

Federal Register

**Tuesday
July 14, 1992**

Part V

Department of Transportation

Coast Guard

46 CFR Part 16

Federal Aviation Administration

14 CFR Part 121

Federal Highway Administration

49 CFR Part 391

Federal Railroad Administration

49 CFR Part 219

**Research and Special Programs
Administration**

49 CFR Part 199

**Drug Testing Requirements; Delay of
International Application; Rules**

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Part 16**

[CGD 86-0671]

RIN 2115-AD74

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates**AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: The Coast Guard announces a delay in the effective date of regulations governing drug 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. Under this final rule, employees must become subject to testing no later than January 2, 1995. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

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

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark Grossetti, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, (202) 267-1421.

SUPPLEMENTARY INFORMATION:**Drafting Information**

The principal persons involved in drafting this document are Lieutenant Commander Mark Grossetti, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing. 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 drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard 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 Coast Guard stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. An amendment was issued on December 21, 1989, and published on December 27, 1989 (54 FR 53286). Under that amendment, drug testing for persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government was scheduled to begin by January 1992. A Final Rule was published on April 24, 1991, delaying the implementation date to January 2, 1993 (56 FR 18982).

DOT has continued active discussions over the last two years with representatives of the Canadian Government, and with representatives of the nations of the European Community. The DOT's initial efforts in this area were focused on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. 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 Canadians, on a substance use policy. The culmination of that effort was an announcement by the Minister of Transport on November 7, 1990, on 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 is continuing to work on necessary legislation and regulations to implement the program.

Because the requirements will apply to American 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 U.S. 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, and discussions are continuing.

During the past two years, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the DOT continues to recognize that: (1) It would be difficult for U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. is continuing to pursue multilateral efforts; specifically, the U.S. is exploring the possibility of initiatives in the International Civil Aviation Organization and the International Maritime Organization on the problem of substance use.

In order to allow decisions and agreements to be reached in an orderly fashion, the Coast Guard has again determined that additional time is necessary. Another additional delay of approximately two years should provide sufficient time. Accordingly, the Coast Guard has determined to postpone again the date by which testing programs must commence for persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

The change in this final rule will delay the applicability of the regulations where they may conflict with foreign law or policy so that the DOT and other elements of the government can complete discussions with foreign governments to attempt to resolve to any conflict between our rules and foreign government laws or policies. Accordingly, the Coast Guard finds that good cause exists under 4 U.S.C. 553(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the *Federal Register*.

Regulatory Evaluation

This final rule is not major under Executive Order 12291. However, because of public interest in, and concern for, a drug-free transportation environment, this final rule is considered significant under the DOT regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule modifies the effective date for compliance with Coast Guard regulations governing drug

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. 92-16358 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

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 rule 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

* * * * *

XII. Conflict with foreign laws or international law.

* * * * *

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

the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. Therefore, the FHWA finds good cause exists to publish this final rule without notice and comment, and to make it effective upon publication in the **Federal Register**.

Rulemaking Analyses and Notices

Regulatory Impact

The action taken by the FHWA in this document defers the effective date that the FHWA's controlled substances testing rules will apply to foreign-based employees of foreign-domiciled motor carriers. This delay is being adopted to allow discussions with foreign governments to continue in an orderly and effective fashion. The FHWA, therefore, finds good cause to promulgate the amendment as a final rule without prior notice and opportunity to comment.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, the FHWA considers this document to be significant because of public interest in the drug testing program and the international impact of this document.

Regulatory Flexibility Act

It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Controlled substances, Drug abuse, Drug testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: June 30, 1992.

T.D. Larson,
Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulation, Subtitle B, Chapter III, Part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. section 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Subpart H—Controlled Substances Testing

2. In § 391.83, paragraph (c) is revised to read as follows:

§ 391.83 Applicability

* * * * *

(c) This subpart is not applicable until January 2, 1995, with respect to any foreign-based employee of a foreign-domiciled carrier.

[FR Doc. 92-16358 Filed 7-13-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 33]

RIN 2130-AA43

Alcohol/Drug Regulations: Postponement of International Application

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule delaying to January 2, 1995, the application of random drug testing requirements to railroad personnel based outside the United States. This delay in implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

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

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, room 8201, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Patricia V. Sun, Trial Attorney (RCC-30), FRA, Washington, DC 20590 (Telephone: (202) 366-4002).

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Railroad Administration published random drug testing requirements. 53 FR 47102. The random testing rule amended § 219.3 of the existing rule to provide that subpart G of the regulation does not apply to any person for whom compliance with the subpart would violate the domestic laws or policies of another country and to provide that the random testing rule (subpart G) would not apply until January 1, 1990, with respect to certain foreign operations. On May 23, 1989, FRA amended the applicability provisions dealing with operations of foreign railroads (54 FR 22284; May 23, 1989) by extending to January 1, 1991, the date on which Subpart G would become effective with respect to any employee whose place of reporting or point of departure for rail transportation services is located outside the United States. In order to provide additional time for negotiations with foreign governments, FRA subsequently issued two more rules, the last of which extended this compliance date further to January 1, 1993. 56 FR 18990; April 24, 1991. (Operations of foreign carriers have been subject to FRA alcohol/drug regulations other than random testing

since implementation in 1986. 49 CFR part 219; 50 FR 31508; Aug. 2, 1985. This applicability is not affected by the action discussed here.)

The Department's initial efforts in this area were focussed on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become clear. Although the DOT could allow its regulations to take effect even for operations outside the U.S., the Department recognizes that (1) it would be difficult of U.S. carriers to effectively implement the regulations without cooperation from foreign governments; (2) in response, foreign governments could impose restrictions on U.S. operations; and, perhaps most importantly, (3) there are distinct advantages to be gained in aligning foreign measures and U.S. measures, especially as they relate to international transportation operations. For these reasons, the U.S. has decided to pursue multilateral efforts.

In order to facilitate this process, FRA is postponing application of the random drug testing requirements to foreign-based personnel until January 2, 1995. This schedule will apply to all such foreign operations, whether or not there have been formal notifications of conflicts with local law or policy. The postponement does not affect testing of U.S.-based employees.

Regulatory Procedures

FRA finds that notice and opportunity for comment are not necessary because the effect of the amendment is to provide additional time for compliance. FRA also finds that providing such notice would be contrary to the public interest because of the need to conduct ongoing international negotiations in an atmosphere of comity and cooperation. FRA finds that there is good cause for making this amendment effective less than 30 days from publication, since its effect is to provide additional time for compliance.

This rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291 but is "significant" as defined under DOT policies and procedures. The amendment contained in the final rule does not have any significant paperwork, Federalism or economic impact. To the extent any such impact exists, the amendments will lessen regulatory burdens by increasing the time available to comply with regulations previously issued. Because

the amendments do not have any significant economic impact, FRA has not prepared a regulation evaluation. It is certified that this final rule will not have significant economic impact on a substantial number of small entities under the provisions of Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*).

Therefore, in consideration of the foregoing, part 219, title 49, Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. No. 100-342; and 49 CFR 1.49(m).

2. Section 219.3 is amended by revising paragraph (c) to read as follows:

§ 219.3 Application.

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2, 1995, with respect to any employee whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

Issued in Washington, DC, on June 29, 1992.
Gilbert E. Carmichael,
Federal Railroad Administrator.
[FR Doc. 92-16359 Filed 7-13-92; 8:45 am]
BILLING CODE 4910-06-M

Research and Special Programs Administration

49 CFR Part 199

[Docket PS-102; Amdt. No. 7]

RIN 2137-AC

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; modification of implementation date.

SUMMARY: RSPA announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, these persons must become subject to testing no later than January 21, 1995.

EFFECTIVE DATE: July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Richard L. Rippert, Alcohol and Drug Program Manager, Office of Pipeline Safety Enforcement (DPS-23), Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (Tel. 202-366-6223).

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause, and random drug testing (53 FR 47084).

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 199 would not be effective until January 1, 1990, with respect to any person for whom foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the U.S. government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989.

On April 13, 1989, RSPA published an amendment to part 199 (Amdt. No. 199-1; 54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons.

Similar amendments were published on December 27, 1989, extending the effective date until January 2, 1992 (Amdt. No. 19-3; 54 FR 53290), and April 24, 1991, extending the date until January 2, 1993 (Amdt. No. 199-5; 56 FR 18986). These amendments provided additional time while government-to-government discussions tried to reach a permanent resolution of this issue.

DOT has continued active discussions with representatives of the Canadian government and representatives of the

nations of the European Economic community. To allow decisions and agreements to be reached in an orderly fashion, we have determined that additional compliance time is necessary. Accordingly, this final rule postpones the date by which testing must commence for persons located outside the territory of the United States to January 2, 1995. Our action does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the Part 199 regulations for persons located outside the territory of the United States. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the *Federal Register*.

Regulatory Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule is not a major rule under Executive Order 12291, and is significant under DOT's Regulatory Policies and

Procedures. This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1989, December 27, 1989, and April 24, 1991. It does not change the basic regulatory structure of that rule. The economic impact of this modification is so minimal that further evaluation is not necessary.

Regulatory Flexibility Act

This final rule modifies the effective date of Part 199 only with respect to persons outside the territory of the United States. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not change the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Executive Order 12612

In accordance with Executive Order 12612, RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

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

In view of the foregoing, 49 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

2. Section 199.1(d) is revised to read as follows:

§ 199.1 Scope and compliance.

* * * * *

(d) This part is not effective until January 2, 1995, with respect to any employee located outside the territory of the United States.

Issued in Washington, DC, on July 2, 1992.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

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