

U.S. Department
of Transportation

United States
Coast Guard



Commander
Eighth Coast Guard District
Hale Boggs Federal Building

501 Magazine St.
New Orleans, LA 70130-3396
Staff Symbol:
Phone: (504) 589-6271

16722
NOV 20 1995

From: Commander, Eighth Coast Guard District
To: Distribution

Subj: EIGHTH DISTRICT DRUG AND ALCOHOL POLICY

Ref: (a) Enforcement of the Chemical Testing Regulations,
COMDTINST 16722.4
(b) COMDT COGARD Washington DC 071601Z SEP 95, Drug and
Alcohol Program Inspector (DAPI)
(c) Title 46 Code of Federal Regulation Part 16
(d) Title 49 Code of Federal Regulation Part 40
(e) Title 46 U.S. Code, Sections 2103, 3306, 3313 and 3318

1. This letter provides policy and procedures for the education and enforcement of chemical testing regulations on all applicable commercial vessels within the Eighth Coast Guard District. Commanding Officers of Marine Safety Offices shall ensure compliance with the requirements of this letter. Commands shall become familiar with references (a) through (e) and shall work with marine employers to attain 100% compliance with Title 46 Code of Federal Regulations Part 16 on all applicable commercial vessels.

2. Reference (a) provides information regarding the history and objectives of this program. It states that the Eighth District's Drug and Alcohol Program Inspector (DAPI) has been assigned to MSO New Orleans. Since issuance of reference (a), the DAPI billet has been transferred to D8m from which the DAPI will manage the program.

3. With the following additions, Commanding Officers of D8 MSOs shall comply with the program responsibilities specified in reference (a) for an MSO without a DAPI:

a. Ensure that the unit point of contact (POC) to the D8 DAPI conducts company audits using "U.S.C.G. Chemical Testing Program Inspection Checklist," performing no less than four audits per month.

b. Ensure that the unit personnel complete vessel audits and conduct follow-up of CG-835 noncompliant companies.

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Subj: EIGHTH DISTRICT DRUG AND ALCOHOL POLICY

46 USC 3318: violation of a regulation

When recommending a civil penalty award, remember that the goal of the civil penalty is to make it cost advantageous to achieve compliance, not to drive noncompliant operators out of business.

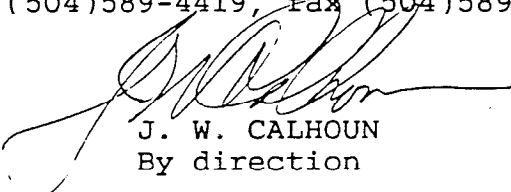
b. Uninspected vessels:

(1) Vessel shall be issued a letter directing compliance within 30 days (see enclosure (4) for sample wording).

(2) Once legislation is implemented, vessels failing to comply within 30 days shall be issued a civil penalty. Until that time, the only enforcement tool available for the uninspected vessel community is a Captain of the Port Order to cease operations pending implementation of a drug and alcohol testing program that meets 46 CFR 16. Although orders of this type are legal (enclosure (5)), they should only be used as a last resort in cases of blatant and continued noncompliance. This is the only case in which a Captain of the Port Order shall be used to enforce the drug and alcohol testing regulations.

The employer is responsible for implementing a drug and alcohol testing program. Because the master and crew have very little control of company actions, suspension and revocation proceedings against vessel personnel shall be rare.

5. Questions regarding this program should be directed to the D8 DAPI, Ensign Erik Jensen at (504)589-4419, fax (504)589-4999.



J. W. CALHOUN
By direction

Encl: (1) Drug and Alcohol Program Monthly Data Report Form
(2) Sample Press Release
(3) Actions To Be Followed During Vessel Inspections
(4) Sample Letter of Noncompliance
(5) CCGDEIGHT (dl) ltr 5800 dated 1 June 1994

Dist: All Eight District MSOs, MSU, and MSDs

D.A.P.I. MONTHLY REPORT

1) AUDITS PERFORMED:

INSPECTED VESSELS: _____

UNINSPECTED VESSELS: _____

2) NUMBER USING CONSORTIUMS: _____

3) OFFICIAL CORRECTIVE ACTIONS TAKEN:

CG 835 ISSUED: _____ # CORRECTED: _____

CIVIL PENALTY: _____

S & R HEARINGS: _____

COTP ORDERS: _____

4) # OFFICIAL CORRECTIVE ACTIONS TAKEN (i.e. CG-835 issued):

PRE-EMPLOYMENT	RANDOM TESTING	EMPLOYEE ASSISTANCE	MIS FORM

5) LIST COMPANIES AUDITED BY USING U.S.C.G. CHEMICAL TESTING PROGRAM INSPECTION CHECKLIST

TESTING PROGRAM INSPECTION CHECKLIST	HRS SPENT

6) OUTREACH PROGRAMS:

SPEAKING ENGAGEMENTS: (LIST)	# ATTENDANCE	AUDIENCE
		INSP/UNINS
		INSP/UNINS
		INSP/UNINS
ASSOCIATION MEETINGS: (LIST)		INSP/UNINS
		INSP/UNINS
		INSP/UNINS
		INSP/UNINS

TRADE PUBLICATION ARTICLES _____ INSP/UNINS

PRESS ARTICLES _____ INSP/UNINS

UNIT NEWSLETTER ARTICLES OR OTHER INFORMATION MAILINGS: _____ INSP/UNINS

FOR CLARIFICATION, SEE REVERSE

ENCLOSURE(1)

MONTHLY REPORT INSTRUCTIONS

****ALL NUMBERS ARE FOR THE CALENDAR MONTH ONLY****

- 1) Enter total number of audits performed during the month on both inspected and uninspected vessels. Include each inspection (annual or reinspection) during which a compliance check was made as an inspected vessel audit (either Form A or B).
- 2) Enter number of employers using consortiums or any third party administrator.
- 3) Official Corrective action taken:
 - A) Enter number of CG-835 issued for violation of 46 CFR part 16, including the number of 835's that have been corrected, and the number that are outstanding.
 - B) Number of civil penalties processed (including those still being processed that occurred during the reporting month).
 - C) Number of Suspension and Revocation Hearings (include all completed or in process for actions during the reporting month).
 - D) Number of COTP orders issued to uninspected vessels to require compliance with the drug and alcohol testing regulations.
- 4) Official corrective action: list the number of CG-835's issued during the month for deficiencies noted in a companies pre-employment program, random testing program, employee assistance program, and submission of the Management Information Form to Headquarters.
- 5) List of companies audited on site by the unit POC using Headquarters Form "U.S.C.G. Chemical Testing Program Inspection Checklist".
- 6) Outreach programs: Summarize unit activity as specified. Where applicable, estimate audience size and identify primary audience type by circling "INSP" for inspected vessel audience and "UNINS" for uninspected vessel audience.

COAST GUARD PROMOTES
DRUG-FREE MARITIME INDUSTRY

Despite the fact that for several years Coast Guard Marine inspectors have checked for drug program compliance during routine vessel exams, the Coast Guard still estimates that as much as 85% of inspected vessels do not fully comply with existing regulations. Estimates for uninspected vessels are even higher. Congress recently mandated that the Coast Guard re-emphasize the importance of establishing and maintaining a current Drug and Alcohol Program for both inspected and uninspected vessels.

In order to accomplish this, a new Drug and Alcohol Program Inspector (DAPI) billet was created in each Coast Guard district. During the next year, the Coast Guard will step up their checks for compliance with these regulations during inspections and boardings of both inspected and uninspected vessels. During these checks, questions regarding the following aspects of the companies program should be anticipated:

- * Does the Company have a pre-employment, random, reasonable cause, and post-accident testing program?
- * Do they have an employee assistance program?
- * Did they submit a Management Information Form to Coast Guard Headquarters last year?
- * Do they use a consortium or third party administrator?

Within the Eighth Coast Guard District, each Marine Safety Office will have a specially trained person to coordinate unit activities with the district DAPI. In addition to vessel compliance checks by Marine Inspectors, this person will visit many vessel owners. During these office audits, detailed checks for company compliance with drug and alcohol testing regulations will be conducted. Close liaison between companies and unit drug and alcohol program administrators is encouraged.

ENCLOSURE(2)

ACTION TO BE FOLLOWED DURING VESSEL INSPECTIONS

1. ACTION: During each Inspection for Certification and Annual Reinspection, the assigned Marine Inspector shall:

a. While scheduling a vessel inspection, ensure that the company is advised of the questions that will be asked of the vessel crew relative to the companies drug and alcohol testing program. Companies that ONLY have unmanned barges will not have a program.

b. During vessel inspections, evaluate suitability of companies drug and alcohol testing program by completing the Chemical Testing Program Audit Form (A). Based upon the answers received and the inspectors overall opinion of crew familiarity with the companies drug and alcohol testing program, the inspector shall determine whether or not there is sufficient probability that the companies program meets regulatory requirements. For those cases where the inspector does not feel that the company program complies with the regulations, a CG-835 granting 30 days to provide information as specified by the Chemical Testing Program Audit Form (B) shall be issued. The following is suggested wording for the CG-835:

"By ____ (date) _____, provide to MSO ____ (unit) _____, satisfactory documentation that the marine employer has established and implemented a chemical testing program as required by 46 CFR Part 16."

Note: Because Form B does not have an OMB document number, its use cannot be mandated. It is provided as an aid to guide the company regarding the minimum information required to document compliance.

c. Upon completion of the inspection, enter the results of the chemical testing regulations compliance check into the MIAR product set as per current Commandant policy.

d. Forward all Forms A and B, (or equivalent), along with copies of all chemical testing CG-835s to the unit's assigned POC.

e. Thirty days after issuance of a chemical testing CG-835, follow-up and bring any non compliance to the attention of the command for appropriate enforcement action.

2. Questions regarding this letter or program shall be directed to the District DAPI, ENS Jensen at (504) 589-6271.

Encl: (1) Chemical Testing Program Audit Form (A)
(2) Chemical Testing Program Audit Form (B)

ENCLOSURE(3)

CHEMICAL TESTING PROGRAM AUDIT FORM (A)

VESSEL NAME: _____ OFFICIAL NUMBER _____

PERSON IN CHARGE: _____ PHONE NUMBER: _____

MI CASE NUMBER: _____

(circle the appropriate answer)

1. Does the company have a Pre-employment drug testing program?
(46 CFR 16.210) Yes No
2. Does the company have a random drug testing program?
(46 CFR 16.230) Yes No
3. Does the company have an Employee Assistance Program (EAP)?
(46 CFR 16.401) Yes No
4. Did the company submit the annual Drug and Alcohol Testing
Program report (Management Information System Form) to
Headquarters last year? (46 CFR 16.500) Yes No
5. Does the company use a Consortium or third party to
administer their program? Yes No

If yes, list the name and phone number of the consortium:

I have asked these questions to the above mentioned individual
and in my opinion the company DOES/DOES NOT meet with
requirements listed in 46 CFR Part 16.

Signature of Inspector & date

CG 835 ISSUED? YES/NO

NOTE: There is no requirement that documentation be maintained
onboard the vessel. These questions are simply the minimum data
that should be gathered as part of an audit.

ENCLOSURE(3-A)

Questions to ask regarding the presence of an EAP:

- Have you received any drug or alcohol awareness training?
- Have you been instructed on where/how to get help for an alcohol or drug program?
- Have you seen posters with drug/alcohol hotline phone numbers in the office or common area?
- Have you seen your companies' drug/alcohol policy?
- Have you received any handouts or brochures about substance abuse?

When doing a shipboard audit an answer of 'YES' to any of the above questions will indicate that the employer has an EAP

CHEMICAL TESTING PROGRAM AUDIT FORM (B)

NOTE: Use of this form is not mandated. It is provided as a guide to the minimum information needed to prove compliance with 46 CFR Part 16.

Organization/Company:

Name: _____
Address: _____

Phone: _____
Fax: _____

**Contact for Questions with Drug
and Alcohol Testing Program**

Name: _____
Phone: _____
Fax: _____

1. APPROXIMATE AVERAGE NUMBER OF EMPLOYEES IN PROGRAM: _____
2. NUMBER OF INSPECTED VESSELS IN PROGRAM: _____
3. NUMBER OF UNINSPECTED VESSELS IN PROGRAM: _____
4. HOW MANY PRE-EMPLOYEMENT TESTS SINCE JANUARY 1st OF THIS YEAR? _____
5. HOW MANY RANDOM TESTS SINCE JANUARY 1st OF THIS YEAR? _____
6. HOW MANY POST-ACCIDENT TESTS SINCE JANUARY 1st OF THIS YEAR? _____
7. HOW MANY REASONABLE CAUSE TESTS SINCE JANUARY 1st OF THIS YEAR? _____
8. HOW MANY POSITIVE DRUG TESTS SINCE JANUARY 1st OF THIS YEAR? _____
9. MANAGEMENT INFORMATION SYSTEM FORM FOR PREVIOUS YEAR SUBMITTED TO
COAST GUARD HEADQUARTERS (G-MAO). (46 CFR 16.500) Y / N
10. POSITIVE DRUG TEST RESULTS MAINTAINED FOR FIVE YEARS (46 CFR 16.260a) Y / N
11. NEGATIVE DRUG TEST RESULTS MAINTAINED FOR ONE YEAR (46 CFR 16.260a) Y / N
12. EMPLOYEE ASSISTANCE PROGRAM (46 CFR 16.401) IN PLACE Y / N
13. MEMBER OF CONSORTIUM OR THIRD PARTY ADMINISTRATOR Y / N

IF YES, PROVIDE THE FOLLOWING DATA:

Company Name: _____
Address: _____

Contact: _____
Phone: _____

ENCLOSURE (3B)

SAMPLE WORDING FOR LETTER OF NONCOMPLIANCE

YOUR LETTERHEAD

DATE

Crystal Marine, Inc
P.O. Box 278
Sansun, LA 70461

Based on the results of a Coast Guard audit of your company's chemical testing program, on September 16, 1995, it was determined that you were in violation of federal law which is codified in Title 46 Code of Federal Regulations Part 16 (46 CFR 16). Specifically you failed to:

- * conduct random testing in accordance with 46 CFR 16.230;
- * maintain records of the number of individuals failing chemical tests and the number and type of drugs for which individuals tested positive in accordance with 46 CFR 16.260;
- * submit to G-MAO the annual Management Informations System Form in accordance with 46 CFR 16.500;
- * notify the Coast Guard of positive test results in accordance with 46 CFR 16.201(c).

The above deficiency(ies) is (are) to be corrected no later than (date)____. If this (these) deficiencies are not resolved in a timely manner, you will be subject to other enforcement actions which can prohibit the operation of your vessel and will, in the future, subject you to fines of up to \$1000 per day of noncompliance.

A copy of this letter will be kept on file for follow-up action and for consideration if further chemical testing violations occur.

Questions regarding this matter should be directed to (unit POC) at (###)###-####.

Sincerely,

ENCLOSURE(4)

U.S. Department
of Transportation

United States
Coast Guard



Commander
Eighth Coast Guard District
Hale Boggs Federal Building

501 Magazine St.
New Orleans, LA 70130-3392
Staff Symbol: (dl)
Phone: (504) 589-6188

5800

JUN 1 1994

From: Commander, Eighth Coast Guard District
To: Commanding Officer, Coast Guard Marine Safety Office Mobile
Commanding Officer, Coast Guard Marine Safety Office Houston

Subj: ENFORCEMENT OF EMPLOYER DRUG SCREENING PROGRAM

Ref: (a) CO, MSO Mobile ltr 16700/SIO dtd 11 Apr 94
(b) CO, MSO Houston ltr 16720 dtd 15 Apr 94
(c) 46 CFR Part 16

1. References (a) and (b) have been forwarded to this office for response. Reference (a) indicates that a recent audit of parasail operations in the Florida panhandle area uncovered significant noncompliance with the Coast Guard drug testing regulations in reference (c) by commercial parasail operators as well as by charter fishing vessel owners. Reference (b) indicates that there is a concern among the maritime community that some marine employers are not in compliance with the regulations in reference (c). Both references (a) and (b) point out difficulties in enforcement of the regulations against the marine employers because, in their opinion, there are no civil or criminal penalty provisions for failure to comply with the drug testing requirements. This letter addresses various enforcement options that, while not explicitly stated in reference (c), are, in my opinion, available to the Captain of the Port to ensure compliance with the provisions of reference (c).

2. Reference (a) includes an analysis of some enforcement options. Specifically, it analyzes the statutory authorities for the regulations in reference (c) and notes that the only authority that has penalty provisions associated with it is 46 U.S.C. § 3306. This statute states that "to carry out [46 U.S.C. Part B] and to secure the safety of individuals and property on board vessels subject to inspection, . . ." the Secretary may issue regulations to carry out the part in the most effective manner for, among other things, "operation of those vessels." 46 U.S.C. § 3318 states that "the owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of . . . a regulation prescribed under this part . . . are liable to the United States Government for a civil penalty of not more than \$5,000. The vessel also is liable in rem for the penalty." It is my opinion that regulations citing 46 U.S.C. § 3306 as authority apply only to inspected vessels. This means that vessels of concern to MSO Mobile, such as parasail vessels or charter fishing vessels, the vast majority of which are uninspected vessels, are not regulated under the authority of this statute and the penalty provisions of 46 U.S.C. § 3318 are therefore not applicable to these uninspected vessels. Having said this, however, it is also

ENCLOSURE(5)

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JUN 1 1994

Subj: ENFORCEMENT OF EMPLOYER DRUG SCREENING PROGRAM

2. (cont'd) my opinion that marine employers who own or operate inspected vessels would be subject to the penalty provisions of 46 U.S.C. § 3318 for failing to have the drug testing program required by reference (c) in place, or for failing to conduct the tests when required by the regulations.

3. Reference (a) also indicates that, because the burden for complying with the regulations is placed on the marine employer, it is questionable whether S&R action could be taken against licensed individuals for failure of the marine employer to comply with the regulations. However, 46 C.F.R. § 16.230 (f) states:

(f) An individual may not be engaged or employed, including self-employment, on a vessel in a position as master, operator, or person in charge for which a license or merchant mariner's document is required by law or regulation unless all crewmembers covered by this section are subject to the random testing requirements of this section.

The original random drug testing regulations were published at 53 Fed. Reg. 47064 (November 21, 1988). These regulations contained a provision similar in wording to the above-quoted section of the current regulations prohibiting anyone from serving as master, operator, or person in charge on a vessel in a position for which a license or merchant mariner's document is required unless crewmembers were subject to the required random drug testing procedures. The preamble to the regulation discussed the meaning of this section and stated:

[Operating a vessel as master, operator or person in charge when the vessel does not have all crewmembers subject to random testing for drugs] could result in suspension and revocation proceedings being initiated against the individual. This change [from the proposed rule, which stated that no individual could be engaged or employed on a vessel unless all crewmembers were subject to a random sampling program] was made because it is unreasonable to expect that all holders of licenses or merchant mariner's documents aboard a vessel be cognizant of who is and who is not in compliance with the testing procedures of this section. The master, operator, or person in charge, however, should be.

Id. at 47075. Based on this clear language, it is my opinion that enforcement of the drug testing requirements through initiation of S&R action against licensed or documented persons who are engaged or employed as masters, operators or persons in charge of vessels, and whose employer does not comply with the random drug testing

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Subj: ENFORCEMENT OF EMPLOYER DRUG SCREENING PROGRAM

4. b. (cont'd) the provisions of 33 U.S.C. § 1223 (b)(3). When the drug testing regulations were originally proposed, the Coast Guard addressed the hazards associated with drug and alcohol use in the merchant fleet. The preamble to the proposed regulations stated:

[W]hile the threat posed to society by drug and alcohol use and abuse is diffused, the same cannot be said of the threat drugs and alcohol pose to transportation industries such as the merchant marine. Not only do personnel who use drugs and alcohol pose dangers to themselves and shipmates, they are in the position to cause, or contribute to, vessel casualties that may take human life, destroy property, and/or seriously harm the environment.

The problem in the marine industry is increased by the fact that personnel often live on board their vessels for long periods of time. What in another context might be considered "recreational" or off-duty drug or alcohol use can have a detrimental effect upon vessel safety because the vessel is frequently also where the individual lives. Intoxicated personnel cannot serve their vessel in an emergency, and pose a hazard if they attempt to perform any necessary safety-related functions.

53 Fed. Reg. 25926, 25927 (July 8, 1988). The regulations were clearly meant to address a dangerous problem aboard merchant vessels, that of drug and alcohol use by vessels personnel who were responsible for the safety of crew and passengers aboard the vessels on which they served, and for the safe operation and navigation of those vessels so that they did not present a hazard to life, property or the environment. It is my opinion that the presence of a condition or circumstance aboard a vessel in which the marine employer is not complying with the regulations meant to address this problem is hazardous and, as such, a Captain of the Port Order is justified in the interest of these very real and immediate safety concerns prohibiting operation of the vessel until the condition is rectified.

5. Summarizing, the drug and alcohol testing program of reference (c) are enforceable against marine employers who own or operate vessels, and against licensed personnel employed aboard vessels that do not comply with the random testing requirements, in a variety of ways. First, owners and operators of inspected vessels are subject to the civil penalties of 46 U.S.C. § 3318. Second, licensed, certificated or documented personnel in the position of master, operator or person in charge on board vessels whose crewmembers are not randomly tested are subject to S&R proceedings against their license or document. Finally, it is appropriate to

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Subj: ENFORCEMENT OF EMPLOYER DRUG SCREENING PROGRAM

5. (cont'd) issue Captain of the Port Orders to vessels whose owners or operators do not comply with the provisions of reference (c), which subjects these individuals to the criminal and civil penalties of 33 U.S.C. § 1232 if they operate in violation of the Order.

6. Enclosure (1) is a Captain of the Port Order similar to one that was enclosed with reference (b) to be used in dealing with marine employers who fail to follow the provisions of reference (c) for vessels that they own or operate. It is provided for your use. If you have any questions regarding this letter or the issues presented, please call me at (504) 589-6188.

D. G. DICKMAN
By direction

Encl: (1) COTP Order

Copy: D8 (m)
All D8 MSOs
COMDT (G-LMI)

OFFICE OR DIVISION	dl	m	dl																
INITIALS OF RESPONSIBLE OFFICERS	DL	MG	[Signature]																
OFFICE OR DIVISION INITIALS																			
DATE OUT	5/31	6/21	6/1																

CAPTAIN OF THE PORT ORDER

#

Based on a recent (inspection) (audit) (boarding), it has been determined that the following vessel(s) _____

(is) (are) being operated and/or manned by personnel who are not being tested for the presence of drugs or alcohol in accordance with the provisions of 46 C.F.R. § 16. This is a violation of regulations and constitutes a hazardous condition or circumstance aboard (this) (these) vessel(s). In the interest of safety, I hereby order you to immediately cease all operations and moor (this) (these) vessel(s) until such time as you provide me with satisfactory proof, in the form of chemical drug testing records for the crew of (this) (these) vessel(s), of your compliance with 46 C.F.R. § 16.

This order is issued under the authority of 33 U.S.C. § 1223 (b) and 33 C.F.R. § 160.111. Failure to comply with this order is punishable by a civil penalty of not more than \$25,000. Willful violation of this order is punishable by a fine of not more than \$50,000 or imprisonment for not more than five (5) years, or both. Each day of a continuing violation constitutes a separate violation.

Procedures for appealing this order are contained in 33 C.F.R. § 160.7. This order may be appealed orally or in writing to the Commander, Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130-3396. If you appeal this order, it remains in effect while the appeal is pending, unless the order is stayed by the Commander, Eighth Coast Guard District.

Questions concerning this order should be directed to _____

ENCLOSURE(1)