

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.IC, 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: