

private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will 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.

H. Civil Justice Reform

This 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.

I. Protection of Children

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

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded from further environmental documentation under figure 2–1, paragraph (34)(a) and (c) of the Instruction. This final rule establishes testing procedures which are administrative in nature and could be used in disciplining maritime personnel. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are 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.

Regulatory Text

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

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 1. The authority citation 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; Department of Homeland Security Delegation No. 0170.1, Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

■ 2. In § 4.06–1, in paragraph (b), at the end of the sentence, add the phrase "as

required in this part" and revise paragraphs (c) and (d) to read as follows:

§ 4.06–1 Responsibilities of the marine employer.

* * * * *

(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.

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■ 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 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