

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 125**

[FRL-7430-3]

**National Pollutant Discharge Elimination System—Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing minor changes to EPA’s final rule implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling purposes published December 18, 2001. The December 2001 rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available for minimizing adverse environmental

impact associated with the use of these structures. EPA is proposing several minor changes to the December 2001 rule because, in several instances, the Phase I final rule text does not reflect the Agency’s intent.

**DATES:** Written comments must be received by January 27, 2003.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Martha Segall, USEPA Office of Water by phone at (202) 566-1041 or by e-mail at [rule.316b@epa.gov](mailto:rule.316b@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

This proposed rule applies to new greenfield and stand-alone facilities that use cooling water intake structures to withdraw water from waters of the U.S. and that have or require a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the CWA. New facilities subject to this regulation would include those

that have a design intake flow of greater than two (2) million gallons per day (MGD) and that use at least twenty-five (25) percent of water withdrawn for cooling purposes. Today’s proposed rule would not apply to existing facilities, major modifications to existing facilities that would be “new sources” under 40 CFR 122.29(b) as that term is used in the effluent guidelines and standards program, or facilities that employ cooling water intake structures in the offshore oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

The following table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria at 40 CFR 125.81. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of Regulated Entities	Standard Industrial Classification Codes	North American Industry Codes (NAIC)
Federal, State and Local Government.	Operators of steam electric generating point source dischargers that employ cooling water intake structures.	4911 and 493 .....	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122
Industry .....	Operators of industrial point source dischargers that employ cooling water intake structures.	See below .....	See below
	Steam electric generating .....	4911 and 493 .....	221111, 221112, 221113, 221119, 221121, 221122, 221111, 221112, 221113, 221119, 221121, 221122
	Agricultural production .....	0133 .....	111991, 11193
	Metal mining .....	1011 .....	21221
	Oil and gas extraction (Excluding offshore and coastal subcategories).	1311, 1321 .....	211111, 211112
	Mining and quarrying of nonmetallic minerals .....	1474 .....	212391
	Food and kindred products .....	2046, 2061, 2062, 2063, 2075, 2085.	311221, 311311, 311312, 311313, 311222, 311225, 31214
	Tobacco products .....	2141 .....	312229, 31221
	Textile mill products .....	2211 .....	31321
	Lumber and wood products, except furniture .....	2415, 2421, 2436, 2493.	321912, 321113, 321918, 321999, 321212, 321219
	Paper and allied products .....	2611, 2621, 2631, 2676.	3221, 322121, 32213, 322121, 322122, 32213, 322291
	Chemical and allied products .....	28 (except 2895, 2893, 2851, and 2879).	325 (except products 325182, 32591, 32551, 32532)
	Petroleum refining and related industries .....	2911, 2999 .....	32411, 324199
	Rubber and miscellaneous plastics products .....	3011, 3069 .....	326211, 31332, 326192, 326299
	Stone, clay, glass, and concrete products .....	3241 .....	32731
	Primary metal industries .....	3312, 3313, 3315, 3316, 3317, 3334, 3339, 3353, 3363, 3365, 3366.	324199, 331111, 331112, 331492, 331222, 332618, 331221, 22121, 331312, 331419, 331315, 331521, 331524, 331525

Category	Examples of Regulated Entities	Standard Industrial Classification Codes	North American Industry Codes (NAIC)
	Fabricated metal products, except machinery and transportation equipment.	3421, 3499 .....	332211, 337215, 332117, 332439, 33251, 332919, 339914, 332999
	Industrial and commercial machinery and computer equipment.	3523, 3531 .....	333111, 332323, 332212, 333922, 22651, 333923, 33312
	Transportation equipment .....	3724, 3743, 3764	336412, 333911, 33651, 336416
	Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks.	3861 .....	333315, 325992
	Electric, gas, and sanitary services .....	4911, 4931, 4939, 4961.	221111, 221112, 221113, 221119, 221121, 221122, 22121, 22133
	Educational services .....	8221 .....	61131
	Engineering, accounting, research, management and related services.	8731 .....	54171

### B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2002-0052. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing

in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will

be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

### C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. Please submit with your comments any references cited in your comments. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments; however, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will

be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW-2002-0052. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to OW-Docket@epa.gov, Attention Docket ID No. OW-2002-0052. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit 1.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three (3) copies of your comments to the "Water Docket," U.S. Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW-2002-0052.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW-2002-0052. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit 1.A.1.

#### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send information identified as CBI by mail only to the following address: Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Martha Segall/ Docket ID No. OW-2002-0056.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## **II. Discussion of Direct Final Rulemaking**

EPA is proposing to make several minor revisions to the final regulations addressing cooling water intake

structures for new facilities, published December 18, 2001. In the "Rules and Regulations" section of today's **Federal Register**, we are approving these revisions as a direct final rule without prior proposal because we view these as noncontroversial revisions and anticipate no adverse comment. We have described the revisions and our rationale for them in the direct final rule. If EPA receives no adverse comment, the Agency will not take further action on this proposed rule. If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment(s), paragraph(s), or section(s) of today's rulemaking for which we do not receive adverse comment will become effective on the date set in the direct final rule, not withstanding any adverse comment on any other distinct amendment, paragraph or section of today's rule. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For the various statutes and Executive Orders that require findings for each rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment

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

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 19, 2002.

**Christine Todd Whitman,**  
*Administrator.*

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