

beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB-1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Task Force on Education and future reports may be found at the Secretary of Energy Advisory Board's web site, located at <http://www.hr.doe.gov/seab>.

Issued at Washington, D.C., on May 15, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

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DEPARTMENT OF ENERGY

Small Entity Compliance Guidance and Civil Penalty Reduction and Waiver Pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996; Statement of Policy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy today publishes a statement of policy regarding guidance to small entities concerning compliance with statutory and regulatory requirements and the waiver or reduction of civil penalties for small entities that violate statutory and regulatory requirements. This policy statement is published to comply with sections 213 and section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: This policy takes effect on June 22, 1998.

ADDRESSES: Interested persons may submit any comments or suggestions with respect to this policy statement to Michael W. Bowers, U.S. Department of Energy, Office of General Counsel, GC-74, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, U.S. Department of Energy, Office of General Counsel, GC-74, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Background

The Small Business Regulatory Enforcement Fairness Act (SBREFA), which was enacted as title II of Pub. L. 104-121, was signed into law on March 29, 1996. The primary goals of SBREFA as stated in the Act are to implement recommendations of the 1995 White House Conference on Small Business; provide small entities enhanced opportunities for judicial review of final agency action; encourage small business participation in the regulatory process; develop more accessible sources of information on regulatory and reporting requirements for small entities; create a more cooperative regulatory environment for small businesses; and make federal regulators more accountable for "excessive" enforcement actions.

Section 221 of SBREFA, 5 U.S.C. 601 note, defines the term "small entity" as having the same meaning as in section 601 of the Regulatory Flexibility Act (RFA). The RFA defines "small entity" as any "small business," "small organization," or "small governmental jurisdiction." 5 U.S.C. 601(6). Under the RFA, a "small business" has the same meaning as "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after an opportunity for public comment, establishes other appropriate definitions. 5 U.S.C. 601(3). Under the Small Business Act, a "small business concern" is one that is independently owned and operated and not dominant in its field of operation (15 U.S.C. 632(a)(1)). SBA regulations further define "small business concern" using number of employees or annual income by industry category. 13 CFR part 121. SBA's regulations also provide that the affiliates of an enterprise are included in determining its size. 13 CFR 121.103. The RFA defines "small organization" as a not-for-profit enterprise which is independently owned and operated and not dominant in its field, unless an agency, after opportunity for public comment, establishes other definitions of the term appropriate to its activities and publishes such definitions in the **Federal Register**. 5 U.S.C. 601(4). The RFA defines a "small governmental jurisdiction" as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000, unless an agency establishes other appropriate definitions after opportunity for public comment. 5 U.S.C. 601(5). The Department of Energy (DOE or

Department) has not established alternative definitions of these terms. The RFA definitions of these terms are included in Section III of the policy statement published today.

The Department currently does not administer any program that is focused principally on the regulation of small entities. DOE does administer programs that involve financial assistance to, or procurement from, small entities. Moreover, requirements in particular rules issued by DOE, which may be enforced by assessment of civil penalties, may apply to some small entities as well as large ones. Therefore, to comply with sections 213 and 223 of SBREFA, the Department has issued the policies set forth in this notice in order to provide for: (1) Guidance to small entities concerning compliance with statutes and regulations under the Department's jurisdiction, and (2) the reduction and waiver of civil penalties for small entities.

II. Policy on Compliance Guidance to Small Entities

Under section 213 of SBREFA, 5 U.S.C. 601 note, each agency that regulates the activities of small entities is directed to establish a program for responding to inquiries from small entities concerning compliance, utilizing existing functions and personnel of the agency to the extent practicable. Section 213(a) provides: "Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity."

The Department provides a variety of information and guidance to persons about compliance with the requirements of the programs it administers. Each substantive area under the Department's jurisdiction has staff members who respond to inquiries about compliance with applicable laws and regulations. If sources of general information are insufficient to provide the needed guidance or assistance, DOE staff members may provide specific, informal advice, or may advise the requester to

use a more formal method to obtain answers to its inquiry. Following are some examples of information and procedures that are available to persons, including small entities, subject to particular DOE regulatory requirements:

- DOE directives, including compliance guides, are available on an Internet website (<http://www.explorer.doe.gov>). These directives primarily apply to the Department's management and operation of its facilities and to DOE contractors and subcontractors if incorporated into contracts. Explorer links to the DOE Technical Standards Program's home page (<http://apollo.osti.gov/html/techstds/techstds.html>), which provides access to guides and handbooks pertaining to use of technical standards in DOE programs. The Department of Energy home page (<http://www.doe.gov>) also includes links to information (e.g., names and telephone numbers of contact persons) provided by various program offices to assist persons who must comply with regulatory requirements.

- DOE has issued a formal policy that addresses issuance of guidance documents, including technical standards, to assist contractors in implementing environment, safety and health requirements at DOE sites (DOE P 450.2A). That policy also commits DOE to provide opportunities for public input on guidance relating to nuclear safety rules, including publication of notice of the availability of such guidance and acceptance of public comments. DOE also has published a detailed statement of policy concerning enforcement of nuclear safety requirements as an appendix to its procedural rules for DOE nuclear activities. 10 CFR part 820, appendix A. This policy statement was amended on October 8, 1997 (62 FR 52479).

- The Office of Energy Efficiency and Renewable Energy has promulgated rules for the Alternative Fuel Transportation Program that allow an owner or operator of a fleet of motor vehicles to request an interpretive ruling on how DOE's regulations apply to its particular facts and circumstances. 10 CFR 490.5. The regulations provide that "[n]o person who obtains an interpretive ruling * * * shall be subject to an enforcement action for civil penalties or criminal fines for actions reasonably taken in reliance thereon * * *" 10 CFR 490.5(i). The Office also issued a "plain English" compliance guide when it published regulations for the program.

The Department has not established a separate program specifically to provide compliance guidance to small entities.

The programs administered by DOE generally involve large companies with contracts to conduct operations at DOE facilities or regulation of private sector companies, such as appliance manufacturers, that are not small entities. The Department's policy is that each program office with authority to bring enforcement actions against small entities for violations of statutory or regulatory requirements should provide compliance guidance to small entities to the extent appropriate and practicable. Under this policy, DOE usually will answer inquiries of small entities concerning compliance if doing so does not interfere with a matter that currently is under investigation or the subject of governmental proceedings.

The Department's policy on providing compliance guidance to small entities includes several conditions on responding to requests by small entities for written guidance applying law to facts they have provided. These conditions are necessary because SBREFA provides that agency guidance may be considered as evidence in any civil or administrative enforcement proceeding. The policy provides that before responding in writing to a small entity's request, DOE offices should require the person who has requested the written guidance to provide in writing the specific facts and circumstances relevant to its request and to identify the pertinent statute or regulation. In addition, the policy calls for DOE offices to consult with legal counsel, and any other DOE office or agency with an interest in the matter, before providing a written response to a small entity. With regard to DOE nuclear activities, the Secretary has delegated to the General Counsel the responsibility for formulating and issuing any interpretation concerning the Atomic Energy Act of 1954, other nuclear statute, or a DOE nuclear safety requirement. 10 CFR 820.51.

III. Policy on Reduction and Waiver of Civil Penalties for Small Entities

Section 223(a) of SBREFA, 5 U.S.C. 601 note, provides the following general standard for agency reduction and waiver policies: "Each agency regulating the activities of small entities shall establish a policy or program * * * to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities."

DOE interprets the term "civil penalties" in section 223 to mean civil

money penalties. This interpretation is consistent with the provision that an agency may consider a small entity's "ability to pay," and the requirement in section 223(c) that each agency report to Congress on the "total amount of penalty reductions and waivers" under its policy or program.

Section 223(b) provides that agency policies or programs are "(s)ubject to the requirements of other statutes" and, thus, do not supersede existing laws on penalties. It provides, moreover, that agency policies or programs shall contain conditions or exclusions, which may include, but shall not be limited to: (1) Requiring the small entity to correct the violation within a reasonable time; (2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a state; (3) excluding from the program small entities that have been subject to multiple enforcement actions by the agency; (4) excluding violations involving willful or criminal conduct; (5) excluding violations that pose serious health, safety, or environmental threats; and (6) requiring a good faith effort to comply with the law.

Several conditions or exclusions suggested in SBREFA are similar to provisions of a Presidential memorandum on regulatory reform issued on April 21, 1995, which directed executive agencies to modify penalties for small businesses. The memorandum provides that agencies shall exercise their 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 * * *. The provisions (of this section) 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." Memorandum of the President of the United States to Executive Agencies, "Regulatory Reform—Waiver of Penalties and Reduction of Reports" (April 21, 1995) (5 U.S.C. 601 note).

The Department has authority to impose civil penalties under various statutes. Section 18 of the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2282a, authorizes DOE to impose civil money penalties of up to \$110,000 on certain persons for violation of DOE nuclear safety requirements in any

applicable rule, regulation or order.¹ The Department has published a statement of enforcement policy for implementing this authority. 10 CFR part 820, appendix A. Under the National Defense Authorization Act for Fiscal Years 1992 and 1993, DOE may impose civil penalties on any contractor of DOE who fails to provide for the training of individuals involved in hazardous substance response or emergency response at DOE nuclear weapons facilities, or who fails to certify such training. 42 U.S.C. 7274d. The Department also has authority to impose civil penalties for violation of certain provisions of the Energy Policy Act, 42 U.S.C. 13262; the Energy Policy and Conservation Act, 42 U.S.C. 6303; the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812; and various other statutes. As mentioned previously, the programs administered by DOE generally involve large contractors and companies, but DOE rules sometimes apply to individual small entities that may be subject to assessment of civil penalties for violation of regulatory requirements.

DOE will consider whether to reduce or waive civil penalties that have been assessed against small entities on a case-by-case basis. Under the DOE policy, small entities are not eligible for the reduction or waiver of a civil penalty if: (1) The violation involves willful or criminal conduct; (2) the small entity has not made a good faith effort to comply with the law; or (3) the violation poses a serious threat to health, safety, or the environment. These exclusions are given as examples in SBREFA and are consistent with the President's memorandum on waiver of penalties for small businesses.

The Department's policy statement includes a non-exclusive list of factors that DOE may weigh in deciding whether to reduce or waive a civil penalty that has been assessed against an eligible small entity. DOE will consider a reduction or waiver of a civil penalty in the following circumstances: (1) The small entity has not been subject to previous enforcement actions for statutory or regulatory violations; (2) the small entity has a low degree of culpability (e.g., violation was committed inadvertently or without knowledge of requirements); (3) the small entity cooperated fully during the

investigation that revealed the violation; (4) the small entity engaged in subsequent corrective actions to mitigate the effects of the violation and prevent future violations; (5) the small entity reasonably relied on misleading or erroneous advice given by a DOE officer or employee; and (6) the small entity is unable financially to pay the penalty. Each factor does not necessarily need to be present for a small entity to qualify for reduction or waiver of a civil penalty, and some factors may be weighed more heavily than others, depending on the particular circumstances.

The Department does not intend this policy statement on reduction and waiver of civil penalties for small entities to change its current policies for enforcing nuclear safety requirements under 10 CFR part 820. This statement of policy complements, and is not intended to be inconsistent with, the statement of enforcement policy in part 820. In enforcing nuclear safety requirements, the Department encourages and rewards contractors who promptly identify, report, and correct non-compliant conditions before they become serious health, safety or environmental threats. See General Statement of Enforcement Policy, appendix A to 10 CFR part 820, "Procedural Rules for DOE Nuclear Activities." The Department's policy is to reduce significantly the base civil penalty for a DOE contractor who identifies and promptly reports a violation to DOE. On the other hand, the policy provides for setting a civil penalty assessment above the base civil penalty if a covered contractor fails to promptly report and correct potential violations.

The DOE policy concerning the reduction and waiver of civil penalties for small entities does not create a right or remedy for any person. The Department reserves the right to reduce or waive civil penalties in circumstances other than those listed under the policy statement if it is legally permissible and in the public interest to do so.

IV. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of this policy statement prior to the effective date. The report will note that the Office of Management and Budget has determined that this statement of policy does not constitute a "major rule" under that Act. 5 U.S.C. 804(2).

Issued in Washington, D.C., on May 12, 1998.

Mary Anne Sullivan,
Acting General Counsel.

Statement of Policy on Compliance Guidance and Reduction and Waiver of Civil Penalties for Small Entities

The Department of Energy (DOE or Department) has issued this policy statement to comply with sections 213 and 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which was enacted as title II of Pub. L. 104–121. Section 213(b) of SBREFA, 5 U.S.C. 601 note, requires agencies that regulate the activities of small entities to establish a program for responding to inquiries from small entities concerning information on, and advice about, compliance with statutory and regulatory requirements. Section 223 of SBREFA, 5 U.S.C. 601 note, requires each agency regulating the activities of small entities to establish a program or policy to provide for the reduction, and under appropriate circumstances, for the waiver of civil penalties for violations of statutory or regulatory requirements by small entities.

I. Compliance Guidance to Small Entities

The following policies apply to inquiries from small entities concerning compliance with applicable statutes and regulations:

1. Each DOE office with authority to bring enforcement actions against small entities for violation of statutory or regulatory requirements (hereafter "DOE office") should answer inquiries by small entities concerning the application of statutes and regulations to specific facts or circumstances, unless answering an inquiry may interfere with an ongoing investigation or proceeding or otherwise would not be appropriate or practicable.

2. DOE offices should require a small entity that requests DOE to provide written guidance applying the law to facts to state the specific facts and circumstances relevant to its request and to identify the pertinent statute or regulation and the related question on which guidance is sought.

3. DOE offices should consult with Department legal counsel, and any other office or agency with an interest in the matter, before responding in writing to a request by a small entity for guidance regarding how a statute or regulation applies to particular facts and circumstances.

4. DOE offices should deny a request by a small entity for compliance guidance if the small entity has not

¹ DOE recently revised the civil penalty amounts specified in the PAAA and other statutes to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134. See Final Rule, Inflation Adjustment of Civil Monetary Penalties, 62 FR 46181 (Sept. 2, 1997).

provided sufficient information upon which to base a response, or for other good cause.

II. Reduction and Waiver of Civil Penalties for Small Entities

1. DOE offices shall consider on a case-by-case basis whether to reduce or waive an initial assessment of a civil penalty against a small entity for violation of a statutory or regulatory requirement in accordance with the policies that follow.

2. A small entity that has been assessed a civil penalty by DOE shall not be eligible for a reduction or waiver of the penalty if any of the following apply:

(a) The violation involves willful or criminal conduct by the small entity;

(b) The small entity has not made a good faith effort to comply with the law; or

(c) The violation poses a serious threat to health, safety, or the environment.

3. Subject to the exclusions in paragraph 2, DOE offices may consider the following factors in deciding whether to reduce or waive a civil penalty against a small entity:

(a) The small entity's history of legal or regulatory violations;

(b) The degree of culpability of the small entity when it committed the violation;

(c) The extent to which the small entity cooperated during the investigation;

(d) The extent to which the small entity engaged in subsequent corrective actions to mitigate the effects of the violation and prevent future violations;

(e) The extent to which the small entity reasonably relied on misleading or erroneous advice given by a DOE employee;

(f) The ability of the small entity to pay the civil penalty, in whole or in part; and

(g) Any other relevant fact.

4. DOE offices should require a person requesting the reduction or waiver of a civil penalty under this policy to establish that it meets the definition of "small entity" set forth in Section III of this statement of policy.

5. This policy on reduction and waiver of civil penalties for small entities complements, and does not supersede, the general statement of enforcement policy in 10 CFR part 820, appendix A, which applies to enforcement of nuclear safety requirements.

6. The Department reserves the right to reduce or waive civil penalties in appropriate individual circumstances where it determines that a reduction or

waiver is permitted by law and warranted by the public interest.

III. Definition of "Small Entity"

For purposes of this policy, *small entity* means a "small business," "small organization," or "small governmental jurisdiction" as defined by the Regulatory Flexibility Act, 5 U.S.C. 601. The Regulatory Flexibility Act definitions are as follows:

(1) Small business has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless (DOE), after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of (DOE) and publishes such definition(s) in the **Federal Register**;

(2) Small organization means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless (DOE) establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of (DOE) and publishes such definition(s) in the **Federal Register**; and

(3) Small governmental jurisdiction means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless (DOE) establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of (DOE) and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**.

[FR Doc. 98-13587 Filed 5-20-98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-530-000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

May 15, 1998.

Take notice that on May 8, 1998, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in Docket No. CP98-530-000, a request, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act

(18 CFR 157.205 and 157.211), for authorization to install a tap, metering, electronic flow measurement, and appurtenant facilities for the delivery of transportation gas to AFG Industries, Inc. (AFG) in Flemington District, Taylor County, West Virginia, under Equitrans' blanket certificate authorization issued in Docket No. CP83-508-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Equitrans seeks authorization to install a tap connection on its existing pipeline, Number GST-902. Equitrans relates that it will have a ten year firm transportation agreement with AFG. Equitrans states that the annual delivered volumes will be approximately 1,642,000 Dth, with a peak day volume of 5,000 Dth and a daily contractual obligation of 4,300 Dth. Equitrans asserts that all volumes delivered to AFG will be within contractually permissible levels.

Equitrans states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. Equitrans estimates the cost to construct the facilities at approximately \$127,200, a portion of which will be reimbursed by AFG to Equitrans. Equitrans has sent a copy of this request to the West Virginia Public Service Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-13495 Filed 5-20-98; 8:45 am]

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