DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 16

[CGD 91-223]

RIN 2115-AE29

Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking establishes Coast Guard regulations which implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that require chemical testing for use of dangerous drugs of all applicants for issuance or renewal of licenses, certificates of registry (CORs), or merchant mariner's documents (MMDs). Testing of applicants will provide an additional tool in the effort to promote a drug-free work place in the maritime industry.

EFFECTIVE DATE: This rule is effective March 24, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–223), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR K. McKinna, Merchant Vessel Personnel Division (G–MVP), (202) 267– 0218, or LCDR M. Grossetti, Marine Investigation Division (G–MMI), (202) 276–0415, Office of Marine Safety, Security and Environmental Protection, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, and Ms. Jacqueline L. Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

On March 4, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents" in the **Federal Register** (59 FR 10544). The 60-day comment period closed on May 3, 1994. The Coast Guard received seven letters commenting on the proposal from mariners, a shipping company, and marine industry representatives. No public hearing was requested, and none was held.

After careful review of the comments and the NPRM, the Coast Guard has finalized the regulations requiring chemical testing for use of dangerous drugs of all applicants for issuance or renewal of merchant mariner credentials. The Coast Guard finds that the regulations provide the maximum flexibility practicable in establishing requirements for chemical testing for use of dangerous drugs.

Background and Purpose

In recent years, several major oil spills from ships have occurred in waters under the jurisdiction of the United States. Among these were the EXXON VALDEZ in Prince William Sound, Alaska, and the AMERICAN TRADER in coastal waters of California. These spills caused extensive damage, including the loss of fish and wildlife. In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380).

Among other things, OPA 90 introduces new safety measures relating to vessel operations. This final rule implements sections 4101(a) and (b) of OPA 90, which amend 46 U.S.C. 7101 and 7302, respectively, to require every person who applies for the issuance or renewal of a license, certificate of registry (COR), or merchant mariner's document (MMD) to be tested for use of dangerous drugs.

Under 46 CFR part 10, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers, and issues CORs to qualified staff officers such as pursers, medical doctors, and professional nurses.

Under the authority of 46 U.S.C. 7302, any person serving aboard most U.S.-flag merchant vessels of more than 100 gross tons which operate on other than rivers and lakes must hold an MMD issued by the Coast Guard. The MMD serves as a certificate of identification and service, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to qualified tankermen.

The statutory language of OPA 90 requires the testing of applicants for issuance or renewal of licenses, CORs, or MMDs for the use of dangerous drugs

in violation of law or Federal regulation. Existing Coast Guard drug-testing regulations use the phrase "chemical test," which is already defined in 46 CFR 16.105. For the purposes of this final rule, the "chemical testing" required of applicants for issuance or renewal of licenses, CORs, or MMDs relates only to the use of dangerous drugs.

Section 4103(a)(2) of OPA 90 amends 46 U.S.C. 2101 by adding "dangerous drug" to the list of general definitions and removes the definition of ''dangerous drugs'' from 46 U.S.C. 7503(a) and 7704(a). The definition of "dangerous drug" in section 4103(a)(2) of OPA 90 includes the term "controlled substance." Although "marijuana" is not specifically mentioned in the new definition, marijuana is a controlled substance under 21 U.S.C. 802, and is therefore covered by the definition of ''dangerous drug.'' This final rule will revise the definition of "dangerous drug" in 46 CFR 16.105 so that it conforms with the definition in 46 U.S.C. 2101, as amended by section 4103(a)(2) of OPA 90. This change has no substantive effect on the existing chemical testing rules in 46 CFR part 16.

To clarify the meaning of "pass a chemical test for dangerous drugs" a new definition has been added to 46 CFR 10.103, 12.01–6, and 16.105. It means that the result of a chemical test is reported as negative under 49 CFR part 40.

Currently, 46 CFR 16.220(b) provides exceptions to the periodic chemical test requirement when there has been a recent test for use of dangerous drugs or participation in a random test program. These exceptions were revised by a final rule published in the **Federal Register** on May 28, 1993 (58 FR 31104), and apply to the new testing requirements in this final rule.

Sections 4102(b) and (c) of OPA 90 amend 46 U.S.C 7107 and 7302 to limit the terms of CORs and MMDs to 5 years. On September 27, 1994, the Coast Guard published a final rule entitled "Fiveyear Term of Validity for Certificates of Registry and Merchant Mariner's Documents" (CGD 91-211) in the Federal Register (59 FR 49294) to require renewals of MMDs and CORs. Although the final rules for chemical testing and terms of validity both deal with the issuance and renewal of merchant mariner's credentials, separate dockets were maintained for ease of review by the public.

Discussion of Comments and Changes

Seven letters were received in response to the NPRM. The Coast Guard has reviewed all of the comments and,