

# Marijuana/Opioid Crisis

Walt Brudzinski

Chief Administrative Law Judge, USCG

# Question

What is the government's latest initiative in chemical testing of commercial vessel personnel in the face of the Marijuana/Opioid crisis?

# History

- **In 1988 Coast Guard implemented chemical testing for holders of merchant mariner credentials in safety sensitive positions**
- **53 FR 47,064 (1988); 46 C.F.R. Part 16; 49 C.F.R. Part 40**

# Drugs Tested (5 panel)

- **Marijuana**
- **Cocaine**
- **Opiates (codeine, morphine, and heroin)**
- **Phencyclidine (PCP)**
- **Amphetamines**

# Types of Tests

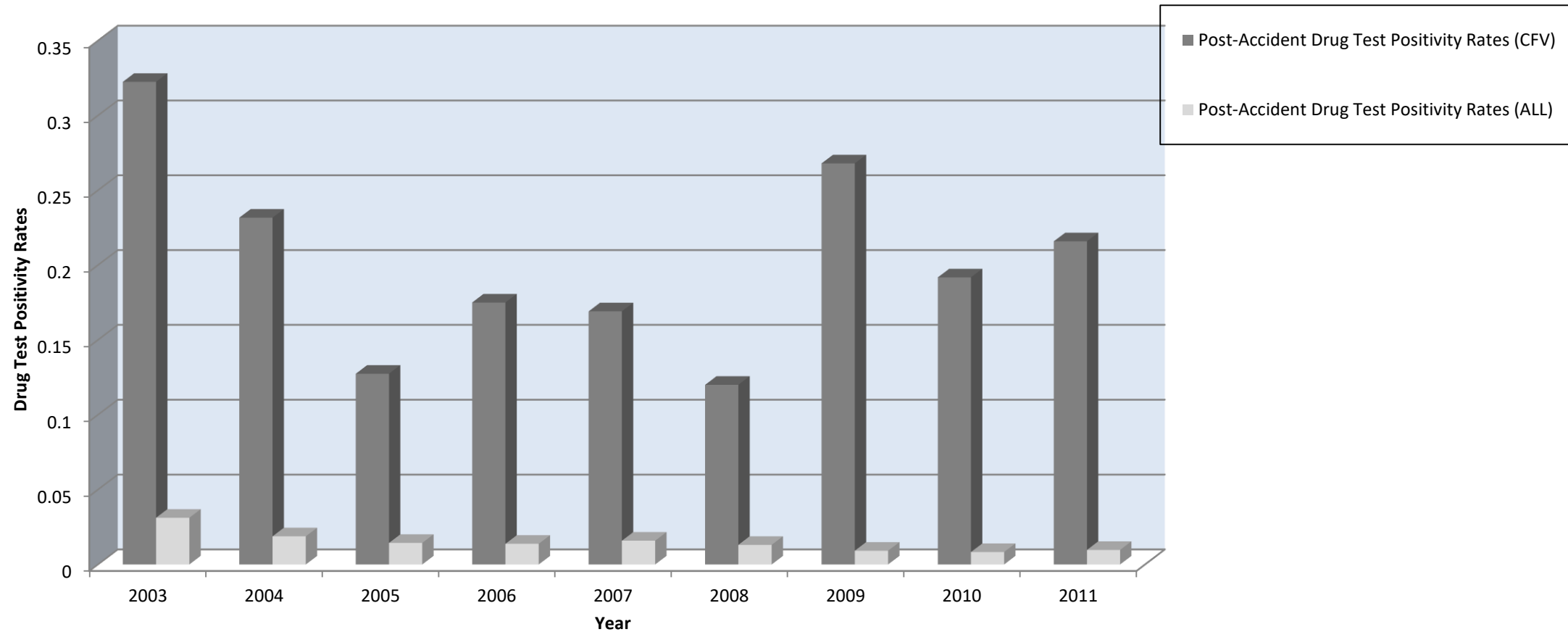
- **Pre-employment**
- **Periodic**
- **Random**
- **Serious Marine Incident**
- **Reasonable Cause**

# Rationale

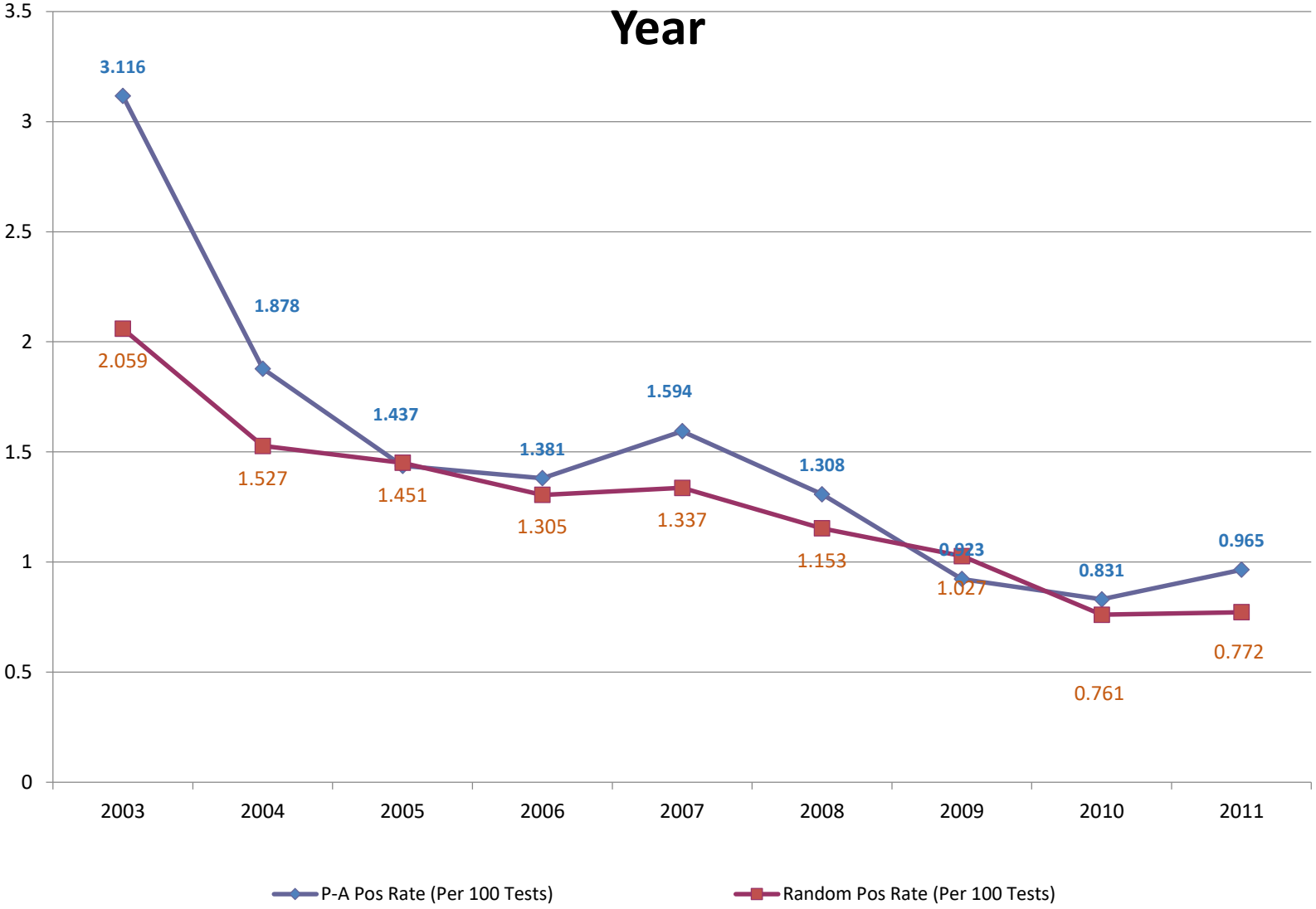
- **Discourage drug and alcohol use by commercial vessel personnel**
- **Reduce the potential for marine casualties**
- **Enhance the safety of marine transportation**

**Has it worked?**

# Post Accident Drug Test Positivity Rates: CFVs vs. ALL Vessels



# Random and Post-Accident Positivity Rates, By Year





# Law

**If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the merchant mariner's [credential] shall be revoked unless the holder provides satisfactory proof that the holder is cured.**

**Source: 46 U.S.C. § 7704(b)**

# Cure Defined

- **Drug rehabilitation, followed by**
- **One year of non-association**
- **Substance abuse monitoring program**
- **Medical Review Officer (MRO) Return to Work Letter**

# Enforcement Mechanism

- **Formal, trial type hearings**
- **Most drug cases are settled**

## Positive Test Triggers Presumption of Dangerous Drug Use

- **If an individual fails a chemical test for dangerous drugs under this part, (46 C.F.R. Part 16) the individual will be presumed to be a user of dangerous drugs. (46 C.F.R. § 16.201(f))**

# Two Recent Events Resulting in More Tests

- **Minimum number of random drug tests required to be conducted increased from 25% to 50%**
- **Addition of four opioids to the types of drugs tested**

# What's an Opioid?

- **Opiates - derived from opium poppy plant**
- **Includes codeine, morphine, and heroin**
- **Opioids - broader category: opiates and semi-synthetic compounds such as hydrocodone, hydromorphone, oxycodone, and oxymorphone.**
- **What are they popularly known as?**

# Popular Brand Names

- Hydrocodone – Vicodin
- Hydromorphone – Dilaudid
- Oxycodone – Percocet, OxyContin
- Oxymorphone – Opana and Opana ER, AKA Blue Heaven, Pink Lady, Octagons, Oranges, Orgasna
- Concentration: If  $\geq 100$  ng/ml then positive test

# Marijuana/Opioid Crisis

**259 million prescriptions  
for opioids in 2012.**

**One bottle for every adult.**

**NPRM 82 FR 7771 of 1/23/17**



# Misuse/Dependent

**In 2014, 2 million Americans  
misused or were dependent  
on prescription opioids.**

**NPRM 82 FR 7771 of 1/23/17**

# Opioid Overdose Deaths

- 28,647 in 2014
- 33,091 in 2015
- 13% ↑

NPRM 82 FR 7771 of 1/23/17

# Deaths Related to Prescription Opioids

**40% of overdose deaths in the  
U.S. have been related to  
prescription opioids since 2012.**

**Not insignificant.**

**NPRM 82 FR 7771 of 1/23/17**

The 5 Panel Tests Now Look Like This

**Marijuana, Cocaine,  
Phencyclidine (PCP),  
Amphetamines, and Opioids (to  
include codeine, morphine, and  
heroin, plus percocet, vicodin,  
opana, and dilaudid)**

# Verification Process

- **Medical Review Officer (MRO) verifies test result as + or –**
- **Legitimate medical explanation – e.g., valid prescription**
- **Can mariner continue performance safely?**
- **MRO duty to disclose**

# Verification Process, Continued

MRO is required to disclose to third parties information likely to:

- 1) render the mariner medically unqualified under an applicable DOT agency regulation;
- 2) indicate continued performance by the mariner of his or her safety-sensitive function is likely to pose a significant safety risk.

# Who Are the Third Parties?

- **Mariner's Employer**
- **Coast Guard**
- **Substance Abuse Professional (SAP)**
- **Examiner who determines whether the mariner is medically qualified**

## MRO's Discretion

Reporting is always the  
“reasonable medical judgment”  
of the MRO.



# Marijuana

- **A prescription for marijuana must be “consistent with” and not simply “under” the Controlled Substances Act. (21 U.S.C. § 801 et seq.)**
- **Regardless of any state’s “medical marijuana” laws, there cannot be a legally valid prescription for marijuana, because it remains a Schedule I substance under the Controlled Substances Act.**

# MRO's Discretion

- **An MRO may request a D, L stereoisomer test of a lab confirmed methamphetamine result to help rule out whether the result was possibly due to the use of an over-the-counter product.**
- **An MRO may request a THC-V test when verifying a positive marijuana test result after a doctor provides a (Marinol) prescription. THC-V testing provides useful info to the MRO when determining whether the lab reported positive result for marijuana resulted from the mariner's use of marijuana.**

# Conclusion

**Mariners are subject to drug testing requirements which fairly selects them and fairly deals with those who test positive for marijuana and opioids, thereby promoting safety at sea.**