

Commercial Vessel Casualty Reporting & Regulations

Provided by ACE Marine

Commercial Vessel Marine Casualties, Investigations and
Chemical Testing Excerpted from CFR Parts 4 & 16



46 CFR PART 4

PART 4

MARINE CASUALTIES AND INVESTIGATIONS (Subparts 4.01 – 4.06 only)

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Subpart 4.01 – Authority and Scope of Regulations

4.01-1 Scope of regulation.

The regulations in this part govern the reporting of marine casualties, the investigation of marine casualties and the submittal of reports designed to increase the likelihood of timely assistance to vessels in distress.

4.01-3 Reporting exclusion.

- (a) Vessels subject to 33 CFR 173.51 are excluded from the requirements of subpart 4.05.
- (b) Vessels which report diving accidents under 46 CFR 197.484 regarding deaths, or injuries which cause incapacitation for greater than 72 hours, are not required to give notice under 4.05-1(d) or 4.05-1(e).
- (c) Vessels are excluded from the requirements of 4.05-1(d) and (e) with respect to the death or injury of shipyard or harbor workers when such accidents are not the result of either a vessel casualty (e.g. collision) or a vessel equipment casualty (e.g. cargo boom failure) and are subject to the reporting requirements of Occupational Safety and Health Administration (OSHA) under 29 CFR 1904.

Subpart 4.03 – Definitions

4.03-1 Marine casualty or accident.

- (a) The term marine casualty or accident shall mean any casualty or accident involving any vessel other than public vessels if such casualty or accident occurs upon the navigable waters of the United States, its territories or possessions or any casualty or accident wherever such casualty or accident may occur involving any United States vessel which is not a public vessel. (See 4.03-40 for definition of “Public Vessel.”)
- (b) The term marine casualty or accident includes any accidental grounding, or any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of the vessel.
- (c) The term marine casualty or accident also includes occurrences of loss of life or injury to any person while diving from a vessel and using underwater breathing apparatus.

4.03-2 Serious marine incident.

The term serious marine incident includes the following events involving a vessel in commercial service:

- (a) Any marine casualty or accident as defined in 4.03-1 which is required by 4.05-1 to be reported to the Coast Guard and which results in any of the following:
 - (1) One or more deaths;
 - (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
 - (3) Damage to property, as defined in 4.05-1(f) of this part, in excess of \$100,000;
 - (4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or

- (5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more.
- (b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.
- (c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

4.03-4 Individual directly involved in a serious marine incident.

The term individual directly involved in a serious marine incident is an individual whose order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing a serious marine incident.

4.03-5 Medical facility.

The term medical facility means an American hospital, clinic, physician's office or laboratory, where blood and urine specimens can be collected according to recognized professional standards.

4.03-6 Qualified medical personnel.

The term qualified medical personnel means a physician, physician's assistant, nurse, emergency medical technician, or other person authorized under State or Federal law or regulation to collect blood and urine specimens.

4.03-7 Chemical test.

The term chemical test means a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

4.03-10 Party in interest.

The term party in interest shall mean any person whom the Marine Board of Investigation or the investigating officer shall find to have a direct interest in the investigation conducted by it and shall include an owner, a charterer, or the agent of such owner or charterer of the vessel or vessels involved in the marine casualty or accident, and all licensed or certificated personnel whose conduct, whether or not involved in a marine casualty or accident, is under investigation by the Board or investigating officer.

4.03-15 Commandant.

The Commandant, U.S. Coast Guard, is that officer who acts as chief of the Coast Guard and is charged with the administration of the Coast Guard.

4.03-20 Coast Guard district.

A Coast Guard district is one of the geographical areas whose boundaries are described in 33 CFR Part 3.

4.03-25 District Commander.

The District Commander is the chief of a Coast Guard district and is charged with the administration of all Coast Guard responsibilities and activities within his respective district, except those functions of administrative law judges under the Administrative Procedure Act (60

Stat. 237, 5 U.S.C. 1001 et seq.) and activities of independent units of the Coast Guard, such as the Coast Guard Yard and the Coast Guard Academy.

4.03-30 Investigating Officer.

An investigating officer is an officer or employee of the Coast Guard designated by the Commandant, District Commander or the Officer in Charge, Marine Inspection, for the purpose of making investigations of marine casualties and accidents or other matters pertaining to the conduct of seamen. An Officer in Charge, Marine Inspection, is an investigating officer without further designation.

4.03-35 Nuclear vessel.

The term nuclear vessel means any vessel in which power for propulsion, or for any other purpose, is derived from nuclear energy; or any vessel handling or processing substantial amounts of radioactive material other than as cargo.

4.03-40 Public vessels.

Except as provided in subpart 4.40, vessels within the statutory exemptions of Title LII of the Revised Statutes of the United States (R.S. 4399-4500) (as amended) relating to the inspection of vessels, are public vessels and therefore not subject to the regulations in this part. To be deemed public vessels such vessels must:

- (a) Be used for a public purpose, not in trade or commercial service; and
- (b) Be owned outright by the United States; it is not sufficient that the United States holds the vessel under a bareboat charter.

4.03-45 Marine employer.

Marine employer means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

4.03-50 Recreational vessel.

Recreational vessel means a vessel meeting the definition in 46 U.S.C. 2101(25) that is then being used only for pleasure.

4.03-55 Law Enforcement Officer.

Law enforcement officer means a Coast Guard commissioned, warrant or petty officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State or local law.

Subpart 4.04 – Notice of Potential Vessel Casualty

4.04-1 Reports of potential vessel casualty.

A vessel owner, charterer, managing operator or agent shall immediately notify either of the following Coast Guard officers if there is reason to believe a vessel is lost or imperiled.

- (a) The Coast Guard district rescue coordination center (RCC) cognizant over the area the vessel was last operating in; or
- (b) The Coast Guard search and rescue authority nearest to where the vessel was last operating.

Reasons for belief that a vessel is in distress include, but are not limited to, lack of communications with or nonappearance of the vessel.

4.04-3 Reports of lack of vessel communication.

The owner, charterer, managing operator or agent of a vessel that is required to report to the United States flag Merchant Vessel Location Filing System under the authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), shall immediately notify the Coast Guard if more than 48 hours have passed since receiving communication from the vessel. This notification shall be given to the Coast Guard district RCC cognizant over the area the vessel was last operating in.

4.04-5 Substance of reports.

The owner, charterer, managing operator or agent, notifying the Coast Guard under 4.04-1 or 4.04-3, shall:

- (a) Provide the name and identification number of the vessel, the names of the individuals on board, and other information that may be requested by the Coast Guard (when providing the names of the individuals on board for a passenger vessel, the list of passengers need only meet the requirements of 46 U.S.C. 3502); and
- (b) Submit written confirmation of that notice to the Coast Guard facility that the notice was given to within 24 hours.

Subpart 4.05 - Notice of Marine Casualty and Voyage Records

4.05-1 Notice of marine casualty.

- (a) Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in:
 - (1) An unintended grounding, or an unintended strike of (allision with) a bridge;
 - (2) An intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a)(3) through (7);
 - (3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel;
 - (4) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems;
 - (5) A loss of life;
 - (6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties; or
 - (7) An occurrence causing property-damage in excess of \$25,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.
- (b) Notice given as required by 33 CFR 160.215 satisfies the requirement of this section if the marine casualty involves a hazardous condition as defined by 33 CFR 160.203.

4.05-5 Substance of marine casualty notice.

The notice require in 4.05-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

4.05-10 Written report of marine casualty.

- (a) The owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine casualty. This written report is in addition to the immediate notice required by 4.05-1. This written report must be delivered to a Coast Guard Marine Safety Office or Marine Inspection Office. It must be provided on Form CG-2692 (Report of Marine Accident, Injury or Death), supplemented as necessary by appended Forms CG-2692A (Barge Addendum) and CG-2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).
- (b) If filed without delay after the occurrence of the marine casualty, the notice required by paragraph (a) of this section suffices as the notice required by 4.05-1(a).

4.05-12 Alcohol or drug use by individuals directly involved in casualties.

- (a) For each marine casualty required to be reported by 4.05-10, the marine employer shall determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty.
- (b) The marine employer shall include in the written report, Form CG-2692, submitted for the casualty information which:
 - (1) Identifies those individuals for whom evidence of drug or alcohol use, or evidence of intoxication, has been obtained; and
 - (2) Specifies the method used to obtain such evidence, such as personal observation of the individual, or by chemical testing of the individual.
- (c) An entry shall be made in the official log book, if carried, pertaining to those individuals for whom evidence of intoxication is obtained. The individual must be informed of this entry and the entry must be witnessed by a second person.
- (d) If an individual directly involved in a casualty refuses to submit to, or cooperate in, the administration of a timely chemical test, when directed by a law enforcement officer or by the marine employer, this fact shall be noted in the official log book, if carried, and in the written report (Form CG-2692), and shall be admissible as evidence in any administrative proceeding.

4.05-15 Voyage records, retention of.

- (a) The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the

cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon request to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

- (b) The investigating officer may substitute photostatic copies of the voyage records referred to in paragraph (a) of this section when they have served their purpose and return the original records to the owner or owners thereof.

4.05-20 Report of accident to aid to navigation.

Whenever a vessel collides with a buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, it shall be the duty of the person in charge of such vessel to report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG-2692 is required unless one or more of the results listed in 4.05-1 occur.

4.05-25 Reports when state of war exists.

During the period when a state of war exists between the United States and any foreign nation, communications in regard to casualties or accidents shall be handled with caution and the reports shall not be made by radio or telegram.

4.05-30 Incidents involving hazardous materials.

When a casualty occurs involving hazardous materials, notification and a written report to the Department of Transportation may be required. See 49 CFR 171.15 and 171.16.

4.05-35 Incidents involving nuclear vessels.

The master of any nuclear vessel shall immediately inform the Commandant in the event of any accident or casualty to the nuclear vessel which may lead to an environmental hazard. The master shall also immediately inform the competent governmental authority of the country in whose waters the vessel may be or whose waters the vessel approaches in a damaged condition.

Subpart 4.06 - Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service

4.06-1 Responsibilities of the marine employer.

- (a) At the time of occurrence of a marine casualty, a discharge of oil into the navigable waters of the United States, a discharge of a hazardous substance into the navigable waters of the United States, or a release of a hazardous substance into the environment of the United States, the marine employer shall make a timely, good faith determination as to whether the occurrence currently is, or is likely to become, a serious marine incident.
- (b) When a marine employer determines that a casualty or incident is, or is likely to become, a serious marine incident, the marine employer shall take all practicable steps to have each individual engaged or employed on board the vessel who is directly involved in the incident chemically tested for evidence of drug and alcohol use.

- (c) The determination of which individuals are directly involved in a serious marine incident is to be made by the marine employer. A law enforcement officer may determine that additional individuals are directly involved in the serious marine incident. In such cases, the marine employer shall take all practicable steps to have these individuals tested in accordance with paragraph (b) of this section.

- (d) The requirements of this subpart shall not prevent vessel personnel who are required to be tested from performing duties in the aftermath of a serious marine incident when their performance is necessary for the preservation of life or property or the protection of the environment.

- (e) The marine employer shall ensure that all individuals engaged or employed on board a vessel are fully indoctrinated in the requirements of this subpart, and that appropriate vessel personnel are trained as necessary in the practical applications of these requirements.

- (f) Each marine employer shall implement the testing requirements of this subpart in accordance with the implementation schedule provided in 46 CFR 16.205 and 16.207.

4.06-5 Responsibilities of individuals directly involved in serious marine incidents.

- (a) Any individual engaged or employed on board a vessel who is determined to be directly involved in a serious marine incident shall provide blood, breath or urine specimens for chemical tests required by 4.06-10 when directed to do so by the marine employer or a law enforcement officer.

- (b) If the individual refuses to provide blood, breath or urine specimens, this refusal shall be noted on Form CG-2692B and in the vessel's official log book, if one is required.

- (c) No individual may be forcibly compelled to provide specimens for chemical tests required by this part; however, refusal is considered a violation of regulation and could subject the individual to suspension and revocation proceedings under Part 5 of this chapter and removal from any duties which directly affect the safety of the vessel's navigation or operations.

4.06-10 Required specimens.

Each individual required to submit to chemical testing shall, as soon as practicable, provide the following specimens for chemical testing:

- (a) Urine specimens, collected in accordance with 4.06-20 and part 16 of this Chapter.
- (b) Blood or breath specimens, or both, collected in accordance with 4.06-20.

4.06-20 Specimen collection requirements.

- (a) All inspected vessels certificated for unrestricted ocean routes, and all inspected vessels certificated for restricted overseas routes, are required to have on board at all times a breath testing device capable of determining the presence of alcohol in a person's system. The breath testing device shall be used in accordance with procedures specified by the manufacturer.

- (b) The marine employer shall ensure that urine specimen collection and shipping kits meeting the requirements of 16.330 of this part are readily available for use following serious marine incidents.

The specimen collection and shipping kits need not be maintained aboard each vessel if they can otherwise be readily obtained within 24 hours from the time of the occurrence of the serious marine incident.

- (c) The marine employer shall ensure that specimens required by 4.06-10 are collected as soon as practicable following the occurrence of a serious marine incident.
- (d) When obtaining blood, breath, and urine specimens, the marine employer shall ensure that the collection process is supervised by either qualified collection personnel, the marine employer, a law enforcement officer, or the marine employer's representative.
- (e) Chemical tests of an individual's breath for the presence of alcohol using a breath testing device may be conducted by any individual trained to conduct such tests. Blood specimens shall be taken only by qualified medical personnel.

4.06-30 Specimen collection in incidents involving fatalities.

- (a) When an individual engaged or employed on board a vessel dies as a result of a serious marine incident, blood and urine specimens must be obtained from the remains of the individual for chemical testing, if practicable to do so. The marine employer shall notify the appropriate local authority, such as the coroner or medical examiner, as soon as possible, of the fatality and of the requirements of this subpart. The marine employer shall provide the specimen collection and shipping kit and request that the local authority assist in obtaining the necessary specimens. When the custodian of the remains is a person other than the local authority, the marine employer shall request the custodian to cooperate in obtaining the specimens required under this part.
- (b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary specimens, the marine employer shall provide an explanation of the circumstances on Form CG-2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).

4.06-40 Specimen handling and shipping.

- (a) The marine employer shall ensure that blood specimens collected in accordance with 4.06-20 and 4.06-30 are promptly shipped to a testing laboratory qualified to conduct tests on such specimens. A proper chain of custody must be maintained for each specimen from the time of collection through the authorized disposition of the specimen. Blood specimens must be shipped to the laboratory in a cooled condition by any means adequate to ensure delivery within twenty-four (24) hours of receipt by the carrier.
- (b) The marine employer shall ensure that the urine specimen collection procedures of 16.310 of this part and the chain of custody requirements of 16.320 are complied with. The marine employer shall ensure that urine specimens required by 4.06-20 and 4.06-30 are promptly shipped to a laboratory complying with the requirements of 49 CFR Part 40. Urine specimens must be shipped by an expeditious means, but need not be shipped in a cooled condition for overnight delivery.

4.06-50 Specimen analysis and follow-up procedures.

- (a) Each laboratory will provide prompt analysis of specimens collected under this subpart, consistent with the need to develop all relevant information and to provide a complete analysis report.
- (b) Reports shall be sent to the Medical Review Officer meeting the requirements of 40 CFR 40.33, as designated by the marine employer submitting the specimen for testing. Whenever a urinalysis report indicates the presence of a dangerous drug or drug metabolite, the Medical Review Officer shall review the report as required by 49 CFR 40.33 and submit his or her findings to the marine employer. Blood test reports indicating the presence of alcohol shall be similarly reviewed to determine if there is a legitimate medical explanation.
- (c) Analysis results which indicate the presence of alcohol, dangerous drugs, or drug metabolites shall not be construed by themselves as constituting a finding that use of drugs or alcohol was the probable cause of a serious marine incident.

4.06-60 Submission of reports and test results.

- (a) Whenever an individual engaged or employed on a vessel is identified as being directly involved in a serious marine incident, the marine employer shall complete Form CG-2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).
- (b) When the serious marine incident requires the submission of Form CG-2692 (Report of Marine Casualty, Injury or Death) to the Coast Guard in accordance with 4.05-10, the report required by paragraph (a) of this section shall be appended to Form CG-2692.
- (c) In incidents involving discharges of oil or hazardous substances as described in 4.03-2(b) and (c) of this part, when Form CG-2692 is not required to be submitted, the report required by paragraph (a) of this section shall be submitted to the Coast Guard Officer in Charge, Marine Inspection, having jurisdiction over the location where the discharge occurred or nearest the port of first arrival following the discharge.
- (d) Upon receipt of the report of chemical test results, the marine employer shall submit a copy of the test results for each person listed on the CG-2692B to the Coast Guard Officer in Charge, Marine Inspection to whom the CG-2692B was submitted.

46 CFR PART 16

PART 16 CHEMICAL TESTING

Subpart A – General

Section

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Subpart B – Required Chemical Testing

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- 16.207 Conflict with foreign laws.
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Subpart C – Standards for Chemical Testing for Dangerous Drugs

- 16.301 Procedures for Transportation Workplace Drug Testing Programs.
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Subpart D – Employee Assistance Program

- 16.401 Employee Assistance Program (EAP).

Subpart E – Management Information System

- 16.500 Management Information System requirements.

Subpart A – General

16.101 Purpose of regulations.

- (a) The regulations in this part provide a means to minimize the use of intoxicants by merchant marine personnel and to promote a drug free and safe work environment.
- (b) These regulations prescribe the minimum standards, procedures, and means to be used to test for the use of dangerous drugs.
- (c) As part of a reasonable cause drug testing program established pursuant to this part, employers may test for drugs in addition to those specified in this part only with approval granted by the Coast Guard under 49 CFR Part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

16.105 Definitions of terms used in this part.

Chemical test means a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drugs or alcohol use.

Crewmember means an individual who is:

- (a) On board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document issued under this subchapter, whether or not the individual is a member of the vessel's crew; or
- (b) Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, except the following:
 - (1) Individuals on fish processing vessels who are primarily employed in the preparation of fish or fish products, or in a support position, and who have no duties that directly affect the safe operation of the vessel;
 - (2) Scientific personnel on an oceanographic research vessel;
 - (3) Individuals on industrial vessels who are industrial personnel, as defined in this chapter; and
 - (4) Individuals not required under part 15 of this subchapter who have no duties which directly affect the safe operation of the vessel.

Dangerous drug means a narcotic drug, a controlled substance, or a controlled-substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 [21 U.S.C. 802]).

Dangerous drug level means the amount of traces of dangerous drugs or drug metabolites in an individual's breath, blood, urine, saliva, or body fluids or tissues.

Drug test means a chemical test of an individual's urine for evidence of dangerous drug use.

Employer means a marine employer or sponsoring organization.

Fails a chemical test for dangerous drugs means that the result of a chemical test conducted in accordance with 49 CFR part 40 is reported as "positive" for the presence

of dangerous drugs or drug metabolites in an individual's system by a Medical Review Officer in accordance with that part.

Intoxicant means any form of alcohol, dangerous drug, or combination thereof.

Marine employer means the owner, managing operator, charterer, agent, master, or person in charge of a vessel, other than a recreational vessel.

Medical Review Officer means an individual designated by the employer to carry out the duties specified in 16.370 of this part.

Operation means to navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems. Operation includes:

- (a) determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position, or speed, and maintaining a lookout;
- (b) controlling, operating, monitoring, maintaining, or testing: the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches, windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment; and
- (c) mooring, anchoring, and line handling; loading or discharging of cargo or fuel; assembling or disassembling of tows; and maintaining the vessel's stability and watertight integrity.

Passes a chemical test for dangerous drugs means the result of a chemical test conducted in accordance with 49 CFR part 40 is reported as "negative" by a Medical Review Officer in accordance with that part.

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals to take random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals to take random tests required by this part.

Refuse to submit means that a crewmember fails to provide a urine sample as required by 49 CFR part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

Serious marine incident means an event defined in 46 CFR 4.03-2.

Sponsoring organization is any company, consortium, corporation, association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated.

Vessel owned in the United States means any vessel documented or numbered under the laws of the United States; and any vessel owned by a citizen of the United

States that is not documented or numbered by any nation.

Subpart B - Required Chemical Testing

16.201 Application.

- (a) Chemical testing of personnel must be conducted as required by this subpart.
- (b) If an individual fails a chemical test for dangerous drugs under this part, the individual will be presumed to be a user of dangerous drugs.
- (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 or prospective employer shall report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as practicable and shall be subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR Part 5.
- (d) If an individual who does not hold a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as possible.
- (e) An individual who has failed a required chemical test for dangerous drugs may not be reemployed aboard a vessel until the requirements of 16.370(d) of this part and 46 CFR Part 5, if applicable, have been satisfied.

16.205 Implementation of chemical testing programs.

- (a) Each employer who employs more than 50 employees required to be tested under this part was required to implement the pre-employment testing program required by this part not later than July 21, 1989, and the serious marine incident and reasonable cause testing programs required by this part not later than December 21, 1989. The random testing program required by this part shall be implemented not later than October 1, 1991.
- (b) Each employer who employs from 11 to 50 employees required to be tested under this part was required to implement the pre-employment, serious marine incident, and reasonable cause testing programs required by this part not later than December 21, 1989. The random testing program required by this part shall be implemented not later than October 1, 1991.
- (c) Each employer who employs 10 or fewer employees required to be tested under this part was required to implement the pre-employment, serious marine incident and reasonable cause testing programs required by this part not later than December 21, 1990. The random testing program required by this part shall be implemented not later than October 1, 1991.
- (d) Reserved.
- (e) The periodic testing requirements of 16.220 apply to physical examinations performed after December 21, 1990.

- (f) When a vessel owned in the United States is operating in waters that are not subject to the jurisdiction of the United States, the testing requirements of 16.210 and 16.230 do not apply to a citizen of a foreign country engaged or employed as pilot in accordance with the laws or customs of that foreign country.
- (g) Upon written request of an employer, Commandant (G-MMI) will review the employer's chemical testing program to determine compliance with the provisions of this part.

16.207 Conflict with foreign laws.

- (a) This part shall not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.
- (b) This part is not effective until January 2, 1997, 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, 1996, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1997.

16.210 Pre-employment testing requirements.

- (a) No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.
- (b) An employer may waive a pre-employment test required for a job applicant by paragraph (a) of this section if the individual provides satisfactory evidence that he or she has:
 - (1) Passed a chemical test for dangerous drugs, required by this part, within the previous six months with no subsequent positive drug tests during the remainder of the six-month period; or
 - (2) During the previous 185 days been subject to a random testing program required by 16.230 for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs required by this part.

16.220 Periodic testing requirements.

- (a) Except as provided by paragraph (c) of this section, and 10.209(g) and 12.02-27(g) of this subchapter, an applicant for an original issuance or a renewal of a license or a certificate of registry (COR), a raise in grade of a license, a higher grade of COR, an original issuance of a merchant mariner's document (MMD), the first endorsement as an able seaman, lifeboatman, qualified member of the engine department, or tankerman, or a reissuance of an MMD with a new expiration date shall be required to pass a chemical test for dangerous drugs. The applicant shall provide the results of the test to the Coast Guard Regional Examination Center (REC) at the time of submitting an application. The test results must be completed and dated not more than 185 days prior to submission of the application.
- (b) Unless excepted under paragraph (c) of this section, each pilot required by this subchapter to receive an annual physical examination must pass a chemical test for dangerous drugs as a part of that examination. The individual shall provide the results of each test required by this section to the REC when the pilot applies for a license renewal or when requested by the Coast Guard.
- (c) An applicant need not submit evidence of passing a

chemical test for dangerous drugs required by paragraph (a) or (b) of this section if he or she provides satisfactory evidence that he or she has –

- (1) Passed a chemical test for dangerous drugs required by this part within the previous six months with no subsequent positive chemical tests during the remainder of the 6-month period; or
- (2) During the previous 185 days been subject to a random testing program required by 16.230 for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs required by this part.

- (d) Except as provided by paragraph (b) of this section, an applicant is required to provide the results of only one chemical test for dangerous drugs when multiple transactions are covered by or requested in a single application.

16.230 Random testing requirements.

- (a) Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of crewmembers on inspected vessels who:
 - (1) Occupy a position, or perform the duties and functions of a position, required by the vessel's Certificate of Inspection;
 - (2) Perform the duties and functions of patrolmen or watchmen required by this chapter; or
 - (3) Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.
- (b) Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of crewmembers on uninspected vessels who:
 - (1) Are required by law or regulation to hold a license issued by the Coast Guard in order to perform their duties on the vessel;
 - (2) Perform duties and functions directly related to the safe operation of the vessel;
 - (3) Perform the duties and functions of patrolmen or watchmen required by this chapter; or
 - (4) Are specifically assigned the duties of warning, mustering, assembling, or controlling the movement of passengers during emergencies.
- (c) The selection of crewmembers for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with crewmembers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the testing frequency and selection process used, each covered crewmember shall have an equal chance of being tested each time selections are made and an employee's chance of selection shall continue to exist throughout his or her employment. As an alternative, random selection may be accomplished by periodically selecting one or more vessels and testing all crewmembers covered by this section, provided that each vessel subject to the marine employer's test program remains equally subject to selection.
- (d) Marine employers may form or otherwise use sponsoring organizations, or may use contractors, to conduct the random chemical testing programs required by this part.
- (e) Except as provided in paragraph (f) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered crewmembers.

- (f) The annual rate for random drug testing may be adjusted in accordance with this paragraph.
- (1) The Commandant's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported random positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Commandant considers the quality and completeness of the reported data, may obtain additional information or reports from marine employers, and may make appropriate modifications in calculating the industry random positive rate. Each year, the Commandant will publish in the *Federal Register* the minimum annual percentage rate for random drug testing of covered crewmembers. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.
 - (2) When the minimum annual percentage rate for random drug testing is 50 percent, the Commandant may lower this rate to 25 percent of all covered crewmembers if the Commandant determines that the data received under the reporting requirements of 46 CFR 16.500 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.
 - (3) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of 46 CFR 16.500 for any calendar year indicate that the positive rate is equal to or greater than 1.0 percent, the Commandant will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered crewmembers.
- (g) Marine employers shall randomly select a sufficient number of covered crewmembers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Commandant. If the marine employer conducts random drug testing through a consortium, the number of crewmembers to be tested may be calculated for each individual marine employer or may be based on the total number of covered crewmembers covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.
- (h) Each marine employer shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.
- (i) If a given covered crewmember is subject to random drug testing under the drug testing rules or more than one DOT agency for the same marine employer, the crewmember shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the crewmember's function.
- (j) If a marine employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the marine employer may:
- (1) Establish separate pools for random selection,

with each pool containing the covered crewmembers who are subject to testing at the same required rate; or

- (2) Randomly select such crewmembers for testing at the highest percentage rate established for the calendar year by any DOT agency to which the marine employer is subject.
- (k) An individual may not be engaged or employed, including self-employment, on a vessel in a position as master, operator, or person in charge for which a license or merchant mariner's document is required by law or regulation unless all crewmembers covered by this section are subject to the random testing requirements of this section.

16.240 Serious marine incident testing requirements.

The marine employer shall ensure that all persons directly involved in a serious marine incident are chemically tested for evidence of dangerous drugs and alcohol in accordance with the requirements of 46 CFR 4.06.

16.250 Reasonable cause testing requirements.

- (a) The marine employer shall require any crewmember engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, who is reasonably suspected of using a dangerous drug to be chemically tested for dangerous drugs.
- (b) 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. Where practicable, this belief should be based on the observation of the individual by two persons in supervisory positions.
- (c) When the marine employer requires testing of an individual under the provisions of this section, the individual must be informed of that fact and directed to provide a urine specimen as soon as practicable. This fact shall be entered in the vessel's official log book, if one is required.
- (d) If an individual refuses to provide a urine specimen when directed to do so by the employer under the provisions of this section, this fact shall be entered in the vessel's official log book, if one is required.

16.260 Records.

- (a) Employers shall maintain records of chemical tests which the Medical Review Officer reports as positive for a period of at least 5 years and shall make these records available to Coast Guard officials upon request. Records of tests reported as negative shall be retained for one year.
- (b) The records shall be sufficient to:
 - (1) Satisfy the requirements of 16.210(b) and 16.220(c) of this part.
 - (2) Identify the total number of individuals chemically tested annually for dangerous drugs in each of the categories of testing required by this part including the annual number of individuals failing chemical tests and the number and types of drugs for which individuals tested positive.

Subpart C – Standards for Chemical Testing for Dangerous Drugs

16.301 Procedures for Transportation

Workplace Drug Testing Programs.

Drug testing programs subject to this part shall be conducted in accordance with 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs. This subpart summarizes requirements for drug testing programs contained in those regulations. Those regulations should be consulted to determine the specific procedures which must be established and utilized. Drug testing programs required by this part shall use only drug testing laboratories certified by the Department of Health and Human Services (DHHS).

16.310 General.

- (a) Collection site. The employer shall ensure that the collection site is adequate to provide for the collection, security, temporary storage, and shipping of specimens to a certified drug testing laboratory.
- (b) Security. Procedures shall provide for the collection site to be secure. Collection sites dedicated solely for specimen collection must be secure at all times. Collection sites which are not dedicated solely for specimen collection must be secured during specimen collection.
- (c) Access to authorized personnel only. No unauthorized personnel shall be permitted in any part of a collection site when specimens are collected nor shall unauthorized personnel be allowed access to stored specimens.
- (d) Privacy. Procedures for collecting urine specimens shall allow for individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (e) Integrity of specimens. Collection site personnel shall take precautions to ensure that each specimen is not adulterated or diluted during the collection process.

16.320 Chain of custody.

- (a) A chain of custody for each specimen to be chemically tested shall be established and maintained from the time of specimen collection through the testing of the specimen.
- (b) If a specimen is not immediately prepared for shipment, it shall be safeguarded during temporary storage.
- (c) Every effort shall be made to minimize the number of persons handling specimens.

16.330 Specimen handling and shipping.

- (a) The employer shall obtain a specimen collection and shipping kit to be used to collect specimens and ship them to the certified drug testing laboratory.
- (b) The specimen collection and shipping kit, as required by 49 CFR Part 40, shall contain:
 - (1) Plastic urine specimen bottles in a sufficient quantity to accommodate the people to be tested.
 - (2) Means for sealing and identifying specimen bottles;
 - (3) Chain of custody forms;
 - (4) A set of step-by-step instructions which describe the proper procedures to be followed during the specimen collection, handling, and shipping; and
 - (5) Shipping materials.
- (c) The marine employer shall ensure that specimens are

promptly shipped to a certified testing laboratory meeting the requirements of 16.340. Chain of custody documents must accompany each specimen from the time of specimen collection through shipment to and testing by the laboratory.

- (d) Specimens shall be shipped by an expeditious means.

16.340 Test laboratory requirements.

- (a) The employer shall ensure that all chemical testing for dangerous drugs required by this part is conducted by a DHHS certified laboratory.
- (b) The laboratory shall meet the requirements of 49 CFR Part 40.

16.350 Specimen analysis.

- (a) Each specimen shall be analyzed in accordance with 49 CFR 40.29, which requires testing for:
 - (1) Marijuana;
 - (2) Cocaine;
 - (3) Opiates;
 - (4) Phencyclidine (PCP); and
 - (5) Amphetamines.
- (b) A specimen which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR 40.29 is reported to the Medical Review Officer as positive.

16.360 Specimen analysis reports.

- (a) The laboratory shall report all test results as required by 49 CFR 40.29(g). Reports are made within an average of five days after receipt of a specimen by the laboratory.
- (b) The laboratory reports as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive are reported positive to the Medical Review Officer for a specific drug or drug metabolite.

16.370 Medical review officer.

- (a) The employer shall designate or appoint a Medical Review Officer (MRO) meeting the qualifications of 49 CFR 40.33. If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.
- (b) The MRO shall review and interpret each confirmed positive test result in accordance with 49 CFR 40.33.
- (c) If the MRO verifies a laboratory confirmed positive report, the MRO shall report the positive test result to the employer or the employer's designated agent.
- (d) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO shall 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 shall agree to be subject to increased, unannounced testing for a period as determined by the MRO of up to 60 months.

16.380 Release of information.

- (a) Except as provided for in this part and in 4.06-60 of this chapter, an employer shall not release individual test results or other personal information for anti-drug program records.
- (b) Individual results from drug tests required by this part may be released if the individual tested signs a specific authorization for the release of the results to an identified person.

- (c) Nothing in this section shall prevent an individual tested under this part from obtaining the results of that test.

Subpart D – Employee Assistance Programs

16.401 Employee Assistance Program (EAP). The employer shall provide an Employee Assistance Program (EAP) for all crewmembers. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to a crewmember. Each EAP must include education and training on drug use for crewmembers and the employer's supervisory personnel as provided below:

- (a) EAP education program: Each EAP education program must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot line telephone number for crewmember assistance, and display and distribution of the employer's policy regarding drug and alcohol use in the workplace.
- (b) EAP training program: An EAP training program must be conducted for the employer's crewmembers and supervisory personnel. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug and alcohol use and abuse; and documentation of training given to crewmembers and the employer's supervisory personnel. Supervisory personnel must receive at least 60 minutes of training.

Subpart E – Management Information System

16.500 Management Information System requirements.

- (a) All marine employers shall collect the drug and alcohol testing program data identified in this section for each calendar year, January 1 to December 31. Marine employers shall submit this data to the Coast Guard by March 15 of the following year. The data shall be submitted to Commandant (G-MMI), 2100 Second Street SW, Washington, DC, 20593-0001.
- (b) All marine employers shall collect the following drug and alcohol testing program data:
- (1) Number of covered employees.
 - (2) Number of covered employees subject to testing under the antidrug rules of more than one DOT agency because of the nature of their assigned duties, identified by each agency.
 - (3) Number of drug and alcohol tests by test type. The drug test types are pre-employment, random, postaccident and reasonable cause. The alcohol test types are postaccident and reasonable cause.
 - (4) Number of positive drug test results verified by a Medical Review Officer (MRO) by test type and type of drug(s). Number of alcohol tests resulting in a blood alcohol concentration of .04 percent by weight or more by test type.
 - (5) Number of negatives reported by a MRO by type of test.

- (6) Number of applicants denied employment based on a positive drug test result verified by an MRO.
 - (7) Number of marine employees with a positive drug test result verified by an MRO, who were returned to duty in a covered position, having met the requirements of 16.370(d) and part 5 of this chapter.
 - (8) Number of marine employee drug test results that MROs verify positive for more than one drug or combination of drugs.
 - (9) Number of covered employees who refused to submit to a drug test required under this part.
 - (10) Marine employee training and education information.
- (c) The data listed in paragraph (b) of this section must be submitted on Form CG-5573, which is reproduced in Appendix B to this part and may be obtained at any Officer in Charge, Marine Inspection. All items on the form must be completed. Data may be submitted by consortia or other employer representatives on behalf of a marine employer. Reports submitted in this manner may be on one form, but must also be accompanied by a list of marine employers for whom the report is submitted. Unless submitting the report on their own behalf, each marine employer must notify the Coast Guard (Commandant [G-MMI]) in writing of the consortium or representative that will submit the employer's data, and remains responsible for ensuring that the data is submitted and is accurate.
- (d) Marine employers that conduct operations regulated by another Department of Transportation Operating Administration must submit appropriate data to that Operating Administration for those employees covered by that Operating Administration's regulations.