are to provide a means of estimating the ambient levels of radioactive pollutants in the environment, following trends in environmental radioactivity levels, and assessing the impact of fallout and other intrusions of radioactive materials. Currently, the ERAMS network is used to collect air, pasteurized milk, precipitation, surface water, and drinking water. Several thousand samples per year are collected. There are approximately 300 sampling stations across the U.S. and its territories operated on a voluntary basis primarily by state and local health agencies. The stations are distributed so as to cover each geographic region, most individual states, and major population centers.

The tentative charge to the SAB's RAC regarding the ERAMS protocol involves the following:

(1) Are the proposed objectives adequate for the refinements and redirection of ERAMS, given the priorities that emerged from the various efforts to evaluate the program and user needs?

(2) With specific emphasis on ambient monitoring, site-specific monitoring,

and data dissemination, are the general approaches outlined in the Agency's submittal to the proposed objectives appropriate?

The draft documents that are the subject of this review are available from the originating EPA office (see below) and are *not* available from the SAB Office. At this time the only draft document that has been provided to the SAB's RAC at this time is background information on the ERAMS program (i.e., the ERAMS Manual, EPA 520/5-84-007, -008, -009). It is expected that additional information specifically relevant to the review will be provided to the Committee soon. To discuss technical aspects of the ERAMS program, or to obtain review and background information provided to the SAB's RAC, please contact Dr. Mary Clark, Technical Advisor, Office of Radiation and Indoor Air (ORIA), U.S. Environmental Protection Agency (6601J), 401 M Street, SW., Washington, D.C. 20460 (Tel. 202-233-9348; FAX 202-233-9651).

To simply obtain copies of the draft documents, please contact Ms. Virginia Stradford, Secretary, at (202) 233-9350, FAX (202) 233-9650. The background documents that support this review, as well as the draft documents listed above are available in the Agency's Air and Radiation Docket. Please address written inquiries as follows: USEPA, Attn: Air and Radiation Docket, Mail Stop 6102, Air, Room M1500, First Floor, Waterside Mall, 401 M Street, SW, Washington, DC 20460. The docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, in Room M1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Lynn Johnson, ORIA Staff at (202) 233-9383.

Members of the public who wish to make a brief oral presentation at this meeting must contact Mrs. Diana L. Pozun, Staff Secretary, RAC, (tel. 202-260-6552; FAX 202-260-7118) no later than Monday, July 10, 1995, in order to have time reserved on the agenda. For a copy of the proposed agenda, please contact Ms. Pozun at the numbers given above or via the INTERNET: POZUN.DIANA@EPAMAIL.EPA.GOV. For questions regarding technical issues to be discussed, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, tel. (202) 260-2560, FAX (202) 260-7118, or via the INTERNET: KOYOOMJI-

AN.JACK@EPAMAIL.EPA.GOV. At this meeting, possible future review topics may be discussed as time permits.

#### **Providing Oral or Written Comments at SAB Meetings**

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date (usually one week prior to the meeting), may be mailed to the committee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the committee up until the time of the meeting.

Dated: June 13, 1995.

**A. Robert Flaak,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 95-15433 Filed 6-22-95; 8:45 am]

BILLING CODE 6560-50-P

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[FRL-5225-5]

#### **Interim Policy on Compliance Incentives for Small Businesses**

**AGENCY:** Office of Enforcement and Compliance Assurance, EPA.

**ACTION:** Notice.

**SUMMARY:** The Office of Enforcement and Compliance Assurance (EPA) is issuing this *Interim Policy on Compliance Incentives for Small Businesses*. This interim Policy is intended to promote environmental compliance among small businesses by providing incentives for participation in compliance assistance programs, and encouraging the prompt correction of violations. The Policy accomplishes this in two ways: by setting forth guidelines for the Agency to reduce or waive penalties for small businesses that make good faith efforts to correct violations, and by providing guidance for States and local governments to offer these incentives.

**DATES:** Comments must be received on or before July 31, 1995.

**ADDRESSES:** Comments may be mailed to: Small Business Policy, Mail Code 2224-A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Elliott Gilberg, 202-564-2310, Office of Compliance, Mail Code 2224-A, or

David A. Hindin, 202-564-2230, Office of Regulatory Enforcement, Mail Code 2248-A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

**SUPPLEMENTARY INFORMATION:** Pursuant to this Interim Policy, EPA will exercise its discretion, under applicable media-specific policies, to refrain from initiating an enforcement action seeking civil penalties, or to mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements and where there is no criminal behavior and no significant health, safety or environmental threat. In addition, EPA is creating special incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the government. In such circumstances, and provided the small business meets certain criteria set forth in the Policy, EPA will exercise its discretion to waive the entire penalty for environmental violations. Moreover, EPA will defer to state actions that are consistent with this Policy.

Dated: June 13, 1995.

**Steven A. Herman,**

*Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency.*

**A. Introduction**

This document sets forth the Environmental Protection Agency's Interim Policy on compliance incentives for small businesses. This Policy is one of the 25 regulatory reform initiatives announced by President Clinton on March 16, 1995, and implements, in part, the Executive Memorandum on Regulatory Reform, 60 FR 20621 (April 26, 1995).

The Executive Memorandum provides in pertinent part:

To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions [of this paragraph] shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

Pursuant to this Interim Policy, EPA will exercise its discretion, under applicable media-specific policies, to refrain from initiating an enforcement action seeking civil penalties, or to mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements and where there is no criminal behavior and no significant health, safety or environmental threat. In addition, as announced in the package of regulatory reform initiatives, EPA is creating special incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the government. In such circumstances, and provided the small business meets certain other criteria set forth below, EPA will exercise its discretion to waive the entire penalty. Moreover, EPA will defer to state actions that are consistent with this Policy.

**B. Background**

The Clean Air Act (CAA) Amendments of 1990 require that states establish Small Business Assistance Programs (SBAPs) to provide technical and environmental compliance assistance to stationary sources. On August 12, 1994, EPA issued an enforcement response policy which provided that an authorized or delegated state program may, consistent with federal requirements, either:

- (1) assess no penalties against small businesses that voluntarily seek compliance assistance and correct violations revealed as a result of compliance assistance within a limited period of time; or
- (2) keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance, where the SBAP is independent of the state enforcement program.

In a further effort to assist small businesses to comply with environmental regulations, and to achieve health, safety, and environmental benefits, the Agency is adopting a similar policy for water, toxics, hazardous waste, and other media programs. This interim Policy sets forth the Agency's implementation of the Executive Memorandum.

**C. Purpose**

This interim Policy is intended to promote environmental compliance among small businesses by providing incentives for participation in compliance assistance programs, and encouraging the prompt correction of

violations. The Policy accomplishes this in two ways: by setting forth a settlement penalty Policy that rewards such behavior, and by providing guidance for States and local governments to offer these incentives.

EPA is committed to a strong enforcement and compliance assurance program as a means to protect human health and the environment. We expect this Policy to encourage greater participation in compliance assistance programs that offer services to small businesses (referred to generically as SBAPs in this Policy). The Policy will allow greater openness among SBAPs and specific facilities, the small business community in general, and other federal and state officials. It will promote the sharing of information on pollution prevention measures, cost effective means of compliance and other valuable compliance-related activities with and among the regulated community. Application of the policy to all media programs should encourage small businesses to look for "whole facility" approaches to environmental compliance. Ultimately, by bringing many small businesses into compliance, this Policy will enhance the quality of our air, water, and land.

Measuring the success of compliance assistance programs is a critical component of EPA's ability to assess the results of compliance and enforcement activities. EPA will work with States to evaluate the effectiveness of this Policy and, in 1997, EPA will consider whether this Policy should be continued, modified or discontinued.

**D. Applicability**

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity who employs 100 or fewer individuals (on a companywide basis). This definition is a simplified version of the CAA § 507 definition of small business. On balance, EPA determined that a single definition would make implementation of this Policy simple and would allow for consistent application of the Policy in a multimedia context.

This interim policy is effective immediately. This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers, except for corrective action programs and the Public Water System Supervision Program under the Safe Drinking Water Act.<sup>1</sup> This Policy

<sup>1</sup> This Policy does not apply to corrective action programs (such as CERCLA, RCRA § 7003, and

applies to all such actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the amount of the civil penalty.

This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil settlement penalty for violations by small businesses. This Policy is to be used for settlement purposes and is not intended for use in pleading, or at hearing or trial. To the extent that this Policy may differ from the terms of applicable enforcement response policies under media-specific programs, this document supersedes those policies. This Policy supplements, but does not supplant the August 12, 1994 *Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs*.

#### E. Criteria for Civil Penalty Mitigation

EPA will eliminate or mitigate its settlement penalty demands against small businesses based on the following criteria:

(1) For purposes of sections F(1) and F(2), *the small business has made a good faith effort to comply with applicable environmental requirements as demonstrated by receiving compliance assistance from a non-confidential government or government supported program that offers services to small businesses (such as a SBAP or state university), and the violations are detected during the compliance assistance.*<sup>2</sup>

Good faith does not exist if an agency specifically offered a compliance assistance program concerning the relevant regulated activities to the business and it failed to participate in such program.

(2) *This is the small business's first violation of this requirement.* This Policy applies to businesses that have not previously been subject to a warning letter, notice of violation, field citation,

SDWA § 1431) because these programs are primarily remedial in nature and generally do not seek penalties. This Policy does not apply to the Public Water System Supervision Program because EPA is developing another policy which addresses compliance by small communities.

<sup>2</sup>If the compliance or technical assistance program keeps the information obtained confidential (i.e., does not share or disclose facility specific information on compliance status with a regulatory agency), this Policy does not apply. However, if a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential program, the business need only disclose the violations to the appropriate regulatory agency pursuant to criterion 1 and comply with the other provisions of this Policy.

or other enforcement action by a government agency for a violation of that requirement within the past five years. If a business has been subject to multiple enforcement actions for violations of environmental requirements in the past five years, this Policy does not apply even if this is the first violation of this particular requirement.

(3) The policy does not apply if:

(a) The violation has caused actual serious harm to public health, safety, or the environment; or

(b) The violation may present an imminent and substantial endangerment to public health or the environment; or

(c) The violation presents a significant health, safety or environmental threat (e.g., violations involving hazardous or toxic substances may present such threats).

(4) *The violation does not involve criminal conduct.*

(5) *The business corrects the violation within the corrections period set forth below.*

Small businesses are expected to remedy the violations within the shortest practicable period of time. Small businesses may take up to 90 days following detection of the violation to correct the violation, or to take substantial steps to correct the violations (e.g., apply for necessary permits, secure financing, order equipment). For violations that cannot be corrected within 90 days, the correction period may be extended for an additional period not to exceed 90 days, so long as the business enters into a written agreement that sets forth the additional correction period and any additional steps to be undertaken by the business to achieve compliance. The schedule may extend for an additional period of 180 days, i.e., up to a period of one year from the date the violation is detected, only if necessary where the small business corrects the violation by implementing pollution prevention measures. Correcting the violation includes remediating any environmental harm associated with the violation.<sup>3</sup> Any corrections period longer than 180 days should be incorporated into an enforceable order. The requirements of the correction period should be made clear to the small business prior to offering compliance assistance.

#### F. Penalty Mitigation Guidelines

EPA will exercise its enforcement discretion to eliminate or mitigate civil settlement penalties as follows.

<sup>3</sup>If significant efforts will be required to remediate the harm, criterion 3 is likely not to have been satisfied.

1. EPA will eliminate the civil settlement penalty in any enforcement action if a small business satisfies all of the criteria in section E.

2. If the small business meets all of the criteria, except it needs a longer corrections period than provided by criterion 5 (i.e., more than 180 days for non-pollution prevention remedies, or 360 days for pollution prevention remedies), EPA will waive up to 100% of the gravity component of the penalty, but may seek the full amount of any economic benefit associated with the violations.<sup>4</sup>

3. If a small business has not met all the criteria above, but has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable policies, to refrain from filing an enforcement action seeking civil penalties or to mitigate its demand for penalties to the maximum extent appropriate. These policies generally recognize good faith efforts to comply and allow for mitigation of the penalty where there is a documented inability to pay all or a portion of the penalty, thereby placing emphasis on enabling the small business to finance compliance.

#### G. Other Factors

To ensure that this Policy enhances and does not compromise public health and the environment, the following conditions apply:

1. Violations detected through federal, state, or local enforcement inspections or reported to an agency as required by applicable regulations or permits remain fully enforceable.

2. A business is subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that had been detected through compliance assistance and were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

3. A business's good faith efforts to correct violations detected during compliance assistance should be considered as a mitigating factor in determining an appropriate enforcement response or penalty in a subsequent enforcement action. However, a State's or EPA's actions in providing

<sup>4</sup>In determining how much of the gravity component of the penalty is appropriate, EPA should consider the nature of the violations, the duration of the violations, the environmental or public health impacts of the violations, good faith efforts by the small business to promptly remedy the violation, and the facility's overall record of compliance with environmental requirements.

compliance assistance is not a legal defense in any enforcement action. This Policy does not limit EPA or a state's discretion to use information on violations revealed through compliance assistance as evidence in subsequent enforcement actions.

#### H. Applicability To States

EPA recognizes that states are partners in enforcement and compliance assurance. Therefore, EPA will defer to state actions in delegated or approved programs that are generally consistent with the guidelines set forth in this Policy.

This Policy does not require SBAPs to provide to EPA information that identifies the names or locations of specific businesses that are found to be in violation through compliance assistance. EPA recommends, however, that whenever an agency provides a correction period to a small business, the agency notify the appropriate EPA Region or state of its action, to assure that federal and state enforcement responses to the identified violations are consistent. A state program that offers confidentiality may not also offer a corrections period for the same violations (see footnote 2).<sup>5</sup>

In developing this Policy, EPA balanced three primary considerations. First, the Agency is seeking to provide States with ample opportunity to adopt innovative approaches to environmental compliance. Thus, the Policy provides the parameters within which States have flexibility to tailor SBAPs to their needs.

Second, EPA recognizes that participation in SBAPs by individual businesses is typically voluntary. Assistance is provided generally upon request. Thus, the Agency is seeking to assure states of the ability to provide incentives that will encourage many small businesses to participate in SBAPs.

Third, the environmental statutes covered by this Policy generally require, as a condition of delegation or authorization, that programs be consistent with Federal requirements and that states have the authority to take appropriate enforcement action with respect to violations.<sup>6</sup> Thus, EPA has an obligation to ensure that state SBAPs are

structured so as to maintain an appropriate level of enforcement authority within delegated or authorized state programs. The Agency believes this Policy will allow states sufficient latitude to use an appropriate combination of delegated state enforcement authority and compliance assistance activity to improve compliance in the small business community.

[FR Doc. 95-15435 Filed 6-22-95; 8:45 am]

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[FRL-5226-6]

#### Proposed Settlement Agreement, Clean Air Act; Petition for Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed settlement agreement in the following cases: *American Petroleum Institute v. U.S. Environmental Protection Agency*, No. 94-1138 (D.C. Cir.); *Texaco, Inc. and Star Enterprises v. U.S. Environmental Protection Agency*, No. 94-1143 (D.C. Cir.) (consolidated cases). These petitions for review were filed under § 307(b) of the Act, 42 U.S.C. 7607(b), contesting various aspects of the regulations issued by EPA on December 15, 1993 for reformulated and conventional gasoline.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-7606. Written comments should be sent to John T. Hannon, Esq. at the above address and must be submitted on or before July 24, 1995.

Dated: June 14, 1995.

**Jean C. Nelson,**

*General Counsel.*

[FR Doc. 95-15436 Filed 6-22-95; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 94-32; DA 95-1365]

#### In-Flight Phone Corp.; Allocation of Spectrum Below 5 GHz Transferred From Government Use

**AGENCY:** Federal Communications Commission.

**ACTION:** Public notice.

**SUMMARY:** This Public Notice solicits comment on a pioneer's preference request filed by In-Flight Phone Corp. (In-Flight). The action is taken in response to a filing by In-Flight.

**DATES:** Comments are due July 3, 1995; reply comments are due July 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Office of Engineering and Technology, (202) 776-1622.

**SUPPLEMENTARY INFORMATION:** This is the text of the Commission's Public Notice in GEN Docket No. 94-32, released June 16, 1995. The pioneer's preference request filed by In-Flight is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington D.C. 20037.

#### Comment Sought on In-Flight Phone Corp. Pioneer's Preference Request

On March 16, 1995, In-Flight Corp. (In-Flight) filed a Petition for Declaratory Ruling (Petition) asking that its pioneer's preference (PP) Request filed in the Narrowband Personal Communications Services proceeding, ET Docket No. 92-100, now be considered in ET Docket No. 94-32, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use. The Petition was placed on Public Notice on April 28, 1994; see DA 95-967. No comments were filed on this Public Notice. On June 8, 1995, in response to the Commission's Third Report and Order in the pioneer's preference review proceeding (see ET Docket No. 93-266, FCC 95-218, released June 8, 1995), In-Flight filed a Supplement to its PP Request. In the Supplement, In-Flight asks that the

<sup>5</sup>The CAA § 507 policy establishes criteria for EPA approval of SBAPs in State Implementation Plans to satisfy the mandate in the CAA, and addresses confidential assistance in that context.

<sup>6</sup>For example, the Resource Conservation and Recovery Act provides that the Administrator may authorize any State to administer and enforce the Act unless he finds, among other things, that "such program does not provide adequate enforcement of compliance with the requirements of" the Act. 42 U.S.C. 6926(b).