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Part X

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 121
Anti-Drug Program for Personnel
Engaged in Specified Aviation Activities;
Extension of Compliance Date; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Admt. No. 121-223]

RIN 2120-AE01

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 Federal Aviation Administration (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, 1993. This extension of the 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 April 24, 1991.

FOR FURTHER INFORMATION CONTACT: William McAndrew, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-6711.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Aviation Administration (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 made other minor revisions (54 FR 15148).

On December 17, 1989, the FAA postponed, for 1 year (until January 2, 1992), the compliance date for drug testing of employees performing covered

functions outside the territory of the United States (54 FR 53282). An amendment disassociating periodic testing from the part 67 medical examination was published February 2, 1990 (55 FR 3698). On March 22, 1990, the FAA extended, until April 10, 1991, the anti-drug plan submission date for § 135.1(c) operators (55 FR 10756). An amendment, published December 14, 1990, allows contractors an additional 90 days for implementation of drug testing programs provided that a plan was submitted for FAA approval by the appropriate date (55 FR 51670).

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 rules provided 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 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 2, 1992.

The DOT has continued active discussions over the last year with representatives of the Canadian government, with representatives of the nations of the European Economic Community, and with other members of the International Civil Aviation Organization (ICAO).

The Department's initial efforts in this area were focused on discussions with Canada, because the rules of five different model administrations would affect Canadian businesses. During the past year, the Government of Canada completed a process under which it received and considered the recommendations and concerns of the House of Commons Standing Committee on Transport, as well as representations from the Canadian transportation industry and other interested Canadian citizens, on a "substance use" policy. The culmination of that effort was an announcement by the Minister of Transport on November 7, 1990, of the Government of Canada's decision to proceed with what he describes as "a comprehensive series of measures to prevent and remedy substance use in safety-sensitive positions in the Canadian transportation network." The

policy includes requirements for education, access to employee assistance programs, and alcohol and drug testing. The Government of Canada must now draft the necessary legislation and regulations and expects to be able to implement the program in the near future.

Because the requirements will apply to United States companies operating in Canada, the Canadian Minister of Transport has asked the U.S. Secretary of Transportation to consider "the idea of a mutual recognition agreement." Senior officials from the United States and Canadian governments met on November 15, 1990, to discuss the new Canadian measures on substance use and the possibility of the mutual recognition agreement. The United States expects to complete its review of the matter in the very near future.

During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become evident. Although the FAA could allow its regulations to take effect even for operations outside the territory of the United States, the DOT and the FAA recognize that (1) it would be difficult for U.S. carriers to effectively implement the regulation without cooperation from foreign governments; (2) in response to such implementation, foreign governments could impose restrictions on United States operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and United States measures, especially as they relate to international transportation operations. For these reasons, the United States has decided to pursue multilateral efforts; specifically, the United States has already begun exploring the possibility of initiatives in the ICAO on the problem of illegal use of drugs. The United States will be making every effort to expedite the handling of these matters.

In order to allow decisions and agreements to be reached in an orderly fashion, DOT and the FAA have determined that further deferral of the foreign applicability of the anti-drug rule for 1 year is necessary. Accordingly, the FAA is postponing the date by which anti-drug programs must be implemented 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, that describes the application procedures.

Reason for No Notice

The amendment to the anti-drug rule merely extends for 1 year the compliance date specified in the rule for drug testing employees 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 the anti-drug rule outside the territory of the United States. The FAA has also 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. This 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, 1993. 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 1990. 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 employees located outside the territory of the United States. This rulemaking action is intended to improve administration of the final antidrug 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). Because of the absence of any costs related to these amendments, the FAA has determined that the expected impact of these amendments is so minimal that they do not warrant a full regulatory evaluation.

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: 40 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 2, 1983).

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

Appendix I to Part 121—Drug Testing Program

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XII. Conflict with foreign laws or international law.

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B. This appendix is effective with respect to any employee located outside the territory of the United States on January 2, 1993.

Issued in Washington, DC, on March 29, 1991.

James B. Busey,
Administrator.

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