

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Part 199

(Docket No. PS-102, Amendment No. 199-5)

RIN 2137-AC05

Control of Drug Use in Natural Gas,
Liquefied Natural Gas, and Hazardous
Liquid Pipeline Operations**AGENCY:** Research and Special Programs
Administration (RSPA), 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 2, 1993. This delay of implementation is adopted to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective April 24, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Director Regulatory Programs, Office of Pipeline Safety, Research and Special Programs Administration (DPS-10), 400 7th Street, SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring preemployment, post-accident, reasonable cause and random drug testing (53 FR 47084, 49 CFR part 199).

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 a 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. A similar amendment was published on December 27, 1989, extending the effective date until January 2, 1992 (Amdt. No. 199-3; 54 FR 53290). These amendments provided additional time to initiate testing while government-to-government discussions tried to reach permanent resolution of this issue.

DOT has continued active discussions over the last year with representatives of the Canadian government and representatives of the nations of the European Economic Community. The Department's initial efforts in this area were focused on discussions with Canada because the rules of five different modal administrations could affect Canadian businesses. During the past year the Government of Canada completed a process under which it received and considered the recommendations and concerns of the House of Commons Standing Committee on Transport, as well as representations from the Canadian transportation industry and other interested Canadians, on a substance use policy. The culmination of that effort was an announcement by the Minister of Transport on November 7, 1990, of the Government of Canada's decision to proceed with what he describes as "a comprehensive series of measures to prevent and remedy substance use in safety-sensitive positions in the Canadian transportation network." The policy includes requirements for education, access to employee assistance programs, and alcohol and drug testing. The Government of Canada must now draft the necessary legislation and regulations and expects to be able to implement the program in the near future.

Because the requirements will apply to 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. The U.S. expects to complete its review of the matter in the very near future.

During the past year, discussions with other countries also have been held, and the difficulty of achieving effective bilateral agreements has become 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 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. has decided to pursue multilateral efforts; specifically, the U.S. has already begun exploring the possibility of initiatives in the International Civil Aviation Organization and the International Maritime Organization on the problem of substance use. The U.S. will be making every effort to expedite the handling of these matters.

To allow decisions and agreements to be reached in an orderly fashion, we have determined that additional compliance time is necessary. An additional delay of approximately one year 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, 1993. Our action here 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 Assessment

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, and on December 27, 1989. It does not change the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

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 add to the recordkeeping and reporting burden of the final rule published on November 21, 1988.

Federalism Implications

In accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient

federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In view of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199—[AMENDED]

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

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 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, 1993, with respect to any employee located outside the territory of the United States.

Issued in Washington, DC on April 16, 1991

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-9551 Filed 4-23-91; 8:45 am]

BILLING CODE 4910-16-M