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#### *H. Executive Order 13211 (Energy Effects)*

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA") of 1995 (Public Law 104-113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not

have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

EPA does not expect that this final rule would have an exclusionary effect, deny persons the benefit of the NPDES program or subject persons to discrimination because of their race, color, or national origin. This rule merely makes three minor technical revisions to the 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, would have no additional costs or benefits beyond those already projected, and would not reduce the level of environmental protection projected.

#### *K. Executive Order 13158: Marine Protected Areas*

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's final rule will not enhance or expand protection nor reduce the level of environmental protection of existing marine protected areas. 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.

#### *L. Plain Language Directive*

Executive Order 12866 encourages agencies to write all rules in plain language. EPA has written this final rule in plain language to make this rule and the final rule at 66 FR 65256, December 18, 2001 easier to understand.

#### *M. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 21, 2003.

#### **List of Subjects in 40 CFR Part 125**

Environmental protection, Cooling water intake structures, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 13, 2003.

**Christine Todd Whitman,**  
Administrator.

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 1. The authority citation for part 125 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

#### **§ 125.83 [Amended]**

■ 2. Section 125.83 is amended by removing the definition for "Minimum ambient source water surface elevation."

■ 3. Section 125.84 is amended by revising paragraphs (b)(4)(ii), (b)(4)(iii), (b)(5)(ii), (c)(3)(ii), (c)(3)(iii), and (d)(1) to read as follows: