DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 95–011]

RIN 2115–AF02

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Implementation of Drug Testing in Foreign Waters

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: This rule establishes January 2, 1997 as the effective date for implementation of chemical drug testing of persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign country. However, industry will have until July 1, 1997 to implement the required testing. The rule also provides for exemption from testing requirements when compliance would violate the domestic laws or policies of another country. The Coast Guard is requesting public comment on this interim rule.

DATES: This rule is effective on January 2, 1997. Section 16.207 must be implemented on or before July 1, 1997. Comments must be received before February 18, 1997.

ADDRESSES: Comments may be mailed or delivered to Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001. Unless otherwise indicated, comments and other documents referred to in this preamble are available for inspection or copying in room 3406 at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jennifer Ledbetter, Project Manager, Marine Investigation Division (G–MOA–1), Office of Marine Safety, Security and Environmental Protection, (202) 267–0684.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation (DOT), promulgated regulations requiring pre-employment, periodic, post-accident, reasonable cause, and random drug testing of U.S. crewmembers on U.S. vessels (53 FR 47079). The final rule provided that the testing requirements of 46 CFR part 16 did not apply to any person for whom compliance with the rules would violate the domestic laws or policies of another country. The effective date of part 16 with respect to any person onboard U.S. vessels in waters subject to the jurisdiction of a foreign government was delayed until January 1990.

The preamble to the rule stated that DOT and other agencies of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our chemical testing rules and foreign government laws or policies. The Coast Guard also stated that if, as a result of those discussions, it was found that amendments to the rule were necessary, timely amendments would be issued. Subsequently, a rule was published on December 27, 1989 (54 FR 53286) delaying implementation of chemical testing for persons onboard U.S. vessels in waters subject to the jurisdiction of a foreign government until January 2, 1992. A final rule was published on April 24, 1991, delaying the implementation date to January 2, 1993 (56 FR 18982); a final rule was published on July 14, 1992, delaying the implementation date to January 2, 1995 (57 FR 31274); a final rule was published on December 20, 1994, delaying the implementation date to January 2, 1996 (59 FR 65500); and a final rule was published on December 28, 1995, delaying the implementation to January 2, 1997 (60 FR 67062). These rules did not prohibit employers from conducting chemical testing of U.S. personnel in foreign waters, they simply delayed the requirement for such testing in those areas. Many companies continued to test mariners in foreign waters under company policy. To this date, there have been no reports of conflicts with foreign laws resulting from that testing

On August 21, 1995, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) proposing to revise 46 CFR 16.207 to provide that U.S. drug testing requirements would not apply in waters subject to the jurisdiction of a foreign government. The proposal would have ensured that Coast Guard drug testing regulations did not conflict with foreign law or policy and would have resulted in no change to the then current applicability of the drug testing requirements.

Discussion of Comments and Changes

Eight comments were received in response the NPRM. Only one comment supported the proposal. That comment supported the proposed rule because it would remove the conflict regarding jurisdiction within waters that are subject to foreign government control.

The remaining seven comments opposed their proposal in the NPRM for several reasons. One stated reason was that the proposed rule would prevent them (employers) from testing while in foreign waters. This was a misinterpretation common to most of the comments opposing the proposal. Neither the original final rule, which contained, a delay of implementation date, nor the proposed rule, which would have eliminated the testing requirement entirely, would in any way prohibit an employer from conducting chemical drug testing on employees. Only the requirement to test was delayed or removed.

One comment stated that the existence of federal requirements is a critical component in its desire to identify substance abusers. Another comment strongly supported the goal of a drug-free workplace and viewed testing as a key component in that effort. The proposed rule appeared to them to exempt a substantial number of U.S. seamen from coverage under essential elements of the testing program and was perceived as sending a confusing message to the maritime industry, particularly those U.S. seamen who work in foreign waters. The comments did not support any lessening of the chemical testing requirements because doing so would advise a substance abuser that once they go foreign they are free of the possibility of being tested.

Another issue raised consistently by the comments was the discrepancy between the proposed removal of testing requirements of part 16, but not in part 4 (post-casualty testing requirements). The comments correctly noted that if a casualty occurred in waters subject to the jurisdiction of a foreign country that drug and alcohol testing was required by 46 CFR part 4.

All the comments that supported requiring chemical testing in foreign waters requested that a clause be included in the regulations that would allow for an exemption from testing when there is an actual conflict with a foreign law or policy. The Coast Guard agrees. Based on the lack of any problems experienced by companies presently conducting chemical testing in foreign waters and based on the comments expressing a need for testing requirements wherever a vessel might be, the Coast Guard has decided to retain the original requirements for chemical testing of U.S. crewmembers onboard U.S. vessels within waters that are subject to the jurisdiction of a foreign government and to make this provision effective on January 2, 1997.

The rule also adds a provision under which the Coast Guard will consider waivers, on a case by case basis, when an actual conflict with a foreign law or policy is brought to our attention.

Under 5 U.S.C.(d), the Coast Guard finds good cause why this rule should be made effective in fewer than 30 days after date of publication. Although the effective date of the rule is January 2, 1997, the Coast Guard recognizes that there may be a need for an implementation period. Therefore, employees will have until July 1, 1997 to implement the final rule on U.S. vessels in waters subject to the jurisdiction of a foreign country.

Although the changes in this rule are responsive to and fully supported by the comments received, the Coast Guard is offering a period for submission of additional comments. This rule is being published as an interim rule with a 60-day comment period. This action will implement the testing requirements without further temporary delays as in past years, but will allow the regulated employers to review and comment on the rule before it is adopted as final. Comments should be mailed to the Executive Secretary, Marine Safety Council, at the address under **ADDRESSES**.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034 (February 26, 1979)). The Coast Guard acknowledges that there are companies whose current policy is not to conduct chemical testing in waters subject to a foreign government. To implement such testing now would increase their operating expenses. This ''increase'', however, was part of the costs evaluated in the original rulemaking and deferred to this time because of the numerous delays in implementing testing in foreign waters. The economic impact of these changes is so minimal that further evaluation is not necessary. This final rule implements the effective date for compliance with Coast Guard regulations governing chemical testing, insofar as those regulations would require testing of persons onboard U.S. vessels in waters that are subject to the jurisdiction of a foreign government.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 16 as follows:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.207 is revised to need as follows:

§ 16.207 Conflict with foreign laws.

(a) This part applies to the testing of all U.S. crewmembers onboard U.S. vessels operating in waters that are subject to the jurisdiction of a foreign government on and after January 2, 1997; however, implementation may be delayed until July 1, 1997.

(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 (G–MOA), at the address listed in § 16.500(a).

Dated: December 9, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

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46 CFR Part 125

[CGD 96–058]

RIN 2115–AF35

Offshore Supply Vessels; Alternate Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Final rule; interpretation.

SUMMARY: The Coast Guard is establishing an alternate maximum size limit for offshore supply vessels that is based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1996. The present maximum size limit of 500 gross tons is based on the U.S. regulatory measurement system. This action provides an alternative for owners and operators of offshore supply vessels that may result in the building of safer, more efficient vessels and may enable the U.S. designers and operators of these vessels to be competitive in the international market.

EFFECTIVE DATE: December 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Eareckson, Marine Safety Center, (202) 366–6441.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This rule is issued as an interpretative rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104–324; October 19, 1996). The Conference Report on the Act (H. Rept. 104–854) states that,