

appropriate docket identification number.

Background. On February 18, 2003, we published a direct final rule (68 FR 7706) and a parallel proposal (68 FR 7735) amending the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (40 CFR part 63, subpart MM). The amendments clarified and consolidated the monitoring and testing requirements and added a site-specific alternative standard for one pulp mill. We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comment by March 20, 2003 on one or more distinct provisions in the direct final rule, we would withdraw those provisions. We subsequently received timely adverse comments on seven of the amendments:

- 40 CFR 63.864(a) through (c), related to a site-specific monitoring plan;
- 40 CFR 63.864(d)(1) and (2), related to monitoring specifications for continuous opacity monitoring systems;
- 40 CFR 63.864(e)(1) through (9), related to monitoring specifications for continuous parameter monitoring systems;
- 40 CFR 63.864(f), related to flow monitoring provisions;
- 40 CFR 63.864(h) and (i), related to data availability restrictions;
- 40 CFR 63.864(j)(5), related to requirements for establishing the operating range for monitoring parameters; and
- 40 CFR 63.864(j)(6), related to an operation and maintenance log for the period between the compliance date and performance test date.

We prepared an action withdrawing these amendments, but the Office of the Federal Register was unable to publish it before May 19, 2003 (the direct final rule's effective date). The final rule amends the subpart MM rule by deleting the provisions which were the subject of adverse comment, consistent with our originally stated intention. If we again address these issues related to monitoring, we will do so by acting on the proposed rule (68 FR 7735) after considering the comments received. We will not institute a second comment period.

We are also amending portions of the subpart MM rule added by the direct final rule to make two technical corrections to inadvertent errors in rule language. The first is a correction to a typographical error affecting one term in Equation 1 of 40 CFR 63.865(a)(1). The second is a correction to a cross-referencing error in 40 CFR 63.687(a)(3).

The Administrative Procedure Act, in 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment. With respect to the amendment deleting the provisions related to monitoring, we are amending the rule to carry out our stated intention of not allowing provisions of the direct final rule to take effect if they were the subject of adverse comment. There has already been notice and opportunity for comment on this action, and, under these circumstances, opportunity for further comment is unnecessary. Moreover, failure to amend the rule by deleting the provisions on which EPA received adverse comment would be contrary to public expectation based on EPA's express promise. There may in fact be detrimental reliance on EPA's promise, further supporting EPA's finding that there is good cause for immediate revision of the rule. The other changes to the rule are minor, noncontroversial technical corrections, which do not substantively change the rule's requirements. Thus, notice and opportunity for public comment on these technical corrections is also unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Section 553(d) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's amendments delete regulatory language that was the subject of adverse comment, do not add any requirements necessitating additional time for compliance, and otherwise do not substantively change the requirements of the rule, we find good cause to make these amendments effective immediately.

Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). In

addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104-113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these amendments, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these amendments in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. Section 808 allows the issuing agency to make a rule