



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 95

46 CFR Part 16

[Docket No. USCG-2010-1064]

RIN 1625-AB58

Revision to Chemical Testing Regulations for Mariners and Marine Employers

AGENCY: Coast Guard, DHS.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The Coast Guard is considering revising the regulations governing chemical (drug and alcohol) testing of mariners. In support of that effort, we would like input from mariners, marine employers, service agents, and substance abuse professionals on a number of questions relating to the administration of chemical testing programs for mariners by mariner employers.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2010-1064 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>, under docket number USCG-2010-1064.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

Confidential Information, Proprietary Information and Sensitive Security Information (SSI): Do not submit comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the Coast Guard point of contact listed in the FOR FURTHER INFORMATION CONTACT section.

Upon receipt of such comments, the Coast Guard will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. The Coast Guard will hold them in a separate file to which the public does not have access, and place a note in the public docket that Coast Guard has received such materials from the commenter. If the Coast Guard receives a request to examine or copy this information, we will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Robert Schoening, Office of Investigations and Casualty Analysis, U.S. Coast Guard; telephone (202) 372-1033, e-mail

Robert.C.Schoening@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request by submitting comments and related material on the below questions. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments and information: If you submit a comment, please include the docket number for this notice (USCG-2010-1064) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your

submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Select document Type" drop down menu select "Notice" and insert "USCG-2010-1064" in the "Enter Keyword or ID" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments online, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Enter Keyword or ID" box insert "USCG-2010-1064" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Background and Purpose

The Coast Guard is considering revising the regulations governing drug testing of mariners in 46 CFR part 16 and alcohol testing in 33 CFR part 95. In support of that effort, the Coast Guard is requesting information from marine employers, mariners, and the public on several questions related to chemical testing of merchant mariners. The Coast Guard also seeks input from State, local, and Tribal governments and from small entities on issues related to administering a drug testing program. When responding to the questions below, please provide quantitative data on costs, benefits, and other relevant

information, specifying sources of information and citations.

Request for Information

The Coast Guard seeks information on the following questions:

A. Casualty data related to drug and alcohol use

Casualties involving drug and alcohol use on commercial vessels can cause a variety of negative impacts, including loss of life, injuries, and property damage. What non-Coast Guard sources of data or information exist detailing benefits or avoided damages that may result from programs which prevent drug and alcohol-related commercial vessel casualties?

B. Recurrent training for supervisors

Currently, 46 CFR 16.401 requires Employee Assistance Program (EAP) training for employees subject to the chemical testing rules in 46 CFR part 16 and their supervisors. The next five questions focus on supervisors, who are required to have at least 60 minutes of EAP training.

(1) Do you, as a marine employer, or consortium or third-party administrator (C/TPA), require recurring (annual or some other frequency) training for supervisors on the signs and effects of drug and alcohol use?

(2) If so, what is the duration, frequency, and cost of training for supervisors?

(3) What method of training do you use (e.g., classroom, online, written materials, etc.)?

(5) What are the costs of your training?

(6) Would a requirement for recurrent supervisory training impact your business operations? How so and by how much?

(7) What are the benefits, if any, of training for supervisors on the signs and effects of drug and alcohol use? How effective is supervisor training in helping employers identify and prevent drug and alcohol use and resulting accidents?

C. Immediate reporting for testing

The Coast Guard is considering a requirement for crewmembers who are selected for testing to report immediately to the testing site upon being notified. The current requirement is that crewmembers randomly selected for testing must report, but how soon they must report is not specified. The Coast Guard believes that requiring mariners to report immediately may improve the reliability and effectiveness of employers' drug-testing programs. Immediate reporting is currently required by the Federal Aviation Administration's rule at 14 CFR 120.109(b)(8),

which regulates aviation employees, and the Federal Motor Carrier Safety Administration's rule at 49 CFR 382.305(1), which regulates commercial truck drivers. The following questions are related to immediate reporting.

(1) What is the average or usual amount of time between when crewmembers are informed of their selection for random testing and their reporting for testing at the collection site?

(2) What is your company or C/TPA's policy or practice, if any, regarding how much time may elapse after the crewmember is notified of the selection before your company or C/TPA considers the delay to be a refusal to submit to testing?

(3) As a marine employer, would a requirement to report immediately for testing impact your business operations? If so, how and by how much?

(4) Do you conduct on-site collection of specimens?

(5) How would immediate reporting for testing improve the reliability and effectiveness of your drug-testing programs?

(6) Do marine employees appear for random drug tests required by Coast Guard regulations during work hours or on their own time?

(7) How effective do you believe a "report immediately" requirement would be in detecting drug use (i.e., by what percent do you estimate non-negative test results would increase if there was a "report immediately" requirement for the industry)?

(8) Do you think a "report immediately" requirement would result in a more effective random drug testing program?

(9) The current requirement is that crewmembers randomly selected for testing must report, but how soon they must report is not specified. Since industry is currently incurring the costs of testing, the Coast Guard does not believe immediate reporting for testing poses significant additional costs. What costs, above and beyond current compliance costs, would be incurred for immediate reporting after notification compared to reporting within 24 hours, or even a few days?

D. Consortia membership for independent owners/operators

(1) If you are an independent owner/operator, do you use a Consortium or Third Party Administrator (C/TPA) to manage the random testing portion of your chemical testing program? If not, how would it impact your business operations, including costs and burden, to use a consortium?

(2) What are the benefits of using a C/TPA to manage the random testing portion of your chemical testing program?

E. Marine employer reporting of failed chemical tests

Under 46 CFR 16.201(c), marine employers who must have a random drug testing program are only required to report failed drug test results for credentialed mariners, not for non-credentialed mariners.

(1) What would be the cost if marine employers were also required to report failed drug tests for non-credentialed mariners?

(2) How many failed drug tests of non-credentialed mariners have you received during the last 5 years? Out of how many tests?

(3) How many failed drug tests of non-credentialed mariners would you expect to see, if marine employers were required to report those test results to the Coast Guard.

(4) What benefit, if any, do you see in requiring all failed drug tests (credentialed and non-credentialed mariners) to be reported to the Coast Guard?

F. Medical Review Officers (MROs) reporting non-negative test results directly to the Coast Guard

A non-negative specimen is a urine specimen that is adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

(1) For MROs, how would a requirement to report all non-negative test results to the Coast Guard (in addition to the marine employer) impact your business?

(2) For MROs, what would be your preferred method to report non-negative drug test results to the Coast Guard?

G. Electronic reporting of Management Information System (MIS) data.

Eighty percent of annual Management Information System reports are submitted through the internet.

(1) If you do not submit your annual MIS data through the internet, what would the cost or savings be if you did?

(2) Would you request an exemption from electronic reporting if one was available?

H. Exemption from reporting

Under 46 CFR 16.500(c), employers who must have a random drug testing program but who have 10 or fewer employees are exempt from mandatory MIS reporting after their third year of reporting.

(1) Are you taking advantage of this exemption? If so, what would the impact be to you if you no longer could take advantage of this exemption?

(2) What sources of data or information exist on the number of employers that are exempt from mandatory reporting and the cost impacts of requiring reporting by all entities?

I. Minimum drug-testing rate

Current regulations require that employers who must have a random drug testing program test their crewmembers at a rate equal to 50 percent of their covered crewmembers annually. The Coast Guard is considering allowing individual companies to use a lower testing rate (25 percent) if they can demonstrate a positive test results rate of 1 percent or less for 2 consecutive years.

(1) As an employer, based on past performance, do you believe that you could qualify for the lower testing rate? If so, what would be the cost savings associated with the lower testing rate?

(2) To C/TPAs, how would managing clients, some of whom have a lower testing threshold (25 percent) and others at the standard testing threshold (50 percent), impact your business operations?

J. Impacts on Small Entities

Would the measures discussed in this notice have a significant economic impact on a substantial number of small entities? What sources of data or information exist

detailing the economic impact on small entities, which may result if the measures discussed above were implemented?

Any information provided in response to this request for comments is appreciated and will be considered by the Coast Guard. This notice is issued under authority of 5 U.S.C. 552(a) and 33 C.F.R. 1.05-1.

Dated: January 13, 2012

PAUL F. THOMAS
Captain, U.S. Coast Guard
Acting Director of Prevention Policy

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