

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Fallbrook, CA (62 FR 6508). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 18 at Fallbrook Community Airpark, Fallbrook, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Fallbrook, CA. The development of a GPS SIAP to RWY 18 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 18 SIAP at Fallbrook Community Airpark, Fallbrook, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Fallbrook, CA [New]

Fallbrook Community Airpark, CA
(Lat. 33°21'15" N, long. 117°15'03" W)

* * * * *

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Fallbrook Community Airpark and within 4 miles west and 5.3 miles east of the 014° bearing from the Fallbrook Community Airpark, extending from the 6-mile radius to 20.5 miles north of the airport, excluding the portion within the Camp Pendleton, CA, Class E airspace area.

Issued in Los Angeles, California, on March 14, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97-8496 Filed 4-2-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AWP-27]

Amendment of Class E Airspace; San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on February 25, 1997 (62 FR 8369), Airspace Docket No. 96-AWP-27.

EFFECTIVE DATE: 0901 UTC March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97-4578, Airspace Docket No. 96-AWP-27, published on February 25, 1997 (62 FR 8369), revised the description of the Class E airspace area at San Jose, CA. An error was discovered in the geographic coordinates for the San Jose, CA, Class E airspace area. This action corrects that error.

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace area at San Jose, CA, as published in the **Federal Register** on February 25, 1997 (62 FR 8369) (**Federal Register** Document 97-4578; page 8369, column 3), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP CA E5 San Jose, CA [Corrected]

By removing “(lat. 37°22’00” N, long. 121°08’04” W, and lat. 37°22’00” N, long. 121°24’04” W.) and substituting “(lat. 37°22’00” N, long. 122°08’04” W, and lat. 37°22’00” N, long. 122°24’04” W.)”.

* * * * *

Issued in Los Angeles, California, on March 4, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97-8499 Filed 4-2-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM97-2-000; Order No. 594]

Statement of Compliance With Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996; Policy Statement

Issued March 26, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; policy statement.

SUMMARY: The Commission is issuing this Policy Statement in compliance with section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Section 223 of SBREFA requires each agency regulating the activities of small entities to establish a 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.

It is the policy of the Commission that to be considered for a reduction or waiver of a penalty, a small entity must not have a history of previous violations, and the violations at issue must not have been the product of willful or criminal conduct, or have caused loss of life or injury to persons, damage to property or the environment, or endangered persons, property or the environment. A small entity that complies with those standards is eligible for consideration for a waiver or reduction of a civil penalty. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. If an eligible small entity cannot meet the criteria for waiver of a civil penalty, it may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

The Commission reserves the right to waive or reduce civil penalties in circumstances other than those listed under this Policy if it is in the public interest to do so.

DATES: This rule is effective March 29, 1997.

FOR FURTHER INFORMATION CONTACT: Stuart Fischer, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, Telephone: (202) 208-1033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed

using a personal computer with a modem by dialing 202-208-1397 if dialing locally or 1-800-856-3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202-208-2474.

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Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

STATEMENT OF PENALTY REDUCTION/ WAIVER POLICY TO COMPLY WITH SECTION 223 OF THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

I. Introduction

The Commission is issuing this Policy Statement in compliance with section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).¹ Section 223 of SBREFA requires each agency regulating the activities of small entities to establish a 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.

It is the policy of the Commission that to be considered for a reduction or waiver of a penalty, a small entity must not have a history of previous violations, and the violations at issue must not have been the product of

willful or criminal conduct, or have caused loss of life or injury to persons, damage to property or the environment, or endangered persons, property or the environment. A small entity that complies with those standards is eligible for consideration for a waiver or reduction of a civil penalty. An eligible small entity will be granted a waiver if it can demonstrate that it also performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. If an eligible small entity cannot meet the criteria for waiver of a civil penalty, it may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

The Commission reserves the right to waive or reduce civil penalties in circumstances other than those listed under this Policy if it is in the public interest to do so.

II. Background

A. SBREFA

President Clinton signed SBREFA into law on March 29, 1996. The stated purpose of SBREFA is, among other things, "to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution oriented."²

Many of the provisions of SBREFA, such as congressional review of agency rulemaking, a right to judicial review under the Regulatory Flexibility Act (RFA), and amendments to the Equal Access to Justice Act became effective either on the date of enactment or within 90 days of that date. However, section 223 of SBREFA, entitled "Rights of Small Entities In Enforcement Actions," takes effect by March 29, 1997, one year after enactment.³ Section 223(a) of SBREFA requires each agency regulating the activities of small entities to establish a policy or program

² Pub. L. No. 104-121, 110 Stat. 858, Section 203(6) (1996).

³ *Id.*, Section 223(a). In addition to the requirements of section 223, section 213(b) of SBREFA requires agencies regulating the activities of small entities to establish a program by March 29, 1997, for responding to inquiries concerning information on, and advice about, compliance with statutory and regulatory requirements. *Id.*, Section 213(b). The Commission has already established and publicized advice programs for small entities offered by its Office of Hydroelectric Licensing and Office of Pipeline Regulation, as well as the availability of assistance through the Enforcement Task Force Hotline. Additionally, Commission staff from the Office of General Counsel, the Office of Electric Power Regulation and the Office of Chief Accountant respond to compliance inquiries made by all entities, regardless of size. Thus, the Commission has complied with section 213(b).

¹ Pub. L. 104-121, 110 Stat. 860, *et seq.*, Section 201, *et seq.* (1996). Section 223 is part of Subtitle B of SBREFA, entitled "Regulatory Enforcement Reforms." Subtitle B is codified as a note to 5 U.S.C. § 601 (1996), which is part of the Regulatory Flexibility Act. Because of this, we will use the session law citations in this policy statement.

providing for the reduction and, under appropriate circumstances, the waiver of civil penalties for violations of statutory or regulatory requirements by small entities.⁴ Penalty reduction/waiver policies or programs are "subject to the requirements or limitations of other statutes."⁵

1. Definition of "Small Entity"

Section 221(1) of SBREFA defines the term "small entity" as having the same meaning as in section 601 of the RFA.⁶ Section 601 of the RFA, in turn, defines "small entity" as "small business," "small organization" and "small governmental jurisdiction."⁷

Under Section 601(3) of the RFA, a "small business" has the same meaning as "small business concern" under section 632(a) of the Small Business Act,⁸ unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after opportunity for notice and comment, establishes its own definition.⁹

Section 632(a)(1) of the Small Business Act defines a "small business concern" as an enterprise "which is independently owned and operated and which is not dominant in its field of operation."¹⁰ The SBA has applied the definition of small business to a number of specific industries based on the sizes of the enterprises and their affiliations.¹¹ The SBA defines a "Natural Gas Transmission Company," which includes an interstate natural gas pipeline, as a small business if it has less than \$5,000,000 in revenues.¹² The SBA considers an electric utility, including a hydroelectric project, a small business if it produces up to four million megawatt hours per year.¹³

When the SBA determines whether an enterprise is a small business, it counts the enterprise's affiliations. Family enterprises or enterprises in which the same individual or individuals have a controlling interest are aggregated together for this purpose.¹⁴ If the aggregate total of the affiliated enterprises exceeds the size requirement for small businesses, none of the affiliated enterprises is considered a small business.

The RFA defines "small organization" as a not-for-profit enterprise which is independently owned and operated and not dominant in its field.¹⁵ The RFA defines a "small governmental jurisdiction" as a governmental entity with a population of less than 50,000.¹⁶

2. Conditions and Exclusions

SBREFA does not mandate the content of a penalty reduction/waiver policy. Subject to the requirements or limitations of other statutes, section 223(b) of SBREFA suggests, but does not require, several conditions or exclusions that may be included in such a policy. These are: Requiring correction of the violation within a reasonable period of time; limiting the applicability of the reduction/waiver policy to violations discovered through participation in a compliance assistance or audit program operated or supported by the agency or a state; excluding small entities that have been subject to multiple enforcement actions by the agency; excluding violations involving willful or criminal conduct; excluding violations that pose serious health, safety or environmental threats; and requiring a good faith effort to comply with the law.¹⁷ In addition to the suggested conditions and exclusions, section 223(a) of SBREFA states that "under appropriate circumstances" an agency may consider ability to pay in determining penalty assessments on small entities.¹⁸

B. The Commission's Civil Penalty Authority

The Commission has the authority to assess civil penalties under section 31(c) of the Federal Power Act (FPA),¹⁹ section 316A of the FPA,²⁰ and section 504(b)(6) of the Natural Gas Policy Act of 1978 (NGPA).²¹ The Natural Gas Act does not provide for civil penalties.

1. The FPA

Section 31(c) of the FPA provides for penalties up to \$10,000 per violation per day and requires that:

In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner.²²

The factors the Commission considers in assessing civil penalties are: Whether the person had actual knowledge of the violation or constructive knowledge deemed to be possessed by a reasonable individual acting under similar circumstances; whether the person has a history of previous violations; whether the violation caused loss of life or injury to persons; whether economic benefits were derived because of the violation; whether the violation caused damage to property or the environment; whether the violation endangered persons, property or the environment; whether there were timely, untimely or no remedial efforts; and whether there are any other pertinent considerations.²³ The section 385.1505 factors are similar to the conditions and exclusions suggested under section 223(b) of SBREFA.

Under the "other pertinent considerations" factor, the Commission has considered the size of a project, the gross revenues earned and whether the entity relied on advice given by Commission staff. While the Commission is not required under the FPA to consider an entity's ability to pay, the Commission has considered that factor when the respondent raised the issue.²⁴

The Commission also has civil penalty authority under section 316A of the FPA,²⁵ to remedy violations of sections 211, 212, 213 and 214 of that statute. Sections 211 and 212 of the FPA concern wheeling electric power. Section 213 contains reporting requirements involving requests for wholesale transmission services. Section 214 deals with sales by exempt wholesale generators.

2. The NGPA

Section 3414(b)(6) of the NGPA provides for civil penalties up to \$5,000 per violation per day and does not identify specific required factors to consider when assessing penalties, other than requiring that the violation is "knowing."²⁶ However, the Commission has informally considered factors similar to those in section 385.1505 when analyzing NGPA civil penalty matters.

²³ 18 CFR 385.1505.

²⁴ See, e.g., *Clifton Power Corp. v. FERC*, 88 F.3d 1258, 1267 (D.C. Cir. 1996); *Bluestone Energy Design, Inc. v. FERC*, 74 F.3d 1288, 1295 (D.C. Cir. 1996).

²⁵ 16 U.S.C. 825o-1 (1994).

²⁶ 15 U.S.C. 3414(b)(6)(A) (1994). The NGPA defines "knowing" as actual knowledge or constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances. 15 U.S.C. 3414(b)(6)(B) (1994).

⁴ *Id.*, Section 223(a).

⁵ *Id.*, Section 223(b).

⁶ *Id.*, Section 221(1).

⁷ 5 U.S.C. Section 601 (1994).

⁸ 15 U.S.C. Section 632(a)(1) (1994).

⁹ 5 U.S.C. Section 601(3) (1994).

¹⁰ 15 U.S.C. Section 632(a) (1994).

¹¹ 13 CFR 121.101-201.

¹² 13 CFR 121.201.

¹³ *Id.*

¹⁴ *Id.*, Section 121.103.

¹⁵ 5 U.S.C. Section 601(4) (1994).

¹⁶ 5 U.S.C. Section 601(5) (1994).

¹⁷ Pub. L. 104-121, 110 Stat. 862, Section 223(b)(1)-(6) (1996).

¹⁸ *Id.*, Section 223(a) (1996).

¹⁹ 16 U.S.C. Section 823b(c)(1994).

²⁰ 16 U.S.C. Section 825o-1 (1994).

²¹ 15 U.S.C. Section 3414(b)(6) (1994).

²² 16 U.S.C. 823b(c)(1994).

III. Discussion

A. Eligibility for Penalty Reduction or Waiver

The Commission is adopting many of the exclusions suggested by section 223(b) of SBREFA. Specifically, to be considered for a reduction or waiver of a penalty, a small entity must not have a history of previous violations, and the violations at issue must not have been the product of willful or criminal conduct, or have caused loss of life or injury to persons, damage to property or the environment, or endangered persons, property or the environment.²⁷ While SBREFA suggests limiting penalty reduction or waiver policies to violations discovered through a small entity's participation in a compliance assistance or audit program,²⁸ we will not make this a prerequisite because it would be too limiting. Requiring participation in a compliance assistance program could exclude first time violators who did not recognize their need for compliance assistance. Although seeking compliance assistance may be an indication of good faith for purposes of a penalty waiver or reduction, it will not be used as a bar to eligibility for this Waiver/Reduction Policy.

B. Criteria for Waiver or Reduction of a Civil Penalty

If it meets all of the eligibility criteria for this Waiver/Reduction Policy, a small entity will be granted a waiver of a civil penalty if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not derive an economic benefit from the violations. The requirements for timely remedial efforts and good faith are conditions suggested for penalty waiver or reduction under sections 223(b)(1) and (6) of SBREFA. These conditions are similar to factors that the Commission already considers under its regulations when determining civil penalties.²⁹

While the requirement that the small entity not be allowed to retain economic benefits from the violations is not a condition or exclusion identified in SBREFA, the Commission believes that this factor must be considered when determining whether to waive or reduce civil penalties. The final penalty

amount should capture any economic benefits derived from violations. Otherwise small entities could be encouraged to violate statutory and regulatory requirements for profit. Violators should not be able to retain economic benefits that are unavailable to small entities that comply with statutory and regulatory requirements.

If an eligible small entity meets some, but not all, of the criteria for a waiver of a civil penalty, it may still be eligible for a penalty reduced from that which would otherwise be appropriate. The appropriateness of a penalty and the level of reduction will be decided on a case-by-case basis by considering the same criteria used for determining a waiver.

In determining whether to reduce a civil penalty, the Commission will also consider, upon request, the small entity's ability to pay. In considering ability to pay, the Commission is following the suggestion in section 223(a) of SBREFA. If a small entity wants the Commission to consider its ability to pay a civil penalty, the entity must provide written documentation demonstrating its financial condition. Acceptable documentation includes, but is not limited to: Federal income tax returns, state income tax returns, income statements, balance sheets, statements of change in financial position, bank statements for loans and checking accounts. The Commission reserves the right to request more than one type of verifying data on financial condition. In analyzing ability to pay, the Commission will consider the small entity's cost of compliance with statutory and regulatory requirements.

The Commission reserves the right to waive or reduce civil penalties in circumstances other than those listed under this Policy if it is in the public interest to do so.

IV. Administrative Effective Date and Congressional Notification

Under the terms of 5 U.S.C. 553(d)(2), this Policy Statement is effective on March 29, 1997. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Policy Statement is not a major rule within the meaning of section 251 of Subtitle E of SBREFA.³⁰ The Commission is submitting this Policy Statement to both Houses of Congress and to the Comptroller General.

³⁰ 5 U.S.C. 804(2) (1996).

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,
Secretary.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding an undesignated center heading and § 2.500, to read as follows:

Statement of Penalty Reduction/Waiver Policy to Comply With the Small Business Regulatory Enforcement Fairness Act of 1996

§ 2.500 Penalty reduction/waiver policy for small entities.

(a) It is the policy of the Commission that any small entity is eligible to be considered for a reduction or waiver of a civil penalty if it has no history of previous violations, and the violations at issue are not the product of willful or criminal conduct, have not caused loss of life or injury to persons, damage to property or the environment or endangered persons, property or the environment. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. An eligible small entity that cannot meet the criteria for waiver of a civil penalty may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

(b) Notwithstanding paragraph (a) of this section, the Commission reserves the right to waive or reduce civil penalties in appropriate individual circumstances where it determines that a waiver or reduction is warranted by the public interest.

[FR Doc. 97–8314 Filed 4–2–97; 8:45 am]

BILLING CODE 6714–01–P

²⁷ See, Pub. L. 104–121, 110 Stat. 862, Section 223(b)(3)–(5) (1996).

²⁸ *Id.*, Section 223(b)(2).

²⁹ See, e.g., 18 CFR 385.1505(b)(8)–(10). The Commission considers good faith when determining the types of remedial efforts made by the violator and whether the violator had actual or constructive knowledge of the violation. See, e.g., 18 CFR 385.1505(b) (1), (2) and (8)–(10).