

## CIVILIAN MARINE PERSONNEL INSTRUCTION

CMPI 790

COVER SHEET - 339

Alcohol Breath Testing

Date: 17 Aug 04

Attached is new CMPI 790, Alcohol Breath Testing. This change replaces CMPI 790 in its entirety.

### Reason for Revision

CMPI 790 has been streamlined and updated and is consistent with higher level policy, law and regulation. CMPI 790 was reviewed as part of the total CMPI review project, the goal of which was to streamline the CMPIs, eliminate redundant and non-policy information, and return them to basic policy documents required for the management of the MSC civil service mariner (CIVMAR) program.

### Effective Date

The above revision is effective upon receipt.

Authorized for MSC:



Approved:



By direction of the Secretary of the Navy

## CIVILIAN MARINE PERSONNEL INSTRUCTION 790

## ALCOHOL BREATH TESTING

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2. Responsibilities
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## Section 1. General Provisions

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1-1. PURPOSE. To provide policy and procedures for administering alcohol breath testing.

1-2. POLICY. It is MSC policy to provide and maintain a safe workplace and to ensure efficient MSC operations. In support of this policy, no alcohol will be possessed or consumed onboard any MSC vessel except in accordance with COMSCINST 3121.9 (series).

1-3. REFERENCES

- a. OPNAVINST 5100.8 (series)
- b. OPNAVINST 5102.1 (series)
- c. 33 Code of Federal Regulations (CFR) Part 95
- d. 46 Code of Federal Regulations (CFR) Parts 4 and 16
- e. 49 Code of Federal Regulations (CFR) Part 40

1-4. APPLICABILITY. This instruction applies to civil service mariners (CIVMARS) employed by the Military Sealift Command.

1-5. DEFINITIONS. See CMPI Definitions/Glossary Appendix.

Section 2. Responsibilities

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2-1. DIRECTOR, APMC. The Director, APMC will:

- a. Establish policies and procedures for managing and administering the alcohol breath testing program for MSC CIVMARS that are consistent with the provisions of this instruction and applicable laws, rules, and/or regulations governing civil service personnel.
- b. Ensure that ashore and afloat employees, supervisors and managers and other alcohol breath testing program officials are provided relevant and updated information and training on alcohol breath testing program policies, practices, procedures, and requirements.
- c. Ensure the APMC has a trained Drug Program Coordinator to assist in managing and administer the CIVMAR Alcohol Breath Testing Program.
- d. Ensure that there are properly calibrated alcohol breath testers ashore and on each CIVMAR crewed ship and that there are officials ashore and afloat designated as ABTOs who are qualified and trained to operate the alcohol breath tester, and that a listing of qualified and trained ABTOs is maintained and publicized.
- e. Designate in writing, maintain and publish a listing of Approving Official(s), ashore and afloat, responsible for approving testing of CIVMARS in the cases of reasonable suspicion and accident/unsafe practice.
- f. Ensure that disciplinary action is taken following the provisions of CMPI 750.
- g. Satisfy applicable bargaining obligations.

2-2. DRUG PROGRAM COORDINATOR (DPC). The DPC will manage and administer the alcohol breath testing program on behalf of the Director, APMC and serve as primary ABTO. As such the DPC will:

- a. Publicize the program, including information regarding the risks and hazards of alcohol use and abuse and provide program guidance, training, and education to ashore and afloat personnel.
- b. Coordinate training for ABTOs, supervisors and Approving Officials. ABTOs will be

trained to operate and maintain the equipment in accordance with the manufacturer's operating instructions. Supervisors, ashore and afloat, will be trained to recognize symptoms of alcohol abuse and to deal with performance and conduct problems resulting from alcohol abuse.

c. Serve as primary ABTO at the APMC carrying out all responsibilities of that duty, including, but not limited to recording test results in permanent record book and forwarding test results to designated official(s) ashore and the appropriate Medical Authority.

2-3. ALCOHOL BREATH TESTER OPERATOR (ABTO). The ABTO (ashore and afloat) will be designated by the Director, APMC and will administer alcohol breath tests, analyze and record test results in a permanent record book and forward test results to the DPC. The format of the Breath Analysis Log Sheet should be used for entries in the permanent record book. A permanent record book is required to be used for recording results and may be a standard 10 1/2 x 8 GSA notebook (stock no. SN-7530-00-222-3525).

2-4. MASTERS OR OFFICERS IN CHARGE (OIC). Masters/OICs will manage and administer the program aboard ship consistent with program requirements and policies of this instruction and those established by the APMC; approve testing (if designated Approving Official) of assigned or detailed crew members in cases of reasonable suspicion and accident/unsafe practice; designate individuals to witness testing, as required; refer employees to the Civilian Employee Assistance Program (CEAP) for assistance in obtaining counseling and rehabilitation, as appropriate; and, recommend or initiate appropriate disciplinary and/or administrative action of assigned crew members.

2-5. APPROVING OFFICIAL(S). Approving Officials, ashore and afloat, will be provided training and program guidance and be designated in writing by the APMC to approve testing of CIVMARS in cases of reasonable suspicion and accident/unsafe practice. Masters should be trained and designated Approving Officials, in addition to other officials and ashore and afloat. Final authority for designation of Approving Offices rests with the Director, APMC.

2-6. SUPERVISORY OFFICIALS ASHORE AND AFLOAT. Supervisory officials will manage and administer program requirements consistent with the provisions of this instruction and those established by the APMC; recommend and document reasonable suspicion and accident/unsafe practice testing to an Approving Official; recommend or initiate administrative and disciplinary action when an employee is found under the influence of alcohol; and refer employees to the Civilian Employee Assistance Program (CEAP) for assistance in obtaining counseling and rehabilitation, as appropriate.

2-7. CIVIL SERVICE MARINERS (CIVMARs). CIVMARs are responsible for being free of the influence of alcohol when reporting for duty and throughout duty hours.

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#### 3-1. BREATH TESTING DEVICES AND SAFEGUARDS

a. Testing devices shall be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the Federal Register from time to time by the National Highway Traffic Safety Administration (NHTSA).

b. The APMC shall comply with the NHTSA-approved quality assurance plan for each Alcohol Breath Tester it uses for alcohol screening or confirmation testing subject reference (e).

#### 3-2. TESTING

a. Testing shall be conducted in accordance with the procedures specified by the manufacturer of the testing device and references (c), (d), and (e).

b. A breath test result of .04 percent or more shall be deemed a positive test, reference (c).

c. If the result of the screening test is an alcohol concentration of 0.02 percent or greater, a confirmation test shall be performed in accordance with reference (e).

#### 3-3. REASONABLE SUSPICION TESTING

a. Grounds. Any CIVMAR may be required to be tested when there is a reasonable suspicion that he/she is under the influence of alcohol during duty hours. Although reasonable suspicion testing does not require certainty, mere hunches are not sufficient to meet this standard. The belief must be based on specific objective facts and reasonable inferences drawn from these facts. Reasonable suspicion testing may be based upon, among other things:

(1) Observable phenomena, such as direct observation of alcohol use or possession, and/or the physical symptoms of being under the influence of alcohol, e.g. slurred speech or body odors, individual's manner, disposition, muscular movement, or general appearance associated with consumption of alcohol.

(2) A pattern of abnormal conduct or erratic behavior.

(3) Information provided either by a reliable and credible source(s) or independently corroborated.

b. CIVMARs Ashore

(1) When testing is proposed based on reasonable suspicion and the CIVMAR is ashore (not assigned or detailed to a ship) the official reporting the matter will immediately notify a designated Approving Official of the specific circumstances which form the basis for his/her determination (MSC Form 12790/1 may be used), including the date(s) and time(s) of the reported alcohol related incident(s), reliable, credible source(s) of information, and rationale leading to the request for testing. If the Approving Official agrees testing is warranted based on a review of the facts and circumstances, he/she will notify the DPC of the requirement to arrange a test.

(2) The DPC will retain the written documentation and arrange for the test as soon as possible after receiving the approval from a designated Approving Official.

c. CIVMARs Afloat

(1) When testing is proposed based on reasonable suspicion and the CIVMAR is afloat (assigned or detailed to a ship), the appropriate afloat supervisor or other responsible authority will notify the Master or OIC in writing of specific circumstances which form the basis for his/her determination including date(s) and time(s) of the reported alcohol related incident(s), reliable, credible source(s) of information, and rationale leading to the request for testing. If the Master or OIC agrees testing is warranted based on the presented facts and circumstances, he/she will have a test conducted. Additionally, the Master/OIC will notify the DPC, by "Personal For" message, email or other means of the approval for testing including the facts and circumstances that serve as the basis for approval. Complete, written documentation will be mailed or otherwise provided to the DPC at the first opportunity after the incident.

(2) In no case will a CIVMAR who is under reasonable suspicion consideration be summarily paid off the ship and left ashore without proper assistance (including medical) being provided and necessary arrangements being made for his/her return to the APMC.

3-4. ACCIDENT OR UNSAFE PRACTICE TESTING. Any CIVMAR who caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity is subject to alcohol breath testing.

a. Grounds. Testing may be initiated when the employee has caused or contributed to a reportable accident or unsafe practice, as defined in reference (b); that is, when the accident or unsafe practice results in a death or personal injury, or damage to the ship, her cargo, stores, or equipment or damage to government or private property.

b. CIVMARs Ashore.

(1) When a supervisor/management official or other responsible authority believes that an accident or unsafe practice meets the criteria to require a test, he/she will notify his/her supervisor, as appropriate, and the Approving Official and commit the details surrounding the incident to writing (MSC Form 12790/1 may be used), including date, time, place, damage,

injury, approximate cost of damage and any other relevant information, facts, and circumstances supporting the determination. The Approving Official will immediately review the report and circumstances of the incident and, if determined necessary, discuss technical or other aspects of the incident with appropriate personnel, to make a determination about testing. If the Approving Official agrees testing is warranted based on the facts and circumstances, he/she will notify the DPC of the requirement to arrange a test.

(2) The DPC will retain a copy of the report and approval and arrange for the test as soon as possible after receiving written approval from the Approving Official.

c. CIVMARs Afloat

(1) When testing is proposed based on an accident or unsafe practice of a crew members, the CIVMAR's supervisor or other responsible authority will notify the Master or OIC in writing of details surrounding the incident including date, time, place, damage, injury, approximate cost of damage and any other relevant information, facts, and circumstances supporting the determination. If the Master or OIC agrees testing is warranted based on the presented facts and circumstances, he/she will have the test conducted and notify the DPC by "Personal For" message, email or other means of the approval for testing including the facts and circumstances which serve as the basis for approval. Complete, written documentation and original testing tape will be mailed or otherwise provided to the DPC at the first opportunity.

(2) In no case will a CIVMAR who caused or contributed to an accident or unsafe practice be summarily paid off the ship and left ashore without proper assistance (including medical) being provided and necessary arrangements being made for his/her return to the APMC.

Should the Master or OIC not be available for approval of testing, an Approving Official from the APMC maintained and published list may be used.

3-5. REFUSAL TO BE TESTED. If a CIVMAR refuses to be tested, he/she will be informed that refusal will be considered failure to follow a direct order and may result in the same range of discipline as a positive test result.

#### Section 4. Consequences of Positive Test Results

	Paragraph No.
<u>Administrative Action</u> .....	4-1
<u>Disciplinary Action</u> .....	4-2
<u>Reasonable Accommodation Requirements</u> .....	4-3

4-1. ADMINISTRATIVE ACTION. An employee who tests positive shall be referred to CEAP.

4-2. DISCIPLINARY ACTION. An employee who tests positive may be subject to disciplinary action. Disciplinary action must be consistent with requirements of the Civil Service Reform Act and other statutes, DOD, DON, and MSC policy, including CMPI 750, applicable collective

bargaining agreements, and may include discipline from a reprimand to removal from the Federal service.

4-3. REASONABLE ACCOMMODATION REQUIREMENTS. A positive test result does not equate to a requirement that the employee be afforded reasonable accommodation. Offers of reasonable accommodation must be in accordance with prevailing case law, applicable statutes, rules, and regulations.

## Section 5. Records and Reports

	Paragraph No.
Records.....	5-1
Employee Access to Records.....	5-2
Reports.....	5-3

### 5-1. RECORDS

a. The APMC will ensure proper maintenance and disposition of records relating to alcohol breath testing and any other authorized documentation necessary to support the program.

b. All alcohol breath testing information on specific individuals is confidential and is to be treated as such by anyone authorized to review or compile alcohol breath testing records. Records and information described in this paragraph will remain confidential, must be marked "For Official Use Only", and be retained in a secure device, with only authorized individuals who have a "need-to-know" having access. These records will be retained for 3 years unless a longer period is determined needed by the APMC or if the record is otherwise covered by another record keeping system such as the Employee Medical File with a different retention period.

c. CEAP officials are responsible for proper maintenance and disposition of CEAP records.

5-2. EMPLOYEE ACCESS TO RECORDS. Any employee who is the subject of an alcohol breath test will, upon written request to the DPC, have access to any records relating to such employee's alcohol breath test.

5-3. REPORTS. Reports will be as requested. The APMC will collect and compile anonymous statistical data annually on:

a. The number and kind of tests administered, number of employees tested and number of employees with positive test results.

b. The number of disciplinary actions or terminations resulting from positive alcohol breath test results, resulting from refusal to submit to testing, and resulting from failure to complete an alcohol counseling program.

c. The number of employees who successfully complete rehabilitation under CEAP.



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## Section 6. Forms

### 6-1. FORMS

- a. Breath Analysis Log Sheet Format
- b. Alcohol Breath Testing Request Form (MSC 12790/1)

## Instrument Model \_\_\_\_\_ Serial No. \_\_\_\_\_

DATE	TESTED PERSON'S NAME	TESTED PERSON'S SSN	TIME OF TEST	TEST RESULT	REFUSAL	TEST OPERATOR Name Printed & Signature

### ALCOHOL BREATH TESTING

This form is to be used by an authorized management official/supervisor to record circumstances of request for and approval of alcohol breath test of an employee.

1. Name of ship:	2. Date:
3. Name of employee:	4. Position:
5. Employee actions that precipitated request for alcohol breath testing:	
6. Has an accident occurred? <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes describe what happened, be specific, include date, time, place and all other pertinent details)	
7. Has an unsafe practice been committed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If yes, provide details, be specific, include date, time, place and all other pertinent details)	
8. Observations (be specific):	
9. Department Head's Signature:	Print Name:
Title:	

10. I have reviewed the above information and concur/nonconcur that the employee will be subject to alcohol breathing testing.

Signature of Master or Director, Marine Employment Division; or Other Designated Official:

11. Employee Tested: ☐ Yes ☐ No (If no explain)

12. Test Results