

## **Title 46: Shipping**

### **PART 4—MARINE CASUALTIES AND INVESTIGATIONS**

#### **Subpart 4.06—Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service**

**Source:** CGD 86–067, 53 FR 47078, Nov. 21, 1988, unless otherwise noted.

##### **§ 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 as required in this part.

(c) The marine employer determines which individuals are directly involved in a serious marine incident (SMI). A law enforcement officer may determine that additional individuals are directly involved in the SMI. In these cases, the marine employer must take all practical steps to have these additional individuals tested according to this part.

(d) The requirements of this subpart do not prevent personnel who are required to be tested from performing duties in the aftermath of an SMI when their performance is necessary to respond to safety concerns directly related to the incident.

(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.

[CGD 86–067, 53 FR 47078, Nov. 21, 1988, as amended by USCG-2000–7759, 66 FR 42967, Aug. 16, 2001; USCG–2001–8773, 70 FR 75960, Dec. 22, 2005]

### **§ 4.06-3 Requirements for alcohol and drug testing following a serious marine incident.**

When a marine employer determines that a casualty or incident is, or is likely to become, an SMI, the marine employer must ensure that the following alcohol and drug testing is conducted:

(a) *Alcohol testing.* (1) Alcohol testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The alcohol testing of each individual must be conducted within 2 hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevent the alcohol testing from being conducted within 2 hours of the occurrence of the incident, then alcohol testing must be completed as soon as the safety concerns are addressed.

(iii) Alcohol testing is not required to be conducted more than 8 hours after the occurrence of the SMI.

(2) Alcohol-testing devices must be used according to the procedures specified by the manufacturer of the testing device and by this part.

(3) If the alcohol testing required in paragraphs (a)(1)(i) and (a)(1)(ii) of this section is not conducted, the marine employer must document on form CG-2692B the reason why the testing was not conducted.

(4) The marine employer may use alcohol-testing results from tests conducted by Coast Guard or local law enforcement personnel to satisfy the alcohol testing requirements of this part only if the alcohol testing meets all of the requirements of this part.

(b) *Drug testing.* (1) Drug testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The collection of drug-test specimens of each individual must be conducted within 32 hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevent the collection of drug-test specimens from being conducted within 32 hours of the occurrence of the incident, then the collection of drug-test specimens must be conducted as soon as the safety concerns are addressed.

(2) If the drug-test specimens required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section were not collected, the marine employer must document on form CG-2692B the reason why the specimens were not collected.

[USCG-2001-8773, 70 FR 75960, Dec. 22, 2005]

**§ 4.06-5 Responsibility 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 an SMI must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide a blood, breath, saliva, or urine specimen, this refusal must be noted on form CG-2692B and in the vessel's official log book, if a log book is required. The marine employer must remove the individual as soon as practical from duties that directly affect the safe operation of the vessel.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for 8 hours following the occurrence of the SMI or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part. However, refusal to provide specimens is a violation of this subpart and may subject the individual to suspension and revocation proceedings under part 5 of this chapter, a civil penalty, or both.

[USCG-2001-8773, 70 FR 75961, Dec. 22, 2005]

**§ 4.06-15 Accessibility of chemical testing devices.**

(a) *Alcohol testing* . (1) The marine employer must have a sufficient number of alcohol testing devices readily accessible on board the vessel to determine the presence of alcohol in the system of each individual who was directly involved in the SMI.

(2) All alcohol testing devices used to meet the requirements of this part must be currently listed on either the Conforming Products List (CPL) titled "Modal Specifications for Devices To Measure Breath Alcohol" or "Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids," which are published periodically in the Federal Register by National Highway Traffic Safety Administration (NHTSA).

(3) The alcohol testing devices need not be carried on board each vessel if obtaining the devices and conducting the required alcohol tests can be accomplished within 2 hours from the time of occurrence of the SMI.

(b) *Drug testing* . (1) The marine employer must have a sufficient number of urine-specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily accessible for use following SMIs.

(2) The specimen collection and shipping kits need not be carried on board each vessel if obtaining the kits and collecting the specimen can be completed within 32 hours from the time of the occurrence of the SMI.

[USCG-2001-8773, 70 FR 75961, Dec. 22, 2005]

**§ 4.06-20 Specimen collection requirements.**

(a) *Alcohol testing* . (1) When conducting alcohol testing required in §4.06–3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with §4.06–3(a) must be taken only by qualified medical personnel.

(3) Collection of an individual's saliva or breath to comply with §4.06–3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted according to this subpart.

(b) *Drug testing* . (1) When conducting drug testing required in §4.06–3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine according to 46 CFR part 16 and 49 CFR part 40.

(2) Specimen collection and shipping kits used to conduct drug testing must be used according to 49 CFR part 40.

[USCG–2001–8773, 70 FR 75961, Dec. 22, 2005]

**§ 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 §16.113 of this chapter and the chain of custody requirements of 49 CFR part 40, subpart D, 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.

[CGD 86–067, 53 FR 47078, Nov. 21, 1988, as amended by USCG-2000–7759, 66 FR 42967, Aug. 16, 2001]

**§ 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 produce a complete analysis report.

(b) Reports shall be sent to the Medical Review Officer meeting the requirements of 49 CFR 40.121, as designated by the marine employer submitting the specimen for testing. Wherever 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 part 40, subpart G, 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.

[CGD 86-067, 53 FR 47078, Nov. 21, 1988, as amended by CGD 90-053, 58 FR 31107, May 28, 1993; USCG-2000-7759, 66 FR 42967, Aug. 16, 2001]

**§ 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.

(e) The Commandant may approve alternate electronic means of submitting reports and test results as required under paragraphs (a) through (d) of this section.

[CGD 86-067, 53 FR 47078, Nov. 21, 1988, as amended by CGD 97-057, 62 FR 51041, Sept. 30, 1997; USCG-1999-6216, 64 FR 53223, Oct. 1, 1999]

**§ 4.06-70 Penalties.**

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

[USCG-2001-8773, 70 FR 75961, Dec. 22, 2005]