

## § 16.107

## 46 CFR Ch. I (10–1–14 Edition)

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 connection 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–INV).

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to Commandant (CG–INV), at the address listed in § 16.500(a).

(c) An employer may request a waiver from the Coast Guard in order to stand-down a crewmember following the Medical Review Officer's receipt of

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a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the crewmember. Consistent with 49 CFR 40.21, the request for a waiver must include as a minimum: Information about the organization and the proposed written company policy concerning stand-down. Specific elements required in the written waiver request are contained in 49 CFR 40.21(c).

[USCG-2000-7759, 66 FR 42967, Aug. 16, 2001, as amended by USCG-2009-0702, 74 FR 49225, Sept. 25, 2009]

### § 16.109 Public Interest Exclusion (PIE).

Service agents are subject to Public Interest Exclusion (PIE) actions in accordance with 49 CFR Part 40, subpart R. The PIE is an action which excludes from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or with 49 CFR part 40, has shown that it is not currently acting in a responsible manner.

[USCG-2000-7759, 66 FR 42968, Aug. 16, 2001]

### § 16.113 Chemical drug testing.

(a) Drug testing programs required by this part must be conducted in accordance with 49 CFR part 40, Procedures for Transportation Workplace Testing Programs. This subpart summarizes the responsibilities of documented and licensed mariners, marine employers, MRO, SAP and other chemical testing service providers in 49 CFR part 40. The regulations in 49 CFR part 40 should be consulted to determine the specific procedures which must be established and utilized. Drug testing programs required by this part must use only drug testing laboratories certified by the Department of Health and Human Services (DHHS).

(b) Each specimen collected in accordance with this part will be tested, as provided in 49 CFR 40.85, for the following:

- (1) Marijuana;
- (2) Cocaine;
- (3) Opiates;
- (4) Phencyclidine (PCP); and
- (5) Amphetamines.

[USCG-2000-7759, 66 FR 42968, Aug. 16, 2001]

EDITORIAL NOTE: At 74 FR 11264, Mar. 16, 2009, §16.113 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

### § 16.115 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115. Any person who fails to implement or conduct, or who otherwise fails to comply with the requirements for chemical testing for dangerous drugs as prescribed under this part, is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. Each day of a continuing violation will constitute a separate violation.

[USCG-2000-7759, 66 FR 42968, Aug. 16, 2001]

## Subpart B—Required Chemical Testing

### § 16.201 Application.

(a) Chemical testing of personnel must be conducted as required by this subpart and in accordance with the procedures detailed in 49 CFR part 40.

(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 credential fails a chemical test for dangerous drugs, the individual's employer, prospective employer, or sponsoring organization must report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual must be denied employment as a crewmember or must be removed from duties which directly affect the safe operation of the vessel as soon as practicable and is subject to suspension and revocation proceedings against his or her credential under 46 CFR part 5.

(d) If an individual who does not hold a credential 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 re-employed aboard a vessel until the requirements of paragraph (f) of this section and 46 CFR