Dated: February 20, 2003.

Michael D. Brown,

Deputy Director.

[FR Doc. 03–4722 Filed 2–27–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 2115–AG07

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the alcohol testing requirements for commercial vessels following a serious marine incident. The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol-testing devices on board, and to authorize use of a wider variety of testing devices. This rulemaking would also make additional minor procedural changes to Part 4, including a time limit for conducting drug testing following a serious marine incident.

DATES: Comments and related material must reach the Docket Management Facility on or before June 30, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 29, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8773), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Robert C. Schoening, Coast Guard, at 202–267–0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8773), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would be helpful to this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations in 46 CFR part 4 require marine employers to take all practicable steps after a serious marine incident (SMI) to ensure that chemical testing is conducted. The regulations do not specify a time requirement for completing the tests for alcohol or for dangerous drugs following an SMI. Without a specified timeframe to conduct alcohol or drug testing after an SMI, in some instances tests were not conducted, and in other instances tests were not completed soon enough for the results to provide a determination of whether alcohol was present in an individual's system at the time the SMI occurred.

In 1998, Congress passed 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). Section 2303a requires the Coast Guard to establish procedures ensuring that after a serious marine casualty occurs, required alcohol testing is conducted no later than two hours after the casualty occurred. If the alcohol testing cannot be conducted within that timeframe because of safety concerns directly related to the casualty, section 2303a requires the alcohol testing to be conducted as soon thereafter as the safety concerns have been adequately addressed to permit such testing. However, section 2303a prohibits us from requiring alcohol testing to be conducted more than eight hours after the casualty occurs.

The Coast Guard requires that alcohol and drug testing be conducted after a serious marine incident. Section 2303a uses the term "serious marine casualty." For the purpose of this rulemaking serious marine casualty means the same as *serious marine incident* (SMI) as defined in 46 CFR 4.03–2. Section 2303a also uses the phrase "safety concerns directly related to the casualty" as the only reason the marine employer may postpone alcohol testing following an SMI.

This rule would provide that alcohol testing requirements after an SMI will not prevent personnel who are required to be tested for alcohol from performing duties in the aftermath of an SMI when their performance is necessary to meet safety concerns directly related to the casualty.

Coast Guard regulations in 46 CFR part 4 mandating alcohol testing after an SMI currently require marine employers to collect blood or breath specimens from each individual who was directly involved in the SMI, and for breath specimens, to use an alcohol breath-testing device that can accurately determine the presence of alcohol in an individual's system. The regulations also require inspected vessels certificated for unrestricted oceans routes and inspected vessels certificated for restricted overseas routes to have onboard at all times an alcohol breath-testing device capable of determining the presence of alcohol in an individual's system. The voyages of oceangoing vessels take the vessel and its crew far from shore-based facilities where alcohol testing can be conducted. If an SMI were to occur during the voyage, the vessel would not be able to return to a shore-based facility soon enough to complete alcohol testing for the results to indicate whether alcohol was present in an individual's system at the time the SMI occurred. Requiring marine employers to have testing devices onboard these vessels at all times makes it possible for them to ensure that proper alcohol testing is conducted in a timely manner.

Section 2303a applies to all commercial vessels. The majority of these vessels are not currently required to carry alcohol-testing devices on board the vessel. A regulatory requirement to conduct testing within the statutory timeframes cannot, by itself, ensure that alcohol testing after an SMI will be done within 2 hours. For the same reason we currently require oceangoing vessels to carry alcohol breath-testing devices onboard at all times, all other commercial vessels should also carry testing devices onboard their vessels. Having the devices onboard would make it possible for a marine employer to conduct the required alcohol testing within two hours after the occurrence of an SMI.

Given a choice between Evidential Breath Testing (EBT) devices or breath Alcohol Screening Devices (ASDs), we believe that most commercial vessel owners and operators would elect to carry breath ASDs for determining the presence of alcohol in an individual's system. Our assumption is based on the cost differential between the more expensive EBT and less expensive breath ASD. However, the cost of the less expensive breath ASD could still be too expensive for the smallest commercial vessel owners and operators. Providing vessel owners and operators with a wider variety of alcohol-testing devices to choose from would give them more control over the cost of compliance. Therefore, we are proposing to allow commercial vessel owners or operators to carry either breath or saliva alcohol-testing devices to satisfy the requirement to carry alcohol-testing devices onboard their vessels.

Discussion of Proposed Rule

Statutory Time Requirements for Alcohol Testing After an SMI

The Coast Guard proposes adding § 4.06–3, "Requirements for alcohol and drug testing following a serious marine incident," which would require commercial vessel marine employers to conduct alcohol testing within two hours after an SMI, unless precluded by safety concerns directly related to the casualty, as mandated by section 2303a. If alcohol testing is not completed within two hours based on this exception, it must be done within eight hours of the casualty. An explanation on the casualty report form CG–2692B would be required for alcohol testing that is not completed within the prescribed two-hour timeframe, and an additional explanation would be required when testing is not completed within the eight-hour timeframe.

We also propose adding a provision in this section requiring drug testing be conducted as soon as possible after an SMI but no later than 32 hours after its occurrence. We would require the same type of explanation on the casualty reporting form when drug testing is not completed within the prescribed times as when alcohol testing is not completed within provided timeframes.

Responsibility of Individuals Directly Involved in Serious Marine Incidents

We propose amending § 4.06–5, "Responsibility of individuals directly involved in serious marine incidents," so that individuals subject to alcohol testing after an SMI would be prohibited from consuming alcoholic beverages for eight hours following the SMI, or until after the required alcohol testing is completed.

Adding a Requirement To Carry Alcohol-Testing Devices

We propose adding § 4.06–15, "Availability of chemical testing devices," which would require marine employers to have sufficient breath- or saliva-alcohol testing devices capable of determining the presence of alcohol in an individual's system on board vessels. This requirement would make it possible for owners and operators to comply with the statute's two-hour timeframe for alcohol testing.

We would also move § 4.06–20(b), which requires commercial vessel owners and operators to have drug-testing kits readily available for use following an SMI, to this new section.

Allowing Use of Saliva-Alcohol Testing Devices

To prevent a redundancy, we propose moving the specimen collection requirements in § 4.06–10 to the specimen collection requirements in § 4.06–20. We also propose including saliva, along with blood and breath, as specimens that can be collected for alcohol testing. For alcohol testing conducted aboard vessels, we would allow vessel owners and operators to choose any breath- or saliva-alcohol testing device that can determine the presence of alcohol in a individual's system. For drug testing, we will keep the current requirement for testing kits complying with 49 CFR part 40.

Delay of Implementation

We propose a delayed implementation date of 180 days to ensure that all marine employers subject to a new carriage requirement have ample time to procure and learn how to use the required equipment.

Related Rulemaking

During the comment period of a recent rulemaking, docket number USCG 2000–7759 Chemical Testing (66 FR 42964), we received one comment letter that requested several changes to the regulations in 46 CFR part 4 requiring alcohol testing after an SMI. The comment recommended that we revise the regulations to allow the use of saliva-alcohol testing devices. The comment also requested that we remove the requirement to conduct alcohol or drug testing on human remains. A copy of this comment letter has been placed into this rulemaking docket. We have considered the comment and, as described in the discussion of proposed rule section of this notice, we are proposing to amend §§ 4.06–5, 4.06–10, and 4.06–20. However, at this time, we are not proposing to amend § 4.06–30 concerning testing of human remains.

Department of Transportation Drug and Alcohol Testing Regulations

This proposal would have no impact on any existing Department of

Transportation (DOT) or operating administration's drug and alcohol testing regulations. It is clear that the Coast Guard is not subject to the provisions of the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102–143), although it does apply to other DOT modes. OTETA does not apply to Coast Guard required alcohol testing of employees in the regulated maritime industry.

The provisions of 49 CFR part 40, the DOT's drug testing requirements, apply to Coast Guard required drug testing. The provisions in 49 CFR part 40 that relate to alcohol testing, including use of the DOT Alcohol Testing Form, however, do not apply to Coast Guard required alcohol testing.

Regulatory Evaluation

This proposed 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. The Office of Management and Budget has not reviewed it under that Order. It is, however, considered "significant" under the regulatory policies and procedures of the DOT (February 26, 1979 (44 FR 11040)). A separate draft Regulatory Analysis is available in the docket as indicated under **ADDRESSES.** A summary of the analysis follows.

This proposed rulemaking would affect more than 183,400 commercial vessels. However, of those, approximately 2,600 vessels are already required to carry alcohol breath-testing devices. Since these vessels carry alcohol-testing devices on board, these marine employers can meet the statutory alcohol-testing timeframe requirement without additional cost. Thus, the number of vessels affected by the proposed requirement for the first time would be approximately 180,800.

Section 2303a of Title 46, U.S. Code, requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of an SMI. This proposal would establish a requirement for all marine employers to have alcohol-testing devices readily available for use to meet the requirements for alcohol testing following an SMI.

This proposed rule would require that alcohol testing be conducted within two hours of the incident, whereas the current regulation does not specify a time frame for testing. This proposal would help to ensure compliance with the alcohol testing requirements after a SMI.

The cost of this proposal is estimated by assuming that, of the available ASDs, 90 percent of vessels would choose the least costly option of purchasing disposable saliva alcohol testing devices, while only 10 percent of vessels would choose a breath ASD. The lowest price breath ASD is more than twice as expensive as the most expensive saliva ASD. We also assume that no vessels would choose an EBT device because of its much higher initial purchase cost and ongoing maintenance and training costs.

The draft Regulatory Analysis shows a $97 median price for the purchase of saliva ASDs and a $393 median price for a breath ASD. Using those median prices, this proposed rule would have an estimated total cost to industry of approximately $144 million throughout the 10-year analysis period. In the first year, affected vessels would incur approximately $40 million. For subsequent years, the average annual cost is approximately $18 million. The draft Regulatory Analysis available in the docket as indicated under **ADDRESSES** further compares the costs of EBT devices versus ASDs as alternatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule could impact about 3,500 small entities, based on the determination made by the Small Business Administration (SBA) in the North American Industry Classification System (NAICS codes 4831, 4832, 4872, 48831, 48832, and 48833). The SBA defines small entities either by revenue size or by employee size for all NAICS sectors. Depending on the NAICS sectors, firms with revenues less than $5 million and firms with less than 500 employees are defined as Small Entities. For the NAICS sectors and sub-sectors that apply to this analysis, SBA defined NAICS sectors 4831 (Deep Sea, Coastal, and Great Lakes water transportation) and 4832 (Inland Water Transportation) by employee size and the rest by revenue size. Those sectors defined by revenue size are: Scenic and Sightseeing Transportation (water), Port and Harbor Operations, Marine Cargo Handling, and Navigational Services to Shipping.

To determine the impact of the cost of this rule on these companies, we made the following assumptions:

- We assumed if a firm's revenues are less than $500,000, or it employs less than 20 employees, then it owns 5 vessels; and
- We assumed if a firm's revenues are in the range of $500,000 to $5 million, or it employs between 20 to 500 employees, then it owns 10 vessels.

With these assumptions, we calculated the cost impact of selecting saliva versus breath ASDs. As shown in Table below, costs will be a very small percentage of revenues for almost all companies.

The initial cost burden of alcohol breath-testing devices for some firms owning 5 vessels is 6.12 percent. It is reasonable to assume that under these circumstances the companies in question would choose to use disposable saliva ASDs or the next lowest priced breath ASDs, which would be a much lower cost to them.

COST BURDEN AS A PERCENTAGE OF ANNUAL REVENUES FOR SMALL ENTITIES

For a Company that owns:	Using saliva ASDs		Using breath ASDs	
	Initial	Recurring annual	Initial	Recurring annual
5 vessels:				
Cost	$925	$750	$2,840	$525.
Impact (Cost/Avg. Revenue).	0.01% to 1.99%	0.01% to 1.62%	0.04% to 6.12%	0.01% to 1.13%.
10 vessels:				
Cost	$1,850	$1,500	$5,680	$1,050.
Impact (Cost/Avg. Revenue).	0.002% to 0.41%	0.001% to 0.33%	0.01% to 1.25%	0.001 to 0.23%.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Robert C. Schoening at 202–267–0684.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information (OMB 2115–0003)

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, and a description of those who must collect the information follow.

The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Marine Casualty Information; Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; and Management Information System Requirements

Summary of the Collection of Information: The proposed regulation would require marine employers to document the reason for delaying the alcohol test on form CG–2692B. The requirement to report this information would be promulgated in 46 CFR 4.06–3. We would revise form CG–2692B accordingly to record the results of all types of alcohol testing (blood, breath, and saliva).

Need for Information: In accordance with 46 U.S.C. 2303a, the proposed regulation would require marine employers to document the reason for delaying the alcohol test on form CG–2692B if alcohol testing were not completed within the two-hour timeframe. If the alcohol test is not completed within the eight-hour timeframe, the marine employer must document the reason for the further delay of alcohol testing on form CG–2692B.

Proposed Use of Information: The information would be used to document the results of alcohol tests after SMIs.

Description of the Respondents: Marine employers whose employees, passengers, or vessels are involved in SMIs.

Number of Respondents: Currently, the approved OMB collection, estimates that 5,703 respondents fill out an accident report. This rulemaking would not change the number of incidents or accidents that trigger a response therefore the increase in respondents would be zero.

Frequency of Response: Continues to be once per incident.

Burden of Response: The possible additional burden imposed by this proposed rule is estimated to be so minimal that it does not merit changing the approved collection (a couple of additional minutes whenever documentation is needed). OMB approved, on previous submissions, the one-hour burden of completing each form CG–2692B.

Estimate of Total Annual Burden: The currently approved annual burden is 5,703 hours. Because the possible additional burden imposed by this proposed rule is estimated to be so minimal, it does not merit changing the approved annual burden.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Rules on testing merchant marine personnel for drugs and alcohol fall into the category of personnel qualification. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period, we will undertake appropriate consultations with the affected Indian tribal officials.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(c), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes amending 46 CFR part 4 as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

1. The citation of authority for Part 4 is revised to read as follows:

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; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

2. In § 4.06–1, in paragraph (b) add the phrase "as required in this part" at the end of the sentence, and revise paragraphs (c) and (d) as follows:

§ 4.06–1 Responsibilities of the marine employer.

* * * * *

(c) The determination of which individuals are directly involved in a serious marine incident (SMI) is to be made by the marine employer. A law enforcement officer may determine that additional individuals are directly involved in the SMI. In such cases, the marine employer shall take all practicable steps to have these additional individuals tested in accordance with 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 a SMI when their performance is necessary to respond to safety concerns directly related to the incident.

* * * * *

3. Add § 4.06–3 to read as follows:

§ 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 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 two (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 prevented the alcohol testing from being conducted within 2 hours of the occurrence of the incident, then alcohol testing must be conducted as soon as the safety concerns are addressed.

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

(2) Alcohol-testing devices must be used in accordance with procedures specified by the manufacturer of the testing device and 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 the test(s) 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 drug testing of each individual must be conducted within thirty-two (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 prevented the drug testing from being conducted within 32 hours of the occurrence of the incident, then drug testing must be conducted as soon as the safety concerns are addressed.

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

(3) If the drug test required in paragraphs (b)(1)(i) and (b)(1)(ii) of this section is not conducted, the marine employer must document on form CG–2692B the reason the drug test was not conducted.

4. Revise § 4.06–5 to read as follows:

§ 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 a SMI must provide blood, breath, saliva, or urine specimens for chemical testing required by § 4.06–20 when directed to do so by the marine employer or a law enforcement officer.

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

(c) Individuals subject to alcohol testing after an SMI are prohibited from consuming alcohol beverages for eight (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 is a violation of regulations and may subject the individual's to suspension and revocation proceedings under part 5 of this chapter and/or a civil penalty.

§ 4.06–10 [Removed]

5. Remove § 4.06–10.

6. Add § 4.06–15 to read as follows:

§ 4.06–15 Availability of chemical testing devices.

(a) *Alcohol testing.* The marine employer must have sufficient devices capable of determining the presence of alcohol in an individual's system onboard the vessel for use to meet the alcohol testing requirements found under § 4.06–3 of this part.

(b) *Drug testing.* The marine employer must have urine specimen collection and shipping kits meeting the requirements of 49 CFR part 40 that are readily available for use following SMIs. The specimen collection and shipping kits need not be carried aboard each vessel if obtaining the kits and conducting the required drug tests can be completed within 32 hours from the time of the occurrence of the SMI.

7. Revise § 4.06–20 to read as follows:

§ 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 in accordance with this subpart.

(b) *Drug testing.* 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 in accordance with 46 CFR part 16 and 49 CFR part 40.

8. Add § 4.06–70 to read as follows:

§ 4.06–70 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115.

Dated: February 24, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 03–4809 Filed 2–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D017]

Defense Federal Acquisition Regulation Supplement; Payment Withholding

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement that a contracting officer withhold 5 percent of the payments due under a time-and-materials or labor-hour contract unless otherwise prescribed in the contract Schedule. The proposed rule would permit, but not require, the administrative contracting officer (ACO) to withhold payment amounts if the ACO determines the withholding to be necessary to protect the Government's interests.

DATES: DoD will consider all comments received by April 29, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D017.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, requires the contracting officer to withhold 5 percent of the amounts due, up to a maximum of $50,000, unless otherwise specified in the contract Schedule. The Government retains the withheld amount until the contractor executes and delivers, at the time of final payment, a release discharging the Government from all liabilities, obligations, and claims arising under the contract.

This rule proposes to add DFARS 232.111(b) and DFARS 252.232–7XXX, Alternate A, to specify that, normally, there should be no need to withhold payments when dealing with contractors that typically comply with contractual requirements in a timely manner. This is in contrast to the current requirement in time-and-materials and labor-hour contracts that contracting officers must withhold payments unless other direction is provided in the contract.

DoD is considering revising its policy because the current withholding provisions are administratively burdensome and may, in some situations, result in the withholding of amounts that exceed reasonable amounts needed to protect the Government's interests. In addition, the contractor is already incentivized to execute and deliver the release discharging the Government from all liabilities, obligations, and claims under the contract, since this release is a condition for final payment.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.