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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

**Anti-Drug Program for Personnel
Engaged in Specified Aviation Activities;
Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Admt. No. 121-210]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: The FAA announces a delay in the compliance date for drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, employees located outside the territory of the United States must become subject to testing no later than January 2, 1992. This extension of compliance date is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Mayer, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3410.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FAA, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring preemployment, post-accident, reasonable cause and random drug testing (53 FR 47024). Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. (The Federal Railroad Administration rule issued at that time governed only random testing; other forms of drug testing for covered railroad employees were already required by previously issued regulations. 49 CFR part 219; See 50 FR 31508, August 2, 1985.) On April 14, 1989, the FAA amended the drug testing regulation to extend certain compliance dates and make other minor revisions (54 FR 15148).

The drug testing required by the rule applies to employees performing sensitive safety- and security-related functions, including employees located outside the territory of the United States. However, the rule provides that

they would not apply in any situation in which application of the rules violated local laws or policies.

At the same time, the FAA stated that the DOT and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The final rule stated that if, as a result of those discussions, we found that amendments to the rule were necessary, action would be taken in a timely manner. Under the current schedule, drug testing of employees located outside the territory of the United States is scheduled to begin by January 1, 1991.

DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and have found that there are a number of important issues on which we agree. The DOT and the FAA continue to believe that, with additional time, it will be possible to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, the OST has determined that additional time is necessary. An additional delay of approximately one year should enable an acceptable arrangement to be developed on drug deterrence with Canada and other countries. Accordingly, the FAA is postponing the date by which testing programs must commence for persons located outside the territory of the United States.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking

Distribution System, which describes the application procedures.

Reason for No Notice

The amendment to the anti-drug rule merely extends for one year the compliance date specified in the rule for drug testing persons located outside the territory of the United States. This minor change reflects the commitment made in the preamble to the final rule to "delay the effective date further * * * if such delay is necessary to permit consultation with any foreign governments to be successfully completed" [November 21, 1988; 53 FR 47050]. The FAA does not believe that issuing a notice of proposed rulemaking would result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to the public interest.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and the benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA included that analysis in the public docket. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the Federal Register on November 21, 1988.

This final rule extends the compliance date of covered employees in foreign countries but does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. The FAA is taking this action to provide additional time to negotiate with foreign governments on implementation of drug testing outside the territory of the United States, and has determined that costs and benefits associated with this extension are minimal. A separate economic analysis for this final rule, therefore, is not warranted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule only extends a compliance date; consequently, the FAA has determined that this amendment to the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Statement

This final rule contains an amendment that extends the date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 14, 1988. The amendment provides that Appendix I to part 121 is not effective with respect to any employee located outside the territory of the United States until January 2, 1992. Thus, the FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, previously were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. OMB approved those requirements on February 2, 1989. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This final rule extends the compliance date for drug testing of those persons located outside the territory of the United States. This rulemaking action is intended to improve administration of the final anti-drug rule.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the final rule will not result in an annual effect on the economy of \$100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to the criteria of Executive Order 12291. However, because the rule involves issues of substantial interest to the public, the FAA determined that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen,

Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

The Amendments

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Appendix I—[Amended]

2. By revising paragraph (B) of section XII of Appendix I to part 121 to read as follows:

* * * * *

B. This appendix shall not be effective with respect to any employee located outside the territory of the United States until January 2, 1992.

Issued in Washington, DC, on December 11, 1989.

James B. Bussey,
Administrator.

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