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From: ssmpls@aol.com <ssmpls@aol.com>
Sent: Saturday, March 21, 2020 7:15 PM
To: Patrick.J.Mannion@uscg.mil; IASKNMC@uscg.mil
Cc: amerila@maritimesafety.org; mmeeker@maritimesafety.org; bkelk@maritimesafety.org;
iperez@maritimesafety.org; Ebeller@andersonkelly.com; lmiddlebrook@ssmplaw.com
Subject: Re: COVID-19 and Drug Testing Compliance

Dear Mr. Mannion:

American Maritime Safety, Inc. (AMS) represents over 400 companies operating in the U.S. maritime industry. We have communicated with your office twice before concerning proposed responses to the challenges presented by COVID-19 with respect to drug testing compliance. The issuance, on March 19, 2020, of Marine Safety Information Bulletin Number 08-20, prompts us to request a three-month moratorium on USCG-mandated random testing and reduction of the required annual testing rate to 30% for 2020. We also request that pre-employment testing exemptions under 46 CFR section 16.210(b) be modified to provide that no testing is required if the mariner had a negative test within the previous 12 months or was subject to random testing for 60 days within the last year.

In recognition of the impact of COVID-19, the USCG's Commercial Regulations & Standards Directorate has provided, via MSIB No. 08-20, comparable deferrals in analogous contexts impacting mariner qualifications. Merchant Marine Credentials (MMC), Medical Certificates (National Endorsements only) and STCW endorsements with expiration dates between March 1, 2020 and July 31, have been extended until October 31, 2020. MSIB 08-20 also advised that the Coast Guard does not intend to enforce the obligation under 46 USC 7101(e)(3) for pilots to undergo an annual physical "given the current national emergency and the lack of medical care."

We consider the modifications to the USCG's mandatory drug testing program proposed above to be comparable to those provided in MSIB No. 08-20 and that they would promote both the control of contagion and lessen the present burden on medical facilities.

On behalf of its members, AMS requests the courtesy of a response at your earliest convenience.

Lee Seham, Esq.
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-----Original Message-----

From: ssmpls <ssmpls@aol.com>

To: iperez <iperez@maritimesafety.org>; Patrick.J.Mannion <Patrick.J.Mannion@uscg.mil>

Cc: amerila <amerila@maritimesafety.org>; mmeeker <mmeeker@maritimesafety.org>; bkelk <bkelk@maritimesafety.org>

Sent: Thu, Mar 19, 2020 1:30 pm

Subject: Re: COVID-19 and Drug Testing Compliance

Dear Mr. Mannion:

Issues continue to arise with our members concerning the problematic situation with respect to specimen collections: (1) the health concern presented by going to clinics where the potential for contagion exists, and (2) the decreasing availability of specimen collectors due to illness, government lockdown orders, or fear.

Under the circumstances, we request that your office authorize a 30-day moratorium on specimen collections/testing and a decrease of the required annual random testing rate to 40% for 2020.

As reflected in the email below, we believe these actions are consistent with DOT and USCG policies that subordinate specimen collection to crewmember health and safety where appropriate.

We respectfully request a response at your earliest convenience.

Lee Seham, Esq.

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-----Original Message-----

From: iperez <iperez@maritimesafety.org>
To: 'Mannion, Patrick J CIV' <Patrick.J.Mannion@uscg.mil>
Cc: ssmpls <ssmpls@aol.com>; 'Ann Merila' <amerila@maritimesafety.org>; 'Mark Meeker' <mmeeker@maritimesafety.org>; 'Bryan Kelk' <bkelk@maritimesafety.org>
Sent: Mon, Mar 9, 2020 3:24 pm
Subject: RE: COVID-19 and Drug Testing Compliance

Dear Mr. Mannion:

Members of our consortium have sought guidance from us with respect to how to handle a situation where a vessel, which has been selected for random testing, has a crewmember subject to temporary quarantine due to concerns related to COVID-19. One operator asked us whether it would be required to remove the crewmember from quarantine in order that he would be able to provide a urine specimen to a visiting specimen collector. Specimen collectors have expressed adamant opposition to such collections.

United States Coast Guard MSIB Number 02-20 has determined that persons who are suspected of carrying the COVID-19 present a hazardous condition per 33 CFR 160.216 and must be reported to the U.S. Coast Guard Captain of the Port (COTP) under 33 CFR 160.206. In view of these determinations, we have reviewed Department of Transportation and USCG for guidance in analogous contexts.

We note that United States Department of Transportation regulations provide that:

If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

49 CFR § 40.61(a)(2).

Similarly, USCG post-serious marine incident testing regulations acknowledgment that “safety concerns” may legitimize specimen collections delays in the aftermath of a serious marine incident. 46 CFR § 4.06-3(a)(ii), (b)(iii).

We consider these provisions to reflect the policies of the USDOT and USCG that the health and safety of other crewmembers and the specimen collector should be prioritized over the completion a specimen collection from a quarantined individual. Our view, therefore, is that the master of the vessel in concert with the Designated Employer Representative would be permitted to excuse a previously quarantined individual from participating in a specimen collection.

We respectfully request that you advise us if the above is consistent with the view of your office.

Thank you for your consideration.



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