

1-AR Air 91-213

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

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Casselton, ND [New]

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Casselton Regional Airport (lat. 46°51'15" N., long. 97°12'31" W.); and within 1.75 miles each side of the 110° bearing from the airport, extending from the 5.5-mile radius

area to 6.5 miles southeast of the airport, excluding that portion which overlies the Fargo, ND, transition area.

Issued in Des Plaines, Illinois, on March 13, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-6520 Filed 3-21-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 91

[Docket No. 24722; Ref. Amdt. 91-213]

RIN 2120-AB04

Night-Visual Flight Rules Visibility and Distance From Clouds Minimums

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes an editorial change that was inadvertently omitted in a final rule, published on September 29, 1989, establishing standard visibility and cloud clearance minimums for night visual flight rules operations. This action corrects that omission.

EFFECTIVE DATE: August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Jean Casciano, Office of Rulemaking (ARM-12), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-9683.

SUPPLEMENTARY INFORMATION:

History

On August 18, 1989, the Federal Aviation Administration published a final rule (54 FR 34284) that reorganizes and realigns the general operating and flight rules in part 91 of the Federal Aviation Regulations (FAR). That amendment will become effective on August 18, 1990.

Federal Register Document No. 89-22990, published on September 29, 1989, established standard visibility and cloud clearance minimums for night-visual flight rules operations. That final rule revised § 91.105 as it is currently in effect, but it neglected to indicate how the amendment will be reflected in the revised section, § 91.155, as it will appear in part 91 as of August 18, 1990.

Correction to Final Rule

The following amendment is made to part 91 as it will be revised on August 18, 1990:

Section 91.155 is revised to read as follows:

§ 91.155 Basic VFR weather minimums.

(a) Except as provided in §§ 91.155(b) and 91.157, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less, than that prescribed for the corresponding altitude in the following table:

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface— Within controlled airspace.....	3 statute miles.....	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Outside controlled airspace: Day (except as provided in section 91.155(b)).....	1 statute mile.....	Clear of clouds.
Night (except as provided in section 91.155(b)).....	3 statute miles.....	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface but less than 10,000 feet MSL— Within controlled airspace.....	3 statute miles.....	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Outside controlled airspace: Day.....	1 statute mile.....	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Night.....	3 statute miles.....	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.....	5 statute miles.....	1,000 feet below. 1,000 feet above. 1 mile horizontal.

(b) *Inapplicability.* Notwithstanding the provisions of paragraph (a) of this section, the following operations may be conducted outside of controlled airspace below 1,200 feet above the surface:

(1) *Helicopter.* When the visibility is less than 1 mile during day hours or less than 3 miles during night hours, a helicopter may be operated clear of clouds if operated at a speed that allows the pilot adequate opportunity to see

any air traffic or obstruction in time to avoid a collision.

(2) *Airplane.* When the visibility is less than 3 miles but not less than 1 mile during night hours, an airplane may be operated clear of clouds if operated in

an airport traffic pattern within one-half mile of the runway.

Issued in Washington, DC, on March 8, 1990.

Donald P. Byrne,

Acting Assistant Chief Counsel for
Regulations and Enforcement.

[FR Doc. 90-6490 Filed 3-21-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 776

[Docket No. 900249-0049]

Petroleum Exports To Be Used on Vessels and Aircraft

AGENCY: Bureau of Export
Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (15 CFR parts 730-799) were amended on October 9, 1985 (50 FR 41131) to eliminate the instructions for applying for a validated license for exports of refined petroleum products classified under Petroleum Commodity Groups B, C, D, E, F, G, K, L, M, N and Q in Supplement No. 2 to 15 CFR part 777. The validated license requirement was removed by 50 FR 41131-41134 on October 9, 1985. The instructions were inadvertently retained and are now being deleted.

Paragraph (c) of 15 CFR 776.9 provides instructions for submitting a Form BXA-622P when exporting petroleum and petroleum products for vessels or aircraft departing from the United States. This rule removes those provisions, which were made obsolete by the 1985 change in the regulations.

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

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.
2. This rule does not affect a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).
3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be

given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are always welcome. Comments should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 776:

Exports, Reporting and recordkeeping requirements.

Accordingly, part 776 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36862, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) of October 27, 1986 (51 FR 39505, October 29, 1986).

2. In § 776.9, paragraph (c) is removed.

Dated: March 19, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export
Administration.

[FR Doc. 90-6582 Filed 3-21-90; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading
Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Toronto Futures Exchange ("TFE") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1989), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provisions from which exemption is sought.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT:

David A. Naatz, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Toronto Futures Exchange from the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days after Publication of the Order Herein in the Federal Register or after Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the

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see 121-215A

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 procedures.

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

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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 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 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 this 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 640 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