

This rule would provide that alcohol testing requirements after an SMI will not prevent personnel who are required to be tested for alcohol from performing duties in the aftermath of an SMI when their performance is necessary to meet safety concerns directly related to the casualty.

Coast Guard regulations in 46 CFR part 4 mandating alcohol testing after an SMI currently require marine employers to collect blood or breath specimens from each individual who was directly involved in the SMI, and for breath specimens, to use an alcohol breath-testing device that can accurately determine the presence of alcohol in an individual's system. The regulations also require inspected vessels certificated for unrestricted oceans routes and inspected vessels certificated for restricted overseas routes to have onboard at all times an alcohol breath-testing device capable of determining the presence of alcohol in an individual's system. The voyages of oceangoing vessels take the vessel and its crew far from shore-based facilities where alcohol testing can be conducted. If an SMI were to occur during the voyage, the vessel would not be able to return to a shore-based facility soon enough to complete alcohol testing for the results to indicate whether alcohol was present in an individual's system at the time the SMI occurred. Requiring marine employers to have testing devices onboard these vessels at all times makes it possible for them to ensure that proper alcohol testing is conducted in a timely manner.

Section 2303a applies to all commercial vessels. The majority of these vessels are not currently required to carry alcohol-testing devices on board the vessel. A regulatory requirement to conduct testing within the statutory timeframes cannot, by itself, ensure that alcohol testing after an SMI will be done within 2 hours. For the same reason we currently require oceangoing vessels to carry alcohol breath-testing devices onboard at all times, all other commercial vessels should also carry testing devices onboard their vessels. Having the devices onboard would make it possible for a marine employer to conduct the required alcohol testing within two hours after the occurrence of an SMI.

Given a choice between Evidential Breath Testing (EBT) devices or breath Alcohol Screening Devices (ASDs), we believe that most commercial vessel owners and operators would elect to carry breath ASDs for determining the presence of alcohol in an individual's system. Our assumption is based on the cost differential between the more

expensive EBT and less expensive breath ASD. However, the cost of the less expensive breath ASD could still be too expensive for the smallest commercial vessel owners and operators. Providing vessel owners and operators with a wider variety of alcohol-testing devices to choose from would give them more control over the cost of compliance. Therefore, we are proposing to allow commercial vessel owners or operators to carry either breath or saliva alcohol-testing devices to satisfy the requirement to carry alcohol-testing devices onboard their vessels.

Discussion of Proposed Rule

Statutory Time Requirements for Alcohol Testing After an SMI

The Coast Guard proposes adding § 4.06–3, “Requirements for alcohol and drug testing following a serious marine incident,” which would require commercial vessel marine employers to conduct alcohol testing within two hours after an SMI, unless precluded by safety concerns directly related to the casualty, as mandated by section 2303a. If alcohol testing is not completed within two hours based on this exception, it must be done within eight hours of the casualty. An explanation on the casualty report form CG–2692B would be required for alcohol testing that is not completed within the prescribed two-hour timeframe, and an additional explanation would be required when testing is not completed within the eight-hour timeframe.

We also propose adding a provision in this section requiring drug testing be conducted as soon as possible after an SMI but no later than 32 hours after its occurrence. We would require the same type of explanation on the casualty reporting form when drug testing is not completed within the prescribed times as when alcohol testing is not completed within provided timeframes.

Responsibility of Individuals Directly Involved in Serious Marine Incidents

We propose amending § 4.06–5, “Responsibility of individuals directly involved in serious marine incidents,” so that individuals subject to alcohol testing after an SMI would be prohibited from consuming alcoholic beverages for eight hours following the SMI, or until after the required alcohol testing is completed.

Adding a Requirement To Carry Alcohol-Testing Devices

We propose adding § 4.06–15, “Availability of chemical testing devices,” which would require marine

employers to have sufficient breath- or saliva-alcohol testing devices capable of determining the presence of alcohol in an individual's system on board vessels. This requirement would make it possible for owners and operators to comply with the statute's two-hour timeframe for alcohol testing.

We would also move § 4.06–20(b), which requires commercial vessel owners and operators to have drug-testing kits readily available for use following an SMI, to this new section.

Allowing Use of Saliva-Alcohol Testing Devices

To prevent a redundancy, we propose moving the specimen collection requirements in § 4.06–10 to the specimen collection requirements in § 4.06–20. We also propose including saliva, along with blood and breath, as specimens that can be collected for alcohol testing. For alcohol testing conducted aboard vessels, we would allow vessel owners and operators to choose any breath- or saliva-alcohol testing device that can determine the presence of alcohol in a individual's system. For drug testing, we will keep the current requirement for testing kits complying with 49 CFR part 40.

Delay of Implementation

We propose a delayed implementation date of 180 days to ensure that all marine employers subject to a new carriage requirement have ample time to procure and learn how to use the required equipment.

Related Rulemaking

During the comment period of a recent rulemaking, docket number USCG 2000–7759 Chemical Testing (66 FR 42964), we received one comment letter that requested several changes to the regulations in 46 CFR part 4 requiring alcohol testing after an SMI. The comment recommended that we revise the regulations to allow the use of saliva-alcohol testing devices. The comment also requested that we remove the requirement to conduct alcohol or drug testing on human remains. A copy of this comment letter has been placed into this rulemaking docket. We have considered the comment and, as described in the discussion of proposed rule section of this notice, we are proposing to amend §§ 4.06–5, 4.06–10, and 4.06–20. However, at this time, we are not proposing to amend § 4.06–30 concerning testing of human remains.

Department of Transportation Drug and Alcohol Testing Regulations

This proposal would have no impact on any existing Department of