

testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. It does not change the basic regulatory structure of that rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The amendment in this final rule only extends a compliance date. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to require programs for chemical drug and alcohol testing of commercial vessel personnel has been committed to the Coast Guard by Federal statutes. This final rule does, therefore, preempt State and local regulations regarding drug testing programs requiring the testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

Environment

The Coast Guard has considered the environmental impact of this final rule, and has concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. This final rule merely extends an implementation date.

International Trade Impact

This final rule extends that date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued

on November 21, 1988. Thus, the Coast Guard has determined that this final rule will not have an impact on trade opportunities on U.S. firms doing business overseas or on foreign firms doing business in the United States.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207(b) is revised to read as follows:

§ 16.207 Conflict with foreign laws.

* * * * *

(b) This part is not effective until January 2, 1995, with respect to any person onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government. On or before December 1, 1994, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1995.

Dated: June 10, 1992.
R.C. North,
Captain, U.S. Coast Guard Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.
[FR Doc. 92-16356 Filed 7-13-92; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amendment No. 121-229]

RIN 2120AE76

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Federal Aviation Administration (FAA) announces a delay in the effective date of the anti-drug rule for persons located outside the territory of the United States. Under this

final rule, employees located outside the territory of the United States will be subject to the provisions of the anti-drug rule, including requirements for drug testing, on January 2, 1995. This extension of the effective date is adopted in order to allow negotiation with foreign governments and international organizations to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective on July 14, 1992.

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) 366-6710.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FAA was one of six Department of Transportation (DOT) agencies that adopted regulations requiring education, training, and drug testing of employees in the regulated industry of the respective agencies (53 FR 47024). The FAA's anti-drug rule required preemployment, post-accident, reasonable cause, random, and return to duty drug testing. Additionally, certain individuals who were required to have medical examinations under 14 CFR part 67 were required to undergo periodic drug testing.

The requirements of the FAA's anti-drug rule apply to all employees performing sensitive safety- or security-related functions directly for or by contract with a covered employer. As originally promulgated, the rule did not differentiate between employees located within or outside the territory of the United States. However, the rule provided that its provisions would not apply in any situation in which application of the rules would violate local law or policies.

In the preamble to the anti-drug rule, the FAA stated that DOT, FAA, and other elements of the government would enter into discussions with foreign governments to try to resolve any conflicts between our rules and foreign laws or policies. The final rule stated that the Administrator might further delay the effective date of the rule as necessary to enable discussions with other governments to be successfully completed.

The anti-drug rule has been amended on several occasions since its promulgation. Of significance to the current rulemaking, the rule has been amended on three prior occasions to defer the effective date of the rule with respect to employees located outside the territory of the United States. The last of

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these three amendments deferred the effective date to January 2, 1993.

The delays have permitted the FAA and the DOT to continue their discussions with representatives of the Canadian government, the European Economic Community, and the International Civil Aviation Organization (ICAO). During these discussions, it has become apparent that the difficulties associated with achieving effective bilateral agreements remain of concern. Further, the reasons for prior deferrals of unilateral imposition of the requirements of the anti-drug rule outside the territory of the United States, including the practical problems associated with implementation of the rule, and the possibility that foreign governments would impose adverse restrictions on U.S. operations, remain valid. A uniform multilateral anti-drug program that is supported by the international aviation community would best serve not only the affected employers but international aviation as well.

For these reasons, the United States has been pursuing initiatives in the ICAO on the problem of illegal drug use. As a first step in these initiatives, the ICAO (at the request of the United States) recently surveyed its Contracting States to determine the nature and scope of any substance abuse problem in the respective States. The survey results have been evaluated by the ICAO Council, and were released to the member States following the completion of the evaluation. Based on the results, the ICAO appears to be willing to consider substantive efforts to promote an international aviation community free of substance abuse. The United States will continue to make every effort to expedite the ICAO's handling of matters related to these substance abuse initiatives.

In light of the ICAO's demonstrated willingness to cooperate with the United States on initiatives to combat substance abuse, unilateral imposition of the requirements of the anti-drug rule would be premature and counterproductive. Accordingly, the FAA is postponing by two years the date on which the anti-drug rule becomes effective with respect to persons located outside the territory of the United States. The FAA notes, however, that while the rule will not become effective with respect to these employees until January 2, 1995, it will be incumbent upon affected employers to ensure that, sometime prior to the effective date, they have appropriate plans submitted to the FAA for implementation on that date.

Availability of the 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

This amendment to the anti-drug rule merely defers for two years the effective date of the anti-drug rule for 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" (53 FR 46050; November 21, 1988). The FAA concludes that issuing a notice of proposed rulemaking would not result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to public interest.

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 defers the effective date of the anti-drug rule for persons located outside the territory of the United States, 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 pursue multilateral initiatives and negotiations 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 rule will be minimal, and therefore has determined that a revision of the

comprehensive Regulatory Impact Analysis 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 two years the effective date of the rule outside the territory of the United States. 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.

International Trade Impact Statement

This final rule contains an amendment that defers until January 2, 1995, the effective date of the anti-drug rule issued on November 21, 1988, with respect to employees located outside the territory of the United States. 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, 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 action defers the effective date of the anti-drug for employees located outside the territory of the United States. This rulemaking action is

intended to improve administration of the final anti-drug rule.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. Because of the absence of any costs related to this amendment, the FAA has determined that the expected impact of this amendment is so minimal that it does 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 testing, Narcotics, Pilots, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

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. 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).

2. Paragraph B of Section XII of Appendix I to Part 121 is revised 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, 1995.

Issued in Washington, DC on June 30, 1992.

Barry Lambert Harris,

Acting Administrator.

[FR Doc. 92-16357 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

49 CFR Part 391

RIN 2125-AC50

Controlled Substances Testing; Delay of Implementation Dates

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: The FHWA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of foreign-based employees of foreign-domiciled motor carriers. Under this final rule, these persons must be tested no later than January 2, 1995. This delay is being adopted to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: This final rule is effective July 14, 1992. Compliance with requirement to test foreign-based employees of foreign-domiciled carriers for drug use is extended until January 2, 1995.

FOR FURTHER INFORMATION CONTACT:

Mr. David Miller, Office of Motor Carrier Standards (202) 366-2981, or Mr. David Sett, Office of the Chief Counsel (202) 366-1392, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FHWA, along with other agencies of the Department of Transportation, adopted regulations requiring preemployment/use, periodic, post-accident, reasonable cause and random drug testing.

The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 391 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. 53 FR 47134 (November 21, 1988).

On September 27, 1989, the FHWA issued a delay to the effective date to January 1, 1991. 54 FR 39546 (September 27, 1989).

On December 27, 1989, the FHWA published a revision to its drug testing rule to indicate that the rule would not

be effective until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. 54 FR 53294 (December 27, 1989).

On April 24, 1991, the FHWA published a revision to its drug testing rule to indicate that the rule would not be effective until January 2, 1993, with respect to any foreign-based employee of a foreign-domiciled carrier. 56 FR 18994 (April 24, 1991).

The Department of Transportation and other elements of the U.S. Government have entered into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The additional time that the FHWA is allowing would permit the Department to try to achieve our goals of a drug-free transportation system while respecting the national sovereignty of other countries.

In addition, this extension would comply with the intent of Congress in a recent Congressional mandate passed in October 1991, The Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. This Act directs the Secretary of Transportation and the Secretary of State to discuss controlled substances and alcohol use testing with the International Civil Aviation Organization (ICAO), and to determine ways and means to accomplish the strengthening and enforcing of existing ICAO standards. The intent of Congress is to allow the Department to have further discussions with other countries. The FHWA is continuing multilateral discussions with Canada and Mexico to allow motor carriage of freight throughout these countries as unencumbered as possible.

To allow these discussions to progress in an orderly fashion, the FHWA and the DOT have determined that additional compliance time is necessary. An additional delay of approximately two years should provide sufficient time. Accordingly, this final rule postpones the date by which testing programs must commence for persons located outside the territory of the United States to January 2, 1995, including foreign-based employees of American companies (or their foreign subsidiaries.) This action does not postpone testing for any other person, including U.S.-based employees of foreign companies, including their American subsidiaries.

This delay is being adopted to allow negotiations with foreign governments to continue in an orderly and effective fashion. Further notice and opportunity for comment are not required under the regulatory policies and procedures of