
Thursday
March 22, 1990

FEDERAL REGISTER

Part II

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Part 121
Anti-Drug Program for Personnel
Engaged in Specified Aviation Activities;
Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amendment No. 121-215]

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: This announces an extension of the compliance date under the aviation industry drug testing rule for the submission of anti-drug programs by operators who are not required to hold an air carrier operating certificate or an air taxi/commercial operator operating certificate. Under this final rule, these operators will have an additional year to submit an anti-drug program to the FAA for approval. This rulemaking action is necessary to facilitate implementation of the final rule issued on November 14, 1988, that established drug testing requirements in aviation. It is intended to provide the FAA with sufficient time to conduct an orderly review of the scope of the final anti-drug rule by extending the otherwise imminent compliance deadline for these operators.

EFFECTIVE DATE: This final rule is effective on March 22, 1990.

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) 267-3413.

SUPPLEMENTARY INFORMATION:

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 procedure.

Background

The rulemaking process that led to promulgation of the final anti-drug regulations began in late 1986. On December 4, 1986, the FAA issued an advance notice of proposed rulemaking (ANPRM) (51 FR 44432; December 9, 1986). The ANPRM invited comment from interested persons on drug and alcohol abuse by personnel in the aviation industry. On March 3, 1988, the FAA issued a notice of proposed rulemaking (NPRM) (53 FR 8368; March 14, 1988) that analyzed the comments submitted on the ANPRM and set forth proposed regulations for comment by interested persons. The FAA received over 900 comments in response to the ANPRM and the NPRM. In addition, the FAA held three public hearings on the proposed regulations.

The FAA issued the final anti-drug rule requiring certain aviation employers and operators to develop and to implement an anti-drug program for employees performing specified aviation activities on November 14, 1988 (53 FR 47024; November 21, 1988). After the final rule was issued, the FAA became aware that the timeframes for employers' submission of their anti-drug programs for FAA approval was unrealistic. Consequently, the FAA amended the final rule to extend certain compliance dates and make other minor revisions (54 FR 15148; April 14, 1989). Similarly, the FAA later amended the final rule to delay the compliance date for drug testing of covered employees located outside the territory of the United States (54 FR 53283; December 26, 1989). More recently, the FAA amended the final rule to allow employers increased flexibility in the time of the periodic test specimen collection, as long as part 67 certificate holders are tested early in the implementation of the employer's anti-drug program (55 FR 3698; February 2, 1990).

As part of its responsibility to provide compliance guidance to the industry, the FAA has continued reviewing the scope of the rule and reasonableness of the implementation timeframes. As a result of this continuing review, the FAA has become aware of the need to reevaluate the inclusion of those aviation operators otherwise excluded from part 121 and part 135 requirements.

In addition to the FAA's internal review, representatives of aviation organizations and employers subject to the final rule expressed concern after rule issuance about inclusion of operators whose operations do not require that they hold a part 121 or part 135 operating certificate. These

operations include student instruction, nonstop sightseeing flights conducted within a 25-mile radius of the airport of takeoff, ferry or training flights, aerial work operations, sightseeing flights in hot air balloons, nonstop flights within a 25-mile radius of the airport of takeoff for parachute jumps, helicopter flights conducted within a 25-mile radius of the airport, rotorcraft operations under FAR part 133, and Federal election campaign flights conducted under FAR § 91.59. Traditionally, with regard to aviation safety issues, the FAA regulatory scheme has distinguished such operations from commercial air transportation operations under parts 121 and 135. This experience-based demarcation is so comprehensive that these operators are excluded from all part 135 requirements, with the sole exception of the drug testing program requirement.

Industry input includes letters submitted by the Aircraft Owners and Pilots Association (AOPA) and the Air Safety Foundation (ASF), copies of which are available for review by interested persons in Docket No. 25148. AOPA suggests that the FAA reassess the reach of the final rule and eliminate or modify its inclusion of those who are not part 121 or part 135 certificate holders, and who do not engage in providing compensated air transportation of passengers. Comments submitted by ASF echo those of AOPA, and both specifically mention elimination of flight instructors from inclusion in the drug testing rule.

Additionally, since the final rule was promulgated, the FAA has received several petitions for exemption from the requirements of the anti-drug rule submitted by, or on behalf of, operators as defined under § 135.1(c). To date, no exemptions have been granted since the petitioners have not demonstrated that they were uniquely burdened by the rule.

While the issue of the overall scope of the rule was addressed generally by commenters in the prior rulemaking action, the process of actually developing an anti-drug program has increased agency and industry awareness of the need to explore more fully the scope of the final rule and consequent implementation issues. The amendment contained in this final rule addresses inclusion of operators who do not hold a part 121 or part 135 certificate by providing an additional year for these operators to submit an anti-drug program to the FAA. During the extension period, the FAA will evaluate whether further rulemaking is warranted to remove these operators from the rule

or to tailor application of the rule to the nature of the operations they conduct. Any subsequent rulemaking would provide an opportunity for public comment.

Discussion of the Amendment

The section of the anti-drug rule that addresses the issue of employers whose operations do not require either part 121 or part 135 certificates is amended by this final rule. In the anti-drug rule published on November 21, 1988, the applicability section of 14 CFR part 135 was amended so that employers and operators, who are otherwise excluded from the requirements of part 135 generally, were included solely for the purposes of the final anti-drug rule. These operators conduct operations distinguishable from the commercial air transportation sector. While the FAA remains committed to and continues to work toward a drug-free aviation industry, the FAA has determined that the inclusion of these operations under the anti-drug rule warrants further consideration. The FAA believes that extending the compliance dates under the anti-drug rule for operators engaging in operations defined under § 135.1(c) will have no significant impact on aviation safety.

Reason for No Notice and Immediate Adoption

This amendment to the final anti-drug rule is needed immediately to extend the otherwise imminent compliance date specified in the final rule. The delay of the date by which these operators must submit an anti-drug program is to relieve a burden on these operators pending further evaluation and possible rulemaking on the scope of the anti-drug rule. For this reason, notice and public comment procedures are impracticable, unnecessary, and contrary to public interest. As currently provided in the anti-drug rule, the compliance date to submit an anti-drug program for these operators falls within 30 days after publication of this final rule. To avoid placing these operators in technical noncompliance with the anti-drug rule, the FAA has determined that good cause exists to make this final rule effective in less than 30 days.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and 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 also considered 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 amendment extends the compliance deadline for operators who do not hold a part 121 or part 135 certificate. This action will result in a modest reduction in the cost of the final rule which is equal to the cost for those operators to comply with the rule over the initial year. Due to the sparse historical record of accidents caused by drug abuse, it is difficult to accurately estimate the marginal loss of benefits that will accrue based on extending the deadline for a few peripheral operators. The FAA believes, however, that any potential reduction in benefits as a result of this amendment will be minimal, and therefore has determined that a revision of the comprehensive Regulatory Impact Analysis for the amendment is not necessary and the preparation of a separate economic analysis for this amendment 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 merely extends by 1 year the compliance deadline for certain operators. In consideration of the nature of this amendment, the FAA has determined that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small businesses.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120-0535. 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 the final rule does not have sufficient federalism

implications to warrant preparation of a Federalism Assessment.

Conclusion

This final rule extends the compliance deadline for operators who do not hold a part 121 or part 135 certificate. Implementation of the anti-drug rule by these operators was addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action is necessary to facilitate implementation of the final rule issued on November 14, 1988, and is intended to permit an orderly review of the scope of the final rule. It is also 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 has 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 is amended to read as follows:

Authority: 49 U.S.C. App. 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 to Part 121 [Amended]

2. By revising Paragraph A(4) of section IX of appendix I to part 121 to read as follows:

A. * * *

(4)a. Each employer who holds a part 135 certificate and employs 10 or fewer employees who perform a function listed in section III of this appendix and each air traffic control facility not operated by, or under contract with, the FAA or the U.S. military, shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than 480 days after December 21, 1988. Each employer shall implement its anti-drug program for its direct employees not later than 60 days after approval of the anti-drug program by the FAA. Each employer shall

implement its approved anti-drug program for its contractor employees not later than 360 days after initial implementation of the employer's approved anti-drug program for its direct employees.

b. Each operator is defined in § 135.1(c) of this chapter shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than 840 days after December 21, 1988. Each operator shall implement its anti-drug program for its direct employees not later than 60 days after approval of the anti-drug program by the

FAA. Each operator shall implement its approved anti-drug program for its contractor employees not later than 360 days after initial implementation of the operator's approved anti-drug program for its direct employees.

Issued in Washington, DC, on March 15, 1990.

James B. Busey,

[FR Doc. 90-6472 Filed 3-16-90; 3:52 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amdt. 121-215]

RIN 2120-AC33

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

Correction

In rule document 90-6472 beginning on page 10756 in the issue of Thursday, March 22, 1990, make the following correction:

Appendix I to Part 121 [Corrected]

On page 10758, in the second column, in the paragraph designated "b", in the first line, "is" should read "as".

BILLING CODE 1505-01-D
