

information to the Director at least 1 year prior to the expiration of the permit term. Your request must contain a list and justification for each information item in § 122.21(r) or § 125.95 that you determine has not changed since the previous permit application.

EPA requests comment on the two options described above. EPA specifically requests comments on whether an option like that in the suggested regulatory language above is appropriate to reduce the burden for NPDES permit applicants in subsequent permit terms or whether the option that would provide guidance and allow resubmittal of existing data and hence a reconfirmation of the data through the application process is needed to ensure accurate data for the Director. There would be companion language in § 125.98 requiring the Director to review and approve, approve with comments, or disapprove the request within 60 days of submittal by the applicant. EPA also requests comment on the specific time frames that would be appropriate for this option, and whether they should be specified by EPA or left up to the discretion of the Director.

In addition to the concerns discussed above regarding the timing and content of application materials, some commenters also voiced concerns regarding how Directors will determine if a facility is in compliance with the requirements of the proposed rule. These commenters expressed concern that, given the difficulty of predicting the performance of distinct cooling water intake control technologies, it is not reasonable to expect every Phase II existing facility to be able to ensure that it will achieve reductions in impingement and entrainment that are consistent with the proposed performance standards within the first permit term and, therefore, it would be unfair to enforce the proposed standards until each facility has had a reasonable period to achieve compliance. One comment expressed by these groups is that proper design, installation, operation, and maintenance of technologies reasonably likely (based on appropriate characterization and study) to meet the performance standards should satisfy the permit terms and conditions (*i.e.*, be deemed compliance), at least until the second round of permitting occurs. Stated another way, commenters maintain that Phase II existing facilities should not be subject to immediate enforcement actions in the first permit term for failing to meet the proposed performance ranges (*i.e.*, a facility that properly designs, installs, operates and maintains cooling water intake structure control technologies but

discovers, at or near the end of the first permit term, that it has not achieved the requisite level of impingement and entrainment reduction, should not be subject to enforcement for violating the section 316(b) requirements). EPA recognizes that significant variability in biological communities over seasons and other time periods (for example, a period of peak larval abundance that typically occurs in the spring months), may complicate optimization of the performance of technologies for reducing impingement mortality and entrainment. EPA is considering the need for regulatory language that would allow facilities time to come into compliance if they choose to install technologies to meet the performance standards in proposed § 125.94. This would allow facilities a period of time to optimize technology(ies) so that they operate to minimize impingement mortality and entrainment. EPA is currently evaluating and considering allowing six months, one year, two years, or five years (one permit term) for a facility to come into compliance after issuance of its permit. Example regulatory language for a new paragraph (e) in § 125.94 might read as follows:

(e) If you propose to implement design and construction technologies or operational measures to meet the performance standards in § 125.94(b) or (c), you will have an optimization period of [six months/one year/two years/five years] from the issuance of a permit requiring compliance with § 125.94(b) or (c) after which you must comply with the standards.

In this case, the proposed paragraphs § 125.94(e) and (f) would then become (f) and (g), respectively. EPA requests comments on these time frames and the suggested regulatory language above. EPA also requests comment on whether EPA should specify the length of the optimization period or whether the Director should make this decision.

D. Determining Capacity Utilization Rates

At § 125.94(b)(2), the proposed rule would require facilities with a capacity utilization rate of less than 15 percent to meet performance standards for reducing impingement mortality. § 125.94(b)(3) would require facilities with a capacity utilization rate of 15 percent or more to meet performance standards both for reducing impingement mortality and for reducing entrainment. (See 67 FR 17221.) As discussed in Section III above, the proposed Phase II rule defined capacity utilization based on the generation and capacity of the entire facility, including steam electric and non-steam generators. (See the proposed definition of

“capacity utilization rate” at § 125.93, 67 FR 17220.) EPA is considering whether, for the purposes of implementing Section 316(b), defining capacity utilization based on the steam electric part of a facility better reflects a facility’s potential for adverse environmental impact because only the steam electric generators use cooling water. Thus, EPA is considering refining its regulatory definition for “capacity utilization rate” at the proposed § 125.93 to reflect use of the steam electric part of a facility. If EPA were to make this change, the definition of “capacity utilization rate” in § 125.93 might be revised as follows (new language is underlined):

Capacity utilization rate means the ratio between the average annual net generation of the *steam electric part of a facility* (in MWh) and the total net capability of the *steam electric part of a facility* (in MW) multiplied by the number of available hours during a year. The average annual generation must be measured over a five year period (if available) of representative operating conditions.

EPA requests comment on this suggested refinement.

E. Clarifications and Corrections

1. Implementation Burden for Studies and Biological Data Collection

EPA received comments concerning the information collection, study, and monitoring costs presented in the supporting Information Collection Request for Cooling Water Intake Structures for the Phase II Existing Facility Proposed Rule (US EPA ICR No. 2060.01) (February 2002). Commenters stated that the format was confusing and the detail provided in the ICR was insufficient to enable them to review and comment on these costs. To assist reviewers, EPA has placed additional information into the record summarizing the general derivation of information collection, study, and monitoring activity costs associated with the Phase II rule. Labor categories, labor rates, monitoring components, and associated costs are outlined and additional cost details are presented in summary tables to facilitate ease of review and understanding.

Commenters also pointed out that EPA had inadvertently transposed the labor figures for statisticians and biological technicians when putting together the summary tables of costs. EPA has recalculated the ICR costs to rectify this error and has determined that costs will not change substantially. Labor costs associated with monitoring activities in the ICR were significantly higher than the labor for writing final reports and studies. Therefore, when the