



**GCMA REPORT #R-315D**  
**DATE: December 28, 2005**

**CHANGES IN ALCOHOL & DRUG TESTING**  
**EFFECTIVE JUNE 20, 2006**

*[Source: Final Rule, in the Federal Register of December 22, 2005. 70 FR 75954-75961. Docket #USCG-2001-8773. For further information contact Mr. Robert Schoening at Coast Guard Headquarters (G-MOA) at 202.267.0684]*

**SUMMARY**

This final rule revises Coast Guard requirements for alcohol testing after a serious marine incident to ensure that mariners or their employees involved in a serious marine incident are tested for alcohol use within 2 hours of the occurrence of the incident as required under the Coast Guard Authorization Act of 1998.

This final rule also requires that most commercial vessels have alcohol testing devices on board, and authorizes the use of saliva as an acceptable specimen for alcohol testing. This rule also makes some minor procedural changes, including a 32-hour time limit for collecting specimens for drug testing following a serious marine incident.

**REVISED TESTING REGULATIONS**

*[Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103; 2303a; 2306; 6101; 6301; and 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 0170.1, Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).]*  
*[Source: CGD 86-067, 53 FR 47078, Nov. 21, 1988, unless otherwise stated.]*

**§4.06-1 Responsibilities of the marine employer.**

(a) At the time of occurrence of a marine casualty, a discharge of oil into the navigable waters of the United States, a discharge of a hazardous substance into the navigable waters of the United States, or a release of a hazardous substance into the environment of the United States, the marine employer shall make a timely, good faith determination as to whether the occurrence currently is, or is likely to become, a serious marine incident.

(b) When a marine employer determines that a casualty or incident is, or is likely to become, a serious marine incident, the marine employer shall take all practicable steps to have each individual engaged or employed on board the vessel who is directly involved in the incident chemically tested for evidence of drug and alcohol use as required in this part.

(c) The marine employer determines which individuals are directly involved in a **Serious Marine Incident (SMI)**. A law enforcement officer may determine that additional individuals are directly involved in the SMI. In these cases, the marine employer must take all practical steps to have these additional individuals tested according to this part.

(d) The requirements of this subpart do not prevent personnel who are required to be tested from performing duties in the aftermath of an SMI when their performance is necessary to respond to safety concerns directly related to the incident.

(e) The marine employer shall ensure that all individuals engaged or employed on board a vessel are fully indoctrinated in the requirements of this subpart, and that appropriate vessel personnel are trained as necessary in the practical applications of these requirements.  
*[CGD 86-067, 53 FR 47078, Nov. 21, 1988, as amended by USCG-2000-7759, 66 FR 42967, Aug. 16, 2001 and USCG-2001-8773, 70 FR 75960, Dec. 22, 2005.]*

**§4.06-3 Requirements for alcohol and drug testing following a serious marine incident.**

When a marine employer determines that a casualty or incident is, or is likely to become, an SMI, the marine employer must ensure that the following alcohol and drug testing is conducted:

(a) **Alcohol testing.**

(1) Alcohol testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The alcohol testing of each individual must be conducted within 2 hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevent the alcohol testing from being conducted within 2 hours of the occurrence of the incident, then alcohol testing must be completed as soon as the safety concerns are addressed.

(iii) Alcohol testing is not required to be conducted more than 8 hours after the occurrence of the SMI.

(2) Alcohol-testing devices must be used according to the procedures specified by the manufacturer of the testing device and by this part.

(3) If the alcohol testing required in paragraphs (a)(1)(i) and (a)(1)(ii) of this section is not conducted, the marine employer must document on form CG-2692B the reason why the testing was not conducted.

(4) The marine employer may use alcohol-testing results from tests conducted by Coast Guard or local law enforcement personnel to satisfy the alcohol testing requirements of this part only if the alcohol testing meets all of the requirements of this part.

**(b) Drug testing.**

(1) Drug testing must be conducted on each individual engaged or employed on board the vessel who is directly involved in the SMI.

(i) The collection of drug-test specimens of each individual must be conducted within 32 hours of when the SMI occurred, unless precluded by safety concerns directly related to the incident.

(ii) If safety concerns directly related to the SMI prevent the collection of drug-test specimens from being conducted within 32 hours of the occurrence of the incident, then the collection of drug-test specimens must be conducted as soon as the safety concerns are addressed.

(2) If the drug-test specimens required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section were not collected, the marine employer must document on form CG-2692B the reason why the specimens were not collected.

*[USCG-2001-8773, 70 FR 75960, Dec. 22, 2005.]*

**§4.06-5 Responsibility of individuals directly involved in serious marine incidents.**

(a) Any individual engaged or employed on board a vessel who is determined to be directly involved in an SMI must provide a blood, breath, saliva, or urine specimen for chemical testing when directed to do so by the marine employer or a law enforcement officer.

(b) If the individual refuses to provide a blood, breath, saliva, or urine specimen, this refusal must be noted on form CG-2692B and in the vessel's official log book, if a log book is required. The marine employer must remove the individual as soon as practical from duties that directly affect the safe operation of the vessel.

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for 8 hours following the occurrence of the SMI or until after the alcohol testing required by this part is completed.

(d) No individual may be compelled to provide specimens for alcohol and drug testing required by this part. However, refusal to provide specimens is a violation of this subpart and may subject the individual to suspension and revocation proceedings under part 5 of this chapter, a civil penalty, or both.

*[CGD 86-067, 53 FR 47078, Nov. 21, 1988, as amended by USCG-2001-8773, 70 FR 75960, Dec. 22, 2005.]*

**§4.06-10 (Removed)**

**§4.06-15 Accessibility of chemical testing devices.**

**(a) Alcohol testing.**

(1) The marine employer must have a sufficient number of alcohol testing devices readily accessible on board the vessel to determine the presence of alcohol in the system of each individual who was directly involved in the SMI.

(2) All alcohol testing devices used to meet the requirements of this part must be currently listed on either the Conforming Products List (CPL) titled "Modal Specifications for Devices To Measure Breath Alcohol" or "Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids," which are published periodically in the Federal Register by National Highway Traffic Safety Administration (NHTSA).

(3)(a) The alcohol testing devices need not be carried on board each vessel if obtaining the devices and conducting the required alcohol tests can be accomplished within 2 hours from the time of occurrence of the SMI.

(b) *Drug testing.* (1) The marine employer must have a sufficient number of urine-specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily accessible for use following SMIs.

(2) The specimen collection and shipping kits need not be carried on board each vessel if obtaining the kits and collecting the specimen can be completed within 32 hours from the time of the occurrence of the SMI.

*[USCG-2001-8773, 70 FR 75960, Dec. 22, 2005.]*

**§4.06-20 Specimen collection requirements.**

**(a) Alcohol testing.**

(1) When conducting alcohol testing required in §4.06-3(a), an individual determined under this part to be directly involved in the SMI must provide a specimen of their breath, blood, or saliva to the marine employer as required in this subpart.

(2) Collection of an individual's blood to comply with §4.06-3(a) must be taken only by qualified medical personnel

(3) Collection of an individual's saliva or breath to comply with §4.06-3(a) must be taken only by personnel trained to operate the alcohol-testing device in use and must be conducted according to this subpart

**(b) Drug testing.**

(1) When conducting drug testing required in §4.06-3(b), an individual determined under this part to be directly involved in the SMI must provide a specimen of their urine according to 46 CFR part 16 and 49 CFR part 40.

(2) Specimen collection and shipping kits used to conduct drug testing must be used according to 49 CFR part 40.

*[CGD 86-067, 53 FR 47078, Nov. 21, 1988, as amended by USCG-2000-7759, 66 FR 42967, Aug. 16, 2001 and USCG-2001-8773, 70 FR 75960, Dec. 22, 2005.]*

**§4.06-60 Submission of reports and test results.**

(a) Whenever an individual engaged or employed on a vessel is identified as being directly involved in a serious marine incident, the marine employer shall complete Form CG-

2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).

(b) When the serious marine incident requires the submission of Form CG-2692 (Report of Marine Casualty, Injury or Death) to the Coast Guard in accordance with §4.05–10, the report required by paragraph (a) of this section shall be appended to Form CG-2692.

(c) In incidents involving discharges of oil or hazardous substances as described in §4.03–2 (b) and (c) of this part, when Form CG-2692 is not required to be submitted, the report required by paragraph (a) of this section shall be submitted to the Coast Guard Officer in Charge, Marine Inspection, having jurisdiction over the location where the discharge occurred or nearest the port of first arrival following the discharge.

(d) Upon receipt of the report of chemical test results, the marine employer shall submit a copy of the test results for each person listed on the CG-2692B to the Coast Guard Officer in Charge, Marine Inspection to whom the CG-2692B was submitted.

(e) The Commandant may approve alternate electronic means of submitting reports and test results as required under paragraphs (a) through (d) of this section.  
[CGD 86–067, 53 FR 47078, Nov. 21, 1988, as amended by CGD 97–057, 62 FR 51041, Sept. 30, 1997; USCG-1999–6216, 64 FR 53223, Oct. 1, 1999]

#### §4.06-70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.  
[USCG-2001-8773, 70 FR 75960, Dec. 22, 2005.]

### PREAMBLE EXCERPTS

[GCMA Comment: The edited preamble excerpts explain why some of the changes were made. Emphasis is ours!]

#### I. Background and Purpose

This final rule modifies Coast Guard regulations requiring testing for drug and alcohol use by persons involved in **serious marine incidents** (SMIs) to require that alcohol testing be conducted within 2 hours of that serious marine incident (SMI) as defined by regulation below:

#### §4.03-2 Serious marine incident.

The term *serious marine incident* includes the following events involving a vessel in commercial service:

- (a) Any marine casualty or accident as defined in §4.03–1 which is required by §4.05–1 to be reported to the Coast Guard and which results in any of the following:
- (1) One or more deaths;
  - (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
  - (3) Damage to property, as defined in §4.05–1(a)(7) of this part, in excess of \$100,000;

(4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or

(5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more.

(b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.

(c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

[CGD 86–067, 53 FR 47077, Nov. 21, 1988, as amended by CGD 97–057, 62 FR 51041, Sept. 30, 1997]

This final rule also requires most commercial vessels to have alcohol testing devices on board and authorizes the testing of saliva as an acceptable specimen for alcohol testing. This rule also adds a 32-hour time limit for the collection of specimens for drug testing following a serious marine incident.

Coast Guard regulations (46 CFR part 4, subpart 4.06) currently require marine employers to take all practical steps after an SMI to have each individual engaged or employed on board a vessel in commercial service, who is directly involved in the incident, chemically tested for evidence of drug and alcohol use. “Commercial service” includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel. The (existing) regulations do not specify a time requirement following an SMI for collecting specimens for testing or completing the tests to determine the use of alcohol or dangerous drugs. The existing regulations also limit testing to blood and breath specimens as the only acceptable specimens for alcohol testing where the new rules accept saliva..

In 1998, Congress passed the Coast Guard Appropriations Act of 1998 (the Act), Public Law 105-383, which revised Title 46, U.S. Code, by adding a new section 2303a, “Post serious marine casualty alcohol testing” (hereafter section 2303a).

46 U.S. Code Section 2303a requires the Coast Guard to establish procedures to ensure that required alcohol testing is conducted no later than 2 hours after a serious marine casualty occurs.<sup>(1)</sup> [<sup>(1)</sup> *If the alcohol testing cannot be conducted within that time frame because of safety concerns directly related to the casualty, section 2303a requires the alcohol testing to be conducted as soon as the safety concerns have been adequately addressed to permit such testing, but no later than 8 hours after the incident occurs.*] For purposes of this rulemaking, “serious marine incident”

On February 28, 2003, the Coast Guard issued a notice of proposed rulemaking (NPRM) that proposed that alcohol testing be conducted within 2 hours of an SMI, that commercial vessels be required to have alcohol-testing devices on board, and authorized saliva as an acceptable specimen for alcohol testing. The NPRM also proposed some minor changes to part 4, including a 32-hour time limit for collecting drug test specimens following an SMI.

#### III. Discussion of Comments and Changes

During the comment period, the Coast Guard received 121 comments in response to the NPRM. Comments were submitted by maritime trade associations, large and small vessel marine employers, drug and alcohol testing service

agents, manufacturers of alcohol-testing devices, and one Federal agency. The main issues discussed in the comments were the requirement to carry alcohol-testing devices, testing device storage, the costs of purchasing and maintaining the alcohol-testing device, and requests for exemptions based on size of crew and history of safety.

The comments are divided by category and discussed below.

#### A. Comments Beyond the Scope of the Rulemaking

The NPRM proposed that alcohol testing be conducted within 2 hours of an SMI, that commercial vessels be required to have alcohol-testing devices on board, and authorized saliva as an acceptable specimen for alcohol testing. The NPRM also proposed some minor procedural changes to part 4, including a 32-hour time limit for collecting drug test specimens following an SMI.

Many comments raised issues that are beyond the narrow scope of this rulemaking. Those comments raised issues about:

- The potential liability of marine employers if there is a false positive on an alcohol screening test, if a positive alcohol reading was due to an alternate source, such as mouthwash; or because the Alcohol Screening Devices (ASDs) are not as efficient as Evidential Breath Tests (EBTs);
- Whether the Coast Guard should require a "confirmation" test after the initial screening to verify the presence and level of alcohol;
- Whether the U.S. Coast Guard should adopt a flexible enforcement approach that takes into consideration the reasonable and good faith efforts of vessel supervisors who are assigned specimen collection functions; and the safety and operational needs following a serious marine incident;
- Whether there should be a separate part to regulate the testing of human remains; and
- Whether the existing definition of an SMI in 46 CFR part 4, subpart 4.03, is vague and should be clarified.

These comments are beyond the narrow scope of this rulemaking, which is to implement the timing requirements of section 2302a by ensuring that marine employers conduct alcohol testing within 2 hours after an SMI.<sup>(1)</sup> Although these comments are not discussed further in this preamble, they were referred to the appropriate Coast Guard office for review and appropriate action separate from this rulemaking.

**[<sup>(1)</sup>GCMA Comment: Congress ordered strict alcohol testing when it determined that in hundreds of maritime accidents, no efforts were made to conduct alcohol testing to see whether alcohol use played any part in the accident.]**

#### B. Comments Generally Supporting the Rulemaking

A few comments generally supported the proposed rule, stating that they fully support all testing of all operators when any accident happens or even when they appear to be operating any vessel unsafely.

A comment from a manufacturer of an alcohol-testing device stated that the manufacturer supports this rule and believes that the technology exists to permit implementation of the proposed rule with confidence. The comment further

stated that the manufacturer believes that the available technology will protect the individual tested with accurate results, as well as help to ensure public safety by providing timely information. The manufacturer also stated that the alcohol-testing devices include built-in quality control indicators to direct proper use and minimize environmental impact.

#### C. Who Conducts the Tests

We received 40 comments primarily from small passenger vessel operators and marine employer trade associations, including charter boat operator associations and other interested trade associations that addressed the question of who should be responsible for conducting the drug or alcohol tests after a SMI.

Some of these comments stated that the Coast Guard should conduct the alcohol testing following an SMI. Also, 34 of those comments stated that Congress intended that the Coast Guard conduct alcohol testing after an SMI and that it is wrong to shift the testing requirement, and its costs, onto the individual marine employers.

One marine employer stated that the Coast Guard, as the regulator, is in the best position to determine whether a test is necessary and whether the test should be administered at the site of a vessel boarding, seizure, or accident investigation, or be conducted ashore at a Coast Guard facility.

**We disagree!!!** 46 U.S. Code Section 2303a requires the Coast Guard to establish procedures to ensure that alcohol testing is conducted within 2 hours after a serious marine casualty. It does not require the Coast Guard to conduct the testing.

Under the current rule, the marine employer has the responsibility to ensure that the alcohol testing occurs.<sup>(1)</sup>

**[<sup>(1)</sup>GCMA Comment: In reviewing scores of accident reports in our files, it is clear that most employers did not accept responsibility for effective alcohol testing in the past.]**

We considered the option of using Coast Guard resources to ensure alcohol testing after a serious marine incident. However, the Coast Guard finds that this option is impracticable because it is not possible for Coast Guard personnel to reach the scene of all serious marine incidents within the 2 hours required by statute to conduct alcohol testing due to the nature and location of marine industry operations. Furthermore, the Coast Guard sometimes is not aware that a serious marine incident has occurred until a report of the incident is filed by the mariner as required under Coast Guard regulations at 46 CFR 4.06-60.

Even if Coast Guard resources could be at the scene of all serious marine incidents in time to conduct alcohol testing with 2 hours of the incident, it would be impracticable to require Coast Guard units to respond to every incident to conduct required alcohol testing because it would impermissibly burden Coast Guard resources engaged in other functions critical to the Coast Guard's mission, such as homeland security, search and rescue, drug interdiction, migrant interdiction, marine safety, and environmental protection.

Although the responsibility to ensure proper alcohol testing continues to rest on the marine employer, this final rule allows the employer to choose the most cost effective equipment and procedures for his or her operational circumstances. This rule also allows a marine employer to use alcohol tests administered by Coast Guard, local law enforcement personnel, contractors, or other third parties as long as the test used meets the requirements of 46 CFR Part 4. This rule will help to ensure that required alcohol testing can be conducted by the marine employers.

#### D. Requirement To Carry Alcohol-Testing Devices

We received many comments from marine employers and various trade associations suggesting the Coast Guard allow an exemption from the requirement to carry testing devices on board for commercial vessels that only travel a short distance from the shore. Many of the comments stated that these vessels could meet the 2-hour testing requirement by using shoreside testing facilities because the vessels are always within 2 hours of a facility. One comment suggested that vessels that could return to shore within 4 to 6 hours should be allowed to rely on shoreside testing facilities to meet the 2-hour testing requirement of this rule.

We agree that vessels that can reach a testing facility and conduct required alcohol testing within 2 hours of an SMI should have the option of doing so. The marine employer may use alcohol testing results from tests conducted by Coast Guard or local law enforcement personnel if the alcohol testing meets all of the requirements of this part. Therefore, we have modified the text of the final rule to relieve marine employers of the requirement to carry alcohol testing devices on board if they can receive testing from a shoreside testing facility within 2 hours of an SMI.

46 U.S. Code Section 2303a (i.e., as legislated by Congress) states that alcohol tests must be administered within 2 hours of the SMI. Thus, we do not agree that vessels that can return to shore within 4 to 6 hours should be allowed to rely on shoreside testing facilities to meet these requirements. Vessels that cannot return to shore and have testing conducted within 2 hours must carry alcohol testing devices onboard the vessels.

#### E. Lists of Conforming Products

Several comments from marine employers and alcohol testing device product manufacturers urged the Coast Guard to either publish a list of alcohol-testing devices that meet the requirements of this rule or adopt the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) of Evidential Breath Measurement Devices as the acceptable list of devices that meet the requirements of this rule.

The Coast Guard agrees that a list of acceptable testing devices would help marine employers comply with the requirements of this rule. Accordingly, the final rule requires that marine employers carry alcohol-testing devices listed on the most current versions of either the NHTSA Conforming Products Lists of Evidential Breath Measurement Devices<sup>(1)</sup> or the NHTSA Conforming Products List of Alcohol Screening Devices.<sup>(2)</sup> The current Conforming Products Lists were published in the Federal Register and are available on the Internet at the following

locations: Conforming Products Lists of Evidential Breath Measurement Devices, at 69 FR 42237 (July 14, 2004) or <http://www.nhtsa.dot.gov/people/injury/alcohol/eibtcp1040714FR.pdf> and Conforming Products List of Alcohol Screening Devices at 70 FR 72502 (December 5, 2005) or <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/E5-6848.pdf>.

These lists are also available in the docket for this rulemaking. [<sup>(1)</sup>Appendix #1 of this report. <sup>(2)</sup>Appendix 2 of this report.]

#### F. When the Tests Should Be Conducted

One comment asked if alcohol testing results are "acceptable up to 8 hours following an SMI, why not require alcohol testing be conducted within 8 hours?"

46 U.S. Code Section 2303a requires that alcohol testing be conducted within 2 hours of an SMI, unless the testing can not be completed within that time due to safety concerns directly related to the casualty. If there are such safety concerns, then alcohol testing is to be conducted as soon as possible after the safety concerns have been addressed. Therefore, this rule requires testing within 2 hours after an SMI, unless precluded by safety concerns directly related to the incident, in which case the testing must be conducted as soon as the safety concerns are addressed, but not more than 8 hours after the incident.

#### G. Storage of Testing Devices

A few comments stated that some vessels would have difficulty storing the testing devices because of limited space on the vessel. Several other comments stated that storing the testing devices would be problematic because of "hostile" marine weather, which could lead to an inaccurate testing result.

**We disagree.** A review of the specifications from actual alcohol testing devices on the NHTSA CPL lists indicates that some of the devices are approximately the size of a credit card and others are slightly larger handheld devices. The smallest box, which contains 30 devices, is 10 x 4.5 x 7 and weighs 2.0 lbs. A box of these proportions should not create a storage problem on a vessel. The acceptable temperatures for storage of the alcohol-testing devices ranged from 0-104°F. The instructions for two of the testing devices stated that the housing for the device was weather resistant. There is no evidence that the testing devices are susceptible to "hostile" marine weather, and we believe that the temperature ranges for the alcohol-testing devices are wide enough that weather will not lead to an inaccurate testing result.

#### H. Testing for the Presence of Alcohol

We received several comments stating that the testing devices permitted under this rule do not test the amount of alcohol in a person's system. Instead, they only test for the presence of alcohol in a person's system. Several of these comments also stated that such tests are inadmissible in court. Some of the comments stated that there could be disciplinary measures taken against mariners who test positive for the presence of alcohol without knowing the level of alcohol in their system.

The current alcohol testing regulations in 46 CFR Part 4 require that each individual engaged or employed on board the vessel who is directly involved in the incident be chemically tested for evidence of drug and alcohol use. There is no requirement that the amount of alcohol in a mariner's system be determined after an SMI. This rule does not change that requirement. In this rule, we require that currently mandated alcohol testing to be conducted within 2 hours of an SMI. However, a marine employer may choose to use any device from the NHTSA Conforming Products Lists of Evidential Breath Measurement Devices, all of which measure the amount of alcohol in a person's system. This rule does not change how mariners are disciplined by the marine employer or by the Coast Guard.

#### I. Small Crew Testing and Self-Testing

Several comments stated that one to five person crews would be required to test each other, test family members, or self-test in the event of an SMI and that, in some instances, a crewmember would be required to test the captain. Some comments questioned the integrity and reliability of the test results under these circumstances. A few comments suggested that crews smaller than 20 members and crews with a history of safety be exempt from this rule.

This rule does not change the current requirements for who should be chemically tested for alcohol use and who conducts the tests after an SMI. Section 4.06-1(b) requires that marine employers “take all practicable steps to have each individual engaged or employed on board the vessel who is directly involved in the incident chemically tested for evidence of drug and alcohol use.” Section 4.06-1(b) has been in effect since 1988 and is not revised by this rule. The statute requiring that alcohol testing be conducted within 2 hours of an SMI, 46 U.S.C. 2303a, does not provide for an exemption based on the size of the crew or the crew's safety history.

#### J. Comments on Regulatory Evaluation

Several comments stated that the cost of complying with these requirements would be excessive and would be burdensome on businesses.

**We disagree.** We expect marine employers will choose inexpensive saliva Alcohol Screening Devices (ASDs), thereby meeting the minimum requirements and costs to comply with this rule. The average price for saliva ASDs is \$113 per package containing 25 to 30 testing devices. A package of testing devices can easily be separated into smaller quantities of testing devices to accommodate marine employers that own or operate more than one vessel, or to accommodate those marine employers that own or operate one vessel and may want to split the cost of one package. Our cost estimates are conservative (high) because we assume there will be one package of 25 to 30 saliva ASDs purchased for each vessel. We also assume there may be first-year and annual training costs associated with saliva ASDs devices, even though manufacturers and suppliers claim these tests can be properly completed within five minutes, which includes the time to read the instructions.

A few comments stated that our reported prices for testing devices and our compliance cost estimates were inaccurate.

We conducted market research of several testing devices to determine current prices and package quantities. We calculated the direct cost of this rule to industry by estimating the purchase cost of the devices, the training cost, and the cost of replacing the devices due to expiration. We used mariner wage rates to approximate the costs associated with testing device training, and we used wage data from the 2002 National Occupation Employment and Wage Statistics for Captains, Mates, and Pilots of Water Vessels published by the Bureau of Labor Statistics. Our 10-year cost estimate is the discounted present value total of the first-year implementation cost and the annual cost with and without testing device replacement.

Some comments about the cost of ASDs stated that the NPRM acknowledged that “the cost of the less expensive ASDs could still be too expensive for the smallest commercial vessel operators and owners.”

These comments inaccurately quoted the NPRM, which actually stated “the cost of the less expensive breath ASDs could still be too expensive for the smallest commercial vessel operators and owners.” Saliva ASDs are less expensive than some breath ASDs and that is why Coast Guard will allow marine employers to use saliva ASDs. Including saliva ASDs provides a wider variety of alcohol-testing devices, which gives marine employers more control over the cost of compliance.

One comment stated that third-party alcohol screening and testing facilities would be adversely impacted by these requirements and forced out of business.

This rule does not disallow third-party testing, provided the testing is conducted within 2 hours of an SMI, as required by 46 U.S. Code section 2303a.

A few comments stated that the costs associated with this rule could adversely impact small businesses.

**We disagree** with the comments. We estimate that the percentage impact of annual cost on annual revenue for small businesses range from 0.00% to 0.45%, demonstrating the cost impacts of this rule are a small percentage of revenues for small businesses. Small businesses need only purchase inexpensive saliva ASDs to comply with the minimum requirements of this rule. The saliva ASDs do not require extensive training, and we expect the cost of these requirements will be insignificant for small businesses.

Some comments stated that the estimated number of small entities affected by this rulemaking is too low.

We have revised our estimates based on additional information from industry and additional data from the Coast Guard Office of Investigation and Analysis. See the following “Small Entity” section for more about the impacts on small businesses.

**Conforming Products List of Evidential Breath Measurement Devices**

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp. Mississauga, Ontario, Canada:		
Alert J3AD*.....	X	X
Alert J4X.ec.....	X	X
PBA3000C.....	X	X
BAC Systems, Inc., Ontario, Canada: Breath		
Analysis Computer*.....	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer*.....		
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200.....	X	X
200D.....	X	X
300.....	X	X
400.....	X	X
400PA.....	X	X
1400.....	X	X
4011*.....	X	X
4011A*.....	X	X
4011AS*.....	X	X
4011AS-A*.....	X	X
4011AS-AQ*.....	X	X
4011 AW*.....	X	X
4011A27-10100*.....	X	X
4011A27-10100 with filter*.....	X	X
5000.....	X	X
5000 (w/Cal. Vapor Re-Circ.).....	X	X
5000 (w/\3/8\ ID Hose option) X	X	X
5000CD.....	X	X
5000CD/FG5.....	X	X
5000EN.....	X	X
5000 (CAL DOJ).....	X	X
5000VA.....	X	X
8000.....	X	X
PAC 1200*.....	X	X
S-D2.....	X	X
S-D5.....	X	X
Draeger Safety, Inc., Durango, CO:		
Alcotest Model:		
6510.....	X	X
7010*.....	X	X
7110*.....	X	X
7110 MKIII.....	X	X
7110 MKIII-C.....	X	X
7410.....	X	X
7410 Plus.....	X	X
Breathalyzer Model:		
900*.....	X	X
900A*.....	X	X
900BG*.....	X	X
7410.....	X	X
7410-II.....	X	X
Gall's Inc., Lexington, KY: Alcohol Detection		
System--A.D.S. 500.....	X	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*.....	X	X
GC Intoximeter MK II*.....	X	X
GC Intoximeter MK IV*.....	X	X
Auto Intoximeter*.....	X	X
Intoximeter Model:		
3000*.....	X	X
3000 (rev B1)*.....	X	X
3000 (rev B2)*.....	X	X
3000 (rev B2A)*.....	X	X
3000 (rev B2A) w/FM option*.....	X	X
3000 (Fuel Cell)*.....	X	X
3000 D*.....	X	X

3000 DFC*.....	X	X
Alcomonitor.....		X
Alcomonitor CC.....	X	X
Alco-Sensor III.....	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000).....	X	X
Alco-Sensor IV.....	X	X
Alco-Sensor IV-XL.....	X	X
Alco-Sensor AZ.....	X	X
Alco-Sensor FST.....	X	X
RBT-AZ.....	X	X
RBT III.....	X	X
RBT III-A.....	X	X
RBT IV.....	X	X
RBT IV with CEM (cell enhancement module)...	X	X
Intox EC/IR.....	X	X
Intox EC/IR II.....	X	X
Portable Intox EC/IR.....	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA-2*.....	X	X
Breath Alcohol Meter PAM 101B*.....	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, CO:		
PBA 3000B.....	X	X
PBA 3000-P*.....	X	X
PBA 3000C.....	X	X
Alcohol Data Sensor.....	X	X
Phoenix.....	X	X
FC 10.....	X	X
FC 20.....	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
300.....	X	X
400.....	X	X
SD-2*.....	X	X
EBA*.....	X	X
Intoxilyzer Model:		
200.....	X	X
200D.....	X	X
1400.....	X	X
5000 CD/FG5.....	X	X
5000 EN.....	X	X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*.....		X
2000*.....		X
National Draeger, Inc., Durango, CO:		
Alcotest Model:		
7010*.....	X	X
7110*.....	X	X
7110 MKIII.....	X	X
7110 MKIII-C.....	X	X
7410.....	X	X
7410 Plus.....	X	X
Breathalyzer Model:		
900*.....	X	X
900A*.....	X	X
900BG*.....	X	X
7410.....	X	X
7410-II.....	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster (with or without the Delta-1 accessory).....	X	X
BAC Verifier DataMaster (with or without the Delta-1 accessory).....	X	X
DataMaster cdm (with or without the Delta-1 accessory).....	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*.....	X	X
4011AW*.....	X	X
Plus 4 Engineering, Minturn, CO: 5000 Plus4*....	X	X
Seres, Paris, France:		
Alco Master.....	X	X
Alcopro.....	X	X



Siemens-Allis, Cherry Hill, NJ:		
Alcomat*.....	X	X
Alcomat F*.....	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model:		
900*.....	X	X
900A*.....	X	X
1000*.....	X	X
2000*.....	X	X
2000 (non-Humidity Sensor)*.....	X	X
Sound-Off, Inc., Hudsonville, MI:		
AlcoData.....	X	X
Seres Alco Master.....	X	X
Seres Alcopro.....	X	X
Stephenson Corp.: Breathalyzer 900*.....	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000.....		X
Alco-Analyzer 2000.....		X
Alco-Analyzer 2100.....	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*.....	X	X
BAC Verifier Datamaster.....	X	X
BAC Verifier Datamaster II*.....	X	X

\*Instruments marked with an asterisk (\*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC). Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705, (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.1)

Issued on: July 9, 2004.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

## Appendix B, 70 FR 72502 et seq., Dec 5, 2005

**SUMMARY:** This Notice amends and updates the list of devices that conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

**EFFECTIVE DATE:** December 5, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dr. James F. Frank, Office of Research and Technology, Behavioral Research Division (NTI-131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366-5593.

**SUPPLEMENTARY INFORMATION:** On August 2, 1994, NHTSA published Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 39382). These specifications established performance criteria and methods for testing alcohol screening devices to measure alcohol content. The specifications support State laws that target youthful offenders (e.g., "zero tolerance" laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first Conforming Products List (CPL) for screening devices on December 2, 1994 (59 FR 61923, with corrections on December 16, 1994 in 59 FR 65128), identifying the devices that meet NHTSA's Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids. Five (5) devices appeared on that first list. Thereafter, NHTSA amended the CPL on August 15, 1995 (60 FR 42214) and on May 4, 2001 (66 FR 22639), adding seven (7) devices to the CPL in those two (2) actions.

On September 19, 2005, NHTSA published an updated CPL (70 FR 54972), adding several devices to the list and removing several other devices. Since that publication of the CPL, NHTSA discovered an error regarding the name of the device listed on the CPL for the manufacturer Varian, Inc. This Notice serves to correct the error by republishing the CPL in its entirety with the accurate name of the device.

The Notice published on September 19, 2005 explained that Varian, Inc. of Lake Forest, California acquired the "On-Site Alcohol" saliva-alcohol screening device previously owned by Roche Diagnostics Systems. Varian, Inc. certified that the "On-Site Alcohol" device it sells is identical to the device previously sold by Roche. The Roche Diagnostics device was removed from the CPL because none of the Roche devices exist in the marketplace. However, NHTSA intended to list on the CPL the Varian, Inc. "On-Site Alcohol" saliva-alcohol screening device but instead listed the "Q.E.D. A150 Saliva Alcohol Test." Accordingly, NHTSA amends the CPL to correct this error. The CPL is reprinted in its entirety below.

**Conforming Products List of Alcohol Screening Devices**

Manufacturer	Device(s)
AK Solutions, Inc., Palisades Park, NJ \1\.	Alcoscan AL-2500, AlcoChecker, AlcoKey, AlcoMate, AlcoMate Pro, Alcoscan AL-5000, Alcoscan AL-6000.
Alco Check International, Hudsonville, MI.	Alco Check 3000 D.O.T., Alco Check 9000.
Chematics, Inc., North Webster, IN.....	ALCO-SCREEN 02TM \2\ Guth Laboratories, Inc., Harrisburg, PA
Han International Co., Ltd., Seoul, Korea \3\.	Alco Tector Mark X, Mark X Alcohol Checker, Alcotector WAT89EC-1.
OraSure Technologies, Inc., Bethlehem, PA.	A.B.I. (Alcohol Breath Indicator).
PAS Systems International, Inc., Fredericksburg, VA.	Q.E.D. A150 Saliva Alcohol Test.
Q3 Innovations, Inc., Independence, IA \4\.	PAS Vr.
RepcO Marketing, Inc., Raleigh, NC.....	Alcoholhawk[reg] Precision, Alcoholhawk[reg] Elite, Alcoholhawk[reg] ABI, Alcoholhawk[reg] PRO.
Seju Co. of Taejeon, Korea.....	Alco Tec III.
Sound Off, Inc., Hudsonville, MI.....	Safe-Slim.
Varian, Inc., Lake Forest, CA.....	Digitox D.O.T. On-Site Alcohol \5\ \5\

- \1\ The AlcoMate was manufactured by Han International of Seoul, Korea, but marketed and sold in the U.S. by AK Solutions.
- \2\ While the ALCO-SCREEN 02TM saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the Model Specifications when tested at 40°C (104°F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27°C (80°F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27°C (80°F). If the device is stored at or below 27°C (80°F) and used at higher temperatures (i.e., within a minute), the device meets the Model Specifications and the results persist for 10-15 minutes. If the device is stored at or below 27°C (80°F) and equilibrated at 40°C (104°F) for an hour prior to sample application, the device fails to meet the Model Specifications. Storage at temperatures above 27°C (80°F), for even brief periods of time, may result in false negative readings.
- \3\ Han International does not market or sell devices directly in the U.S. market. Other devices manufactured by Han International are listed under AK Solutions, Inc. and Q-3 Innovations, Inc.
- \4\ The AlcoHawk ABI is the same device as that listed under Han International as the “ABI” and is manufactured for Q-3 Innovations by Han International. The Alcoholhawk PRO is the same device as the AlcoMate marketed and sold by AK Solutions, and also manufactured by Han International.
- \5\ While this device passed all of the requirements of the Model Specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30°C (86°F); Readings should be taken after two (2) minutes at 18°C – 29°C (64.4°F – 84.2°F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17°C (62.6°F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

The devices manufactured by Chematics, Inc., OraSure Technologies, Inc., and Varian, Inc. are all single-use, disposable saliva alcohol test devices. All of the other devices listed on the CPL are electronic breath testers. The device called the “Alcotector WAT89EC-“ manufactured by Guth Laboratories, Inc. and the PAS Vr device manufactured by PAS Systems International, Inc. use fuel-cell sensors, whereas all other electronic devices listed on the CPL use semi-conductor sensors.

Marilena Amoni,  
Associate Administrator for Program Development and Delivery.