

entrainment. Cross-referencing this other section of the regulations is not technically correct, because subsection (d) of § 125.84 is part of Track II while the alternative requirements provision applies to either Track I or Track II. Therefore, this action deletes the reference to 40 CFR 125.84(d)(1)(i) and substitutes language referencing "significant adverse impacts on local water resources other than impingement or entrainment." Similarly, to eliminate any uncertainty regarding applicability of the alternative requirements provision at 40 CFR 125.85 to the Track II performance requirements at 40 CFR 125.84(d), this action deletes 40 CFR 125.84(d)(1)(ii) because it is unnecessary and confusing. In addition, the paragraph 40 CFR 125.84(d)(1) and the subparagraph (d)(1)(i) have been combined with some modifications because a separate subparagraph is no longer needed.

#### IV. Response to Comments

EPA received one set of comments on the direct final and companion proposed rules published on December 26, 2002, (67 FR 78948 and 78956) from Riverkeeper, Inc. on behalf of 16 environmental organizations. This group of environmental organizations are petitioners in a suit filed against EPA in the U.S. Court of Appeals in the Second Circuit (Case No. 02-4005) challenging EPA's final Phase I rule for new facilities. Riverkeeper, *et al.* submitted as their comments the brief that they filed in their challenge to the December 18, 2001, Phase I final regulations (Brief for the Environmental Petitioners, December 4, 2002). Riverkeeper *et al.*'s comments did not specifically object to the technical changes in the direct final rule; rather, they objected to the underlying provisions in the final Phase I rule that are related to the technical corrections. Riverkeeper *et al.* filed their brief to preserve their ability to have the objectionable provisions remanded to EPA should they succeed in their challenge of the Phase I rule. EPA also understands that Riverkeeper *et al.* intend to consolidate any petition for review of this rule with the pending litigation in the Second Circuit. EPA believes it responded to Riverkeeper *et al.*'s comments articulated in their brief in EPA's brief filed in the Second Circuit on April 4, 2003, and in the record for the Phase I rule. Thus, EPA includes in the record for this rule the brief it filed in the Second Circuit in the Phase I litigation, all other briefs filed in that litigation, and the entire public record on the National Pollutant Discharge Elimination System:

Regulations Addressing Cooling Water Intake Structures for New Facilities, Final Rule (Docket ID W-00-03).

#### V. Statutory and Executive Orders Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735, October 4, 1993] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector or the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review.

##### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule merely makes three minor technical revisions to the December 2001 Phase I final regulations for cooling water intake structures. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent alternative requirements. It would affect the same facilities as the December 2001 rule, impose no additional costs or result in additional benefits beyond those already projected, and would not reduce the level of environmental protection projected.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

##### C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule does not substantively change the December 18, 2001, final rule for new facilities (66 FR 65256), nor does it impose a significant economic impact on a substantial number of small entities. This rule merely makes three minor technical revisions to the December 2001 rule. These minor changes will clarify the Agency's intent on velocity monitoring, authority to require additional design and construction technologies, and procedures for seeking less stringent