

impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action, nevertheless, will be effective sixty (60) days after publication pursuant to the procedures governing immediate final rules.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 17, 2001.

**Carl Dierker,**

*Acting Regional Administrator, EPA New England.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 4, 5, and 16

[USCG-2000-7759]

RIN 2115-AG00

#### Chemical Testing

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard revises its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published in the **Federal Register** on December 19, 2000.

The Coast Guard amends the regulations on Marine Casualties and Investigations and Chemical Testing by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and incorporating new terms and procedures contained in the DOT final rule.

**DATES:** This final rule is effective August 16, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2000-7759 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call LCDR Scott Budka, Coast Guard, at 202-267-2026. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202-366-5149.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On April 30, 2001, the Coast Guard published a notice of proposed rulemaking NPRM entitled Chemical Testing in the **Federal Register** (66 FR 21502). On the same day, DOT published a common preamble (66 FR 21492) in the **Federal Register** as referred to in our NPRM. In our NPRM we proposed amendments that conformed our drug testing regulations with the Department of Transportation's (DOT) final rule entitled Procedures for Transportation Workplace Drug and Alcohol Testing published in the **Federal Register** (December 19, 2000 (65 FR 79462)). No public hearing was requested and none was held.

##### Background and Purpose

As discussed above, DOT published a comprehensive revision to their drug and alcohol testing procedural rules (49 CFR Part 40). The DOT final rule makes numerous changes in the way that drug and alcohol testing will be conducted. The DOT final rule is effective on August 1, 2001.

It is important that the six DOT agency rules that cover specific transportation industries be consistent with the DOT final rule to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, the Coast Guard is

revising its drug testing regulations affected by Part 40. Since the DOT rule is effective on August 1, 2001, we are making this final rule effective on the date of publication to ensure that these "conforming amendments" are effective as soon as possible. For these reasons, under 5 U.S.C. 553(b)(3) the Coast Guard finds good cause to make this rule effective in fewer than 30 days after publication in the **Federal Register**.

This preamble discusses the revisions to Coast Guard chemical testing regulations to ensure consistency with the DOT final rule.

#### Discussion of Comments and Changes

The Coast Guard is revising its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures in 49 CFR part 40. We are revising 46 CFR parts 4, 5, and 16 by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions required by the DOT regulations; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements.

Some new DOT requirements, such as the requirement for split specimens, are implemented without a revision or conforming amendment to our regulations. In this case, the requirement is in 49 CFR part 40, and our regulations require employers to follow the procedures in that part when conducting required chemical tests for dangerous drugs.

The DOT rule includes new qualification and training requirements for Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs). The Coast Guard is not changing the ability of the MRO to perform a dual MRO/SAP function in the return-to-duty decision process. However, where an individual performs both SAP and MRO functions, Part 40 requires the individual to meet the qualification and training requirements for individuals performing each of these functions.

Another DOT change, the minimum number of follow-up drug tests required during the first year after return to work in a safety-sensitive position, requires a conforming amendment to add this requirement to our existing regulatory text.

The following is a discussion of the comments received addressing the Coast Guard's NPRM published in the **Federal Register** (April 30, 2001 (66 FR 21502)), as well as a discussion of how the Coast Guard has revised its regulations to conform to DOT's final rule.

In response to the NPRM published on April 30, 2001, we received a total

of 48 comment letters to the docket. The comment period closed on June 29, 2001. Twenty of the 48 comment letters received are not specifically discussed in this final rule because they were received after the close of the comment period. We have reviewed the issues presented in those 20 letters, however, and note that they address substantially the same issues raised in the 28 comment letters received during the comment period.

Several of the comment letters addressed issues that concern the requirements in 49 CFR part 40. All of these comments concentrated on discussions, analyses, and regulations published in DOT's final rule and did not address our NPRM. Copies of these comments were forwarded to DOT for inclusion in their docket and are discussed in the DOT common preamble published in Part II of the August 9, 2001 **Federal Register**.

In addition to having received comments that directly addressed Part 40, we also received five comments that discussed Coast Guard implementation of specific DOT alcohol testing regulations. DOT alcohol testing requirements published in their December 19, 2000, final rule do not apply to the maritime industry. The alcohol testing requirements that the maritime industry must comply with are found in 46 CFR subpart 4.06 and 33 CFR part 95.

We received two comments requesting that we postpone our implementation date. DOT is not delaying any of their final rule provisions. Consequently, we are going forward with our conforming amendments. If there are future changes to Part 40 we will make appropriate revisions to our chemical testing requirements.

We received one comment requesting clarification on who bears the cost of additional testing of a split specimen and return-to-duty testing. More specifically, the commenter wanted to know who pays for the additional drug tests. The Coast Guard and DOT regulations leave these determinations to the employee and the employer.

Another comment requested that we allow Consortium/Third party administrators (C/TPAs) to make refusal to test determinations for an owner or operator or other self-employed individuals in accordance with Part 40. DOT addressed this determination issue in the common preamble. In 49 CFR 40.355(j)(1) DOT authorizes service agents to make refusal determinations with respect to owners or operators and other self-employed individuals when the service agent scheduled the test and

the individual fails to appear for it without a legitimate reason for missing the scheduled testing time. The Department's provision adequately meets our needs on this issue and we are not incorporating the suggested provision in our final rule.

#### 46 CFR Part 4

We received only one comment addressing several issues in our proposed amendments to part 4. The comment suggested that we:

- Remove paragraph § 4.06–1(f) because we no longer need an implementation schedule. The Coast Guard agrees and is removing the paragraph.
- Revise the testing requirements found in §§ 4.06–5, 4.06–10, 4.06–20, and 4.06–30. In the NPRM we only proposed amending § 4.06–20. We do not agree that the recommended changes to these sections are appropriate at this time, but will consider making them in our next rulemaking on alcohol testing requirements. This rule only changes the cross-references in § 4.06–20.
- Make a couple of changes to § 4.06–40 by removing paragraph (a) and by removing the cross-reference to § 4.06–30 in paragraph (b). The comment stated that Part 40 provided ample guidance on the custody and shipping of testing samples. We are not removing paragraph (a) because its provisions apply to tests not otherwise covered by 49 CFR Part 40. However, we concur with the suggestion to revise the cross-reference in paragraph (b) to conform with Part 40.
- In § 4.06–50, replace paragraphs (a), (b), and (c) with one provision for specimen analysis and follow-up testing procedures that comply with Part 40. We agree that this section needed to be revised but only so that it meets the requirement to comply with Part 40. We have, therefore, changed only the cross-reference in paragraph (b).

#### 46 CFR Part 5

*Table 5.569.* We proposed a clarification to the Table of Appropriate Orders in § 5.569 to distinguish between a Chemical test for dangerous drugs and one for alcohol, because Part 40 treats them separately. We did not receive any comments addressing this proposed change and it is unchanged in this final rule.

#### 46 CFR Part 16

The majority of comments were directed to 46 CFR Part 16. We received six comments concerning the inapplicability of Part 16 to foreign-flagged vessels. They stated that by not

applying these requirements to foreign-flagged vessels the Coast Guard would create an unfair economic advantage for those vessels over U.S.-flagged vessels. These issues were addressed when Part 16 was established. Foreign-flagged vessels must meet the requirements of 46 CFR subpart 4.06 *Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service* as well as 33 CFR part 95 *Operating a Vessel While Intoxicated*.

*Definitions.* We received one comment requesting a revision of our definition of "Refuse to submit." The comment requested that we clarify in the definition that the specific gravity and creatinine levels would not be used to determine whether or not a substituted sample has been submitted. The Coast Guard disagrees with this request for clarification. Part 40 adequately prescribes the verification process in § 40.145.

*New sections.* We received two comments requesting a Coast Guard blanket approval for stand-downs for the marine industry. We disagree. DOT has determined that stand-down after a positive drug test should be the exception and not the industry norm. In § 16.107 *Waivers*, we have established a process for employers to request approval to use stand-down procedures while employee drug test results are being verified.

We proposed adding § 16.109 describing DOT's new Public Interest Exclusion (PIE) in 49 CFR Part 40, subpart R. We did not receive comments addressing this proposed change and it is unchanged in this final rule.

We are adding § 16.115 *Penalties*, to better inform the public of the penalties prescribed by 46 U.S.C. 2115 for violation of dangerous drug and alcohol testing regulations. We did not receive any comments addressing the addition of this section. However, one commenter suggested we should include a consequence for a refusal to test. This suggestion is beyond the scope of this rulemaking.

*Revisions to § 16.201 Application.* In § 16.201 we are revising paragraph (a) by requiring all chemical drug tests to be conducted in accordance with the procedures found in 49 CFR Part 40. We are revising paragraph (c) to require a sponsoring organization, like employers and prospective employers, to report a documented or licensed mariner's positive chemical drug test to the nearest Coast Guard Officer in Charge, Marine Inspection. We are updating the cross-reference to § 16.370 in paragraph (e) of this section.

We are adding paragraph § 16.201(f) to this section, which was formerly found at § 16.370(d). Paragraph (f) requires an MRO to determine when an individual is ready to return to work after testing positive and allows the MRO to prescribe follow-up testing for up to 60 months as appropriate. In order to ensure intermodal consistency, DOT has prescribed a mandatory minimum number of follow-up tests after return to work. We are revising this paragraph to include the new DOT requirement for a minimum of 6 follow-up drug tests during the first year after an individual returns to work. This new requirement will be in addition to all other Coast Guard requirements for rehabilitation and education following a positive drug test.

*Revisions to § 16.203 Employer, MRO, and SAP responsibilities.* We are adding § 16.203 to set out the Coast Guard's requirements that maritime employers, MROs, and SAPs comply with 49 CFR Part 40.

Where an individual performs both SAP and MRO functions, Part 40 requires the individual to meet the qualification and training requirements for individuals performing each of these functions. In our NPRM, we specifically requested that comments address how we should implement this change in our rule. We also asked if an MRO should, in order to perform SAP functions, meet both the SAP and MRO training requirements or should the MRO training requirements satisfy the requirements for SAP training. We received five comments on this question. The comments recommended that the MRO meet the training and qualification standards of a SAP if the MRO is to be responsible for filling the role of a SAP. We agree and have added paragraphs (d) and (f) accordingly. Paragraph (d) sets out the Coast Guard's training and procedure requirements for MROs whereas paragraph (f) sets out the same requirements for SAPs. We also are adding a new definition for "Substance Abuse Professionals (SAP)" in section § 16.105.

We are adding paragraph (e) to this section to clarify our position on Medical Review Officer (MRO) reporting of test results. Medical Review Officers are not prohibited from reporting positive test results to the Coast Guard. Some MROs are currently doing so. The Coast Guard affirms that MROs are encouraged to report positive test results especially for unemployed or self-employed mariners.

*Deletion of Subpart C.* Most of the requirements in Subpart C are now covered in detail by the revised 49 CFR Part 40 and these sections are no longer

needed in Part 16. We have removed the unnecessary sections and moved the remaining paragraphs to appropriate locations in Subparts A and B. Subpart C is removed and reserved.

### Regulatory Evaluation

DOT has assessed the economic impacts of this proposed rulemaking. Because this final rule makes conforming changes to align Coast Guard regulations with the revised 49 CFR Part 40, DOT determined that it has no additional costs to industry. Their analysis is published in their December 19, 2000, final rule, Procedures for Transportation Workplace Drug and Alcohol Testing Programs (OST 1999-6578).

### Analyses Under Other Executive Orders

DOT also found no significant impact that would warrant further analysis of this rulemaking in accordance to the Small Business Regulatory Enforcement Fairness Act of 1996, the Paperwork Reduction Act of 1995, Federalism impacts under Executive Order 13132, the Unfunded Mandates Reform Act of 1995, Enhancing the Intergovernmental Partnership under Executive Order 12875, Taking of Private Property under Executive Order 12630, Civil Justice Reform under Executive Order 12988, and the Protection of Children from Environmental Health Risks and Safety Risks under Executive Order 13045.

It is well settled that States are precluded from regulation in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101 and 8101 (design, construction, repair, alteration, maintenance, operation, equipping, personnel qualification and manning of vessels) as well as casualty reporting and any other categories where Congress intended the Coast Guard to be the sole source of a vessel's obligations are within the field foreclosed from State regulation. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct 1135 (March 6, 2000)). Rules regarding drug and alcohol testing for merchant marine personnel fall into the covered category of personnel certification rules, with the Coast Guard intended to be the sole source of those rules, thereby precluding States from regulation. Because States may not promulgate rules within these categories, preemption is not an issue under Executive Order 13132.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Scott Budka, Coast Guard, telephone 202-267-2026.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraphs (34)(a), of Commandant Instruction M16475.IC, this rule is categorically excluded from further

environmental documentation. The proposed rule would be promulgated to comply with new DOT regulations. The promulgation of new regulations by the Coast Guard would be editorial or procedural in nature. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

#### List of Subjects

##### 46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Reporting and recordkeeping requirements, Safety, Transportation.

##### 46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

##### 46 CFR Part 16

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

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR Parts 4, 5, and 16 as follows:

#### PART 4—MARINE CASUALTIES AND INVESTIGATIONS

1. The citation of authority for part 4 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

##### § 4.06–1 [Amended]

2. In § 4.06–1 remove paragraph (f).

##### § 4.06–20 [Amended]

3. In § 4.06–20(b) remove the phrase "\$ 16.330 of this part" and add in its place "49 CFR part 40".

##### § 4.06–40 [Amended]

4. In § 4.06–40(b) revise the cross-reference "\$ 16.310 of this part" to read as "\$ 16.113 of this chapter", and revise the cross-reference "\$ 16.320" to read as "49 CFR part 40, subpart D,".

##### § 4.06–50 [Amended]

5. In § 4.06–50(b) in the first sentence revise the cross-reference "49 CFR 40.33" to read as "49 CFR 40.121" and in the second sentence revise the cross-reference "49 CFR 40.33" to read as "49 CFR part 40, subpart G,".

#### PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

6. The citation of authority for part 5 continues to read as follows:

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

7. In § 5.569 in Table 5.569 revise the entry for "Violation of Regulation:" to read as follows:

##### § 5.569 Selection of an appropriate order.

\* \* \* \* \*

TABLE 5.569.—SUGGESTED RANGE OF AN APPROPRIATE ORDER

Type of offense	Range of order (in months)
* * * * *	
Violation of Regulation:	
Refusal to take chemical drug test .....	12–24
Refusal to take required alcohol test .....	12–24
* * * * *	

#### PART 16—CHEMICAL TESTING

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

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

9. In § 16.105 remove the definitions for "Dangerous drug level", "Intoxicant" and "Medical Review Officer", revise the definitions for "Fails a chemical test for dangerous drugs" and "Refuse to submit", and add in alphabetical order definitions for "Consortium/Third party administrator (C/TPA)", "Medical Review Officer (MRO)", "Service agent", "Stand-down", and "Substance Abuse Professional (SAP)" to read as follows:

##### § 16.105 Definitions of terms used in this part.

\* \* \* \* \*

**Consortium/Third party administrator (C/TPA)** means a service agent who provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

\* \* \* \* \*

**Fails a chemical test for dangerous drugs** means that the result of a

chemical test conducted in accordance with 49 CFR 40 was reported as "positive" by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

\* \* \* \* \*

**Medical Review Officer (MRO)** means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

\* \* \* \* \*

**Refuse to submit** means you refused to take a drug test as set out in 49 CFR 40.191.

\* \* \* \* \*

**Service agent** means any person or entity that provides services specified under this part or 49 CFR part 40 to employers and/or crewmembers in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR part 40. Service agents are not employers for purposes of this part.

\* \* \* \* \*

**Stand-down** means the practice of temporarily removing a crewmember from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

**Substance Abuse Professional (SAP)** means a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

\* \* \* \* \*

10. Add § 16.107 to Subpart A to read as follows:

##### § 16.107 Waivers.

(a) To obtain a waiver from 49 CFR 40.21 or from this part you must send your request for a waiver to the Commandant (G–MOA).

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to

Commandant (G-MOA), at the address listed in § 16.500(a).

(c) An employer may request a waiver from the Coast Guard in order to stand-down a crewmember following the Medical Review Officer's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the crewmember. Consistent with 49 CFR 40.21, the request for a waiver must include as a minimum: Information about the organization and the proposed written company policy concerning stand-down. Specific elements required in the written waiver request are contained in 49 CFR 40.21(c).

11. Add § 16.109 to Subpart A to read as follows:

**§ 16.109 Public Interest Exclusion (PIE).**

Service agents are subject to Public Interest Exclusion (PIE) actions in accordance with 49 CFR Part 40, subpart R. The PIE is an action which excludes from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or with 49 CFR part 40, has shown that it is not currently acting in a responsible manner.

12. Add § 16.113 to Subpart A to read as follows:

**§ 16.113 Chemical drug testing.**

(a) Drug testing programs required by this part must be conducted in accordance with 49 CFR part 40, Procedures for Transportation Workplace Testing Programs. This subpart summarizes the responsibilities of documented and licensed mariners, marine employers, MRO, SAP and other chemical testing service providers in 49 CFR part 40. The regulations in 49 CFR part 40 should be consulted to determine the specific procedures which must be established and utilized. Drug testing programs required by this part must use only drug testing laboratories certified by the Department of Health and Human Services (DHHS).

(b) Each specimen collected in accordance with this part will be tested, as provided in 49 CFR 40.85, for the following:

- (1) Marijuana;
- (2) Cocaine;
- (3) Opiates;
- (4) Phencyclidine (PCP); and
- (5) Amphetamines.

13. Add § 16.115 to Subpart A to read as follows:

**§ 16.115 Penalties.**

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115. Any person who fails to

implement or conduct, or who otherwise fails to comply with the requirements for chemical testing for dangerous drugs as prescribed under this part, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. Each day of a continuing violation will constitute a separate violation.

14. In § 16.201 revise paragraphs (a), (c), and (e), and add paragraph (f) to read as follows:

**§ 16.201 Application.**

(a) Chemical testing of personnel must be conducted as required by this subpart and in accordance with the procedures detailed in 49 CFR part 40.

\* \* \* \* \*

(c) If an individual holding a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual's employer, prospective employer, or sponsoring organization must report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual must be denied employment as a crewmember or must be removed from duties which directly affect the safe operation of the vessel as soon as practicable and is subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR part 5.

\* \* \* \* \*

(e) An individual who has failed a required chemical test for dangerous drugs may not be re-employed aboard a vessel until the requirements of paragraph (f) of this section and 46 CFR Part 5, if applicable, have been satisfied.

(f) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work. In addition, the individual must agree to be subject to increased unannounced testing—

(1) For a minimum of six (6) tests in the first year after the individual returns to work as required in 49 CFR part 40; and

(2) For any additional period as determined by the MRO up to a total of 60 months.

15. Add § 16.203 to read as follows:

**§ 16.203 Employer, MRO, and SAP responsibilities.**

(a) *Employers.* (1) Employers must ensure that they and their crewmembers meet the requirements of this part.

(2) Employers are responsible for all the actions of their officials, representatives, and agents in carrying out the requirements of this part.

(3) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

(b) *Medical Review Officer (MRO).* (1) Individuals performing MRO functions must meet the training requirements and follow the procedures in 49 CFR Part 40.

(2) MROs may report chemical drug test results to the Coast Guard for unemployed, self-employed, or individual mariners.

(c) *Substance Abuse Professional (SAP).* Individuals performing SAP functions must meet the training requirements and follow the procedures in 49 CFR Part 40.

**§ 16.207 [Removed]**

16. Remove § 16.207.

17. In § 16.260 revise paragraph (a) to read as follows:

**§ 16.260 Records.**

(a) Employers must maintain records of chemical tests as provided in 49 CFR 40.333 and must make these records available to Coast Guard officials upon request.

\* \* \* \* \*

**Subpart C—[Removed and Reserved]**

18. Remove and reserve Subpart C.

Dated: August 1, 2001.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

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