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of Transportation
United States
Coast Guard



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From: Commander, Eighth Coast Guard District
To: Distribution

Subj: DRUG AND ALCOHOL TESTING

Ref: (a) ALDIST 174-97
(b) COMDT COGARD R252004Z MAR 97
(c) ALDIST 003-97
(d) COMDT (G-M) msg R091305Z

1. This letter clarifies Coast Guard roles and responsibilities for post casualty drug testing as discussed in references (a) through (d).
2. Confusion regarding drug and alcohol program responsibilities is partially the result of different authorities for directing post casualty and reasonable cause tests under regulations promulgated in Title 33 and Title 46 of the Code of Federal Regulations, each of which has a different applicability. The reasonable cause (16.250) and post casualty testing (4.06 and 16.240) requirements in Title 46 CFR do not apply to foreign vessels or to uninspected vessels that are not required to be operated by a licensed individual. Additionally, these regulations intentionally place the burden for testing largely on the marine employer. In most circumstances, the Coast Guard should not conduct or direct tests under these regulations. Failure of the marine employer to accomplish these tests is grounds for a civil penalty.
3. The boating while intoxicated regulations in Title 33 CFR apply to a wide range of vessels including those exempted from the Title 46 regulations, such as U.S. uninspected vessels not operated by licensed individuals and foreign vessels. These regulations allow a marine employer or law enforcement officer to direct testing when reasonable cause exists. Unfortunately, the definition of reasonable cause differs from that in 46 CFR 16.250 which says the marine employer's decision to test must be based on a reasonable and articulable belief that the individual has used a dangerous drug - based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Although 33 CFR 95.035 alludes to a "suspicion" that the individual is in violation of the alcohol standards, it allows the directing of a chemical test for any individual involved in a relatively "minor" marine casualty where among other things, the seaworthiness or efficiency of the vessel is affected. Because this broad authority could be abused, the

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authority to direct tests under this regulation should be reserved for those cases where "reasonable cause" is based upon an articulable belief that the individual is in violation of a law or regulation related to the use of drugs or alcohol or when the marine casualty is serious in nature.

4. The following protocol for post-casualty drug and alcohol testing is provided to clarify the actions required by Coast Guard marine safety personnel:

a. Immediately following any marine casualty involving a U.S. inspected vessel or an uninspected vessel required to be operated by a licensed individual (i.e., towboat or commercial fishing vessel over 200 gross tons), the Coast Guard should remind the marine employer of his or her responsibilities regarding drug and alcohol testing under 46 CFR 4.06 and 16.240. For those casualties that are likely to become a serious marine incident, the marine employer should be specifically reminded of the responsibility to conduct testing of all involved personnel (46 CFR 4.06-5).

b. For marine casualties involving all other vessels (i.e., those to which 46 CFR 4 and 16 do not apply), the Coast Guard should consider whether or not there is reasonable cause to direct a test under the boating while intoxicated regulations in 33 CFR part 95 (see discussion in paragraph 3 above). As briefly discussed in reference (b), CG authority under the boating while intoxicated regulations is very broad. However, because these regulations apply to essentially all vessel types, and have a very broad definition of "reasonable cause," we must guard against using this as our primary authority for directing drug and alcohol tests except where appropriate. Misuse could result in the CG losing its broad authority. For this reason, reference (b) states, "OCMIs/COTPs/boarding officers should exercise good judgment and careful consideration of the seriousness and circumstances of a marine casualty before directing chemical testing under 33 CFR 95.035." In those cases where "reasonable cause" exists (potentially including incidents on vessels discussed in (a) above to which 46 CFR parts 4 and 16 apply) the Coast Guard shall direct testing.

c. When the marine employer fails to conduct any required test, civil penalty action should be vigorously pursued.

5. The above actions constitute the extent of our legal requirements regarding drug and alcohol testing. However, as a proactive agency we must do more as part of our normal contingency planning. Therefore, the OCMI/COTP should

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investigate and make agreements for the use of all available drug and alcohol testing resources. These include, but are not limited to, local and state police, state agencies and qualified Coast Guard operations and MSO personnel. Because the Coast Guard does not immediately respond to all incidents for which drug and alcohol testing may be appropriate (see reference (d) which further defines those incidents for which immediate response is initiated), Coast Guard personnel may not be on scene sufficiently early to conduct effective alcohol testing. However, when Coast Guard resources are on scene and it appears that the marine employer cannot, or will not, complete required tests, the Coast Guard should attempt to conduct voluntary courtesy tests. These tests could include the use of Alco Sensor III breath testing devices or other colorimetric tube methods which can confirm or rule out the use of alcohol. These voluntary tests, however, do not relieve the marine employer of his testing responsibilities.

6. It is Commandant's intent that alcohol testing be conducted within two hours of a marine casualty. MSO personnel should consider this intent when utilizing the above procedures to encourage regulatory compliance. The policy outlined above will be modified in the event that headquarters develops policies that place additional responsibilities for drug and alcohol testing on Coast Guard personnel.



C. T. DESMOND
By direction

Dist: All Eighth District MSOs, MSU and MSDs

Copy: COMDT (G-MOA), (G-MOC)