

### 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 drug or alcohol use.

*Consortium/Third party administrator (C/TPA)* means a service agent who provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

*Credential* is a term used to refer to any or all of the following:

- (1) Merchant mariner's document.
- (2) Merchant mariner's license.
- (3) STCW endorsement.
- (4) Certificate of registry.
- (5) Merchant mariner credential.

*Crewmember* means an individual who is:

- (1) Onboard a vessel acting under the authority of a credential issued under this subchapter, whether or not the individual is a member of the vessel's crew; or
- (2) Engaged or employed onboard 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 credential issued under this subchapter, except for the following:

(1) 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

(2) 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:

(i) 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;

(ii) Scientific personnel on an oceanographic research vessel;

(iii) Individuals on industrial vessels who are industrial personnel, as defined in this chapter; and

(iv) Individuals not required under part 15 of this subchapter who have no duties that 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)).

*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 40 was reported as "positive" by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

*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 (MRO)* means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

*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; life-saving equipment and appliances; fire-fighting 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 for random drug testing* means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug test results (*i.e.*, positives, negatives, and refusals) under this part.

*Refuse to submit* means you refused to take a drug test as set out in 49 CFR 40.191.

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

*Service agent* means any person or entity that provides services specified under this part or 49 CFR part 40 to employers and/or crewmembers in con-

nection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR part 40. Service agents are not employers for purposes of this part.

*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.

*Stand-down* means the practice of temporarily removing a crewmember from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

*Substance Abuse Professional (SAP)* means a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

*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.

[CGD 86-067, 53 FR 47079, Nov. 21, 1988; 53 FR 48367, Nov. 30, 1988, as amended by CGD 90-014, 56 FR 31033, July 8, 1991; CGD 90-053, 58 FR 31107, May 28, 1993; CGD 93-051, 59 FR 28792, June 3, 1994; 59 FR 62226, Dec. 2, 1994; CGD 91-223, 60 FR 4525, Jan. 23, 1995; USCG-2000-7759, 66 FR 42967, Aug. 16, 2001; USCG-2003-16414, 69 FR 6577, Feb. 11, 2004; USCG-2006-24371, 74 FR 11263, Mar. 16, 2009]

#### § 16.107 Waivers.

(a) To obtain a waiver from 49 CFR 40.21 or from this part you must send your request for a waiver to the Commandant (CG-545).

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the