A second comment raised a concern as to whether exhibits should be numbered, noting that there is no patent interference rule requiring that exhibits be numbered. Each exhibit needs to be identified in some unique manner. All interferences declared by the Board of Patent Appeals and Interferences (Board) at this time are subject to a ''Standing Order'' that requires that exhibits be numbered.

The same comment noted that former 37 CFR 1.682 authorized placing a publication in evidence without the need for an affidavit. According to the comment, affidavits will now be necessary. Publications generally may be placed in evidence in interference cases without an affidavit. If an objection is made by an opponent, *e.g.,* for lack of authenticity, then under the Board's practice the party has a period of time within which to supplement its evidence by properly authenticating the publication. The Board expects few, if any, problems with the admissibility of most printed publications given that most parties will have no reason to question the authenticity of most printed publications.

Regulatory Flexibility Act

This rulemaking is procedural and is not subject to the requirements of 5 U.S.C. 553 so no initial regulatory flexibility analysis is required under 5 U.S.C. 603.

Executive Order 13132: Federalism Assessment

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This interim rule creates no information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents.

For the reasons stated in the preamble, the United States Patent and Trademark Office amends 37 CFR Part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. Amend the authority citation for 37 CFR Part 1 to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Amend § 1.601(f) to revise paragraph (f) to read as follows:

§ 1.601 Scope of rules, definitions.

* * * * *

(f) A *count* defines the interfering subject matter between two or more applications or between one or more applications and one or more patents. When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent that is designated to correspond to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application that is designated to correspond to a count and is identical to the count is said to correspond exactly to the count. A claim of a patent or application that is designated to correspond to a count but is not identical to the count is said to correspond substantially to the count. When a count is broader in scope than all claims which correspond to the count, the count is a phantom count.

* * * * *

3. Revise § 1.606 to read as follows:

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. The application must contain, or be amended to contain, at least one claim that is patentable over the prior art and corresponds to each count. The claim in the application need not be, and most often will not be, identical to a claim in the patent. All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count.

4. Amend § 1.671 to revise paragraphs (a) and (e) to read as follows:

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of affidavits, transcripts of depositions, documents and things.

* * * * *

(e) A party may not rely on an affidavit (including exhibits), patent, or printed publication previously submitted by the party under § 1.639(b) unless a copy of the affidavit, patent, or printed publication has been served and a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit, patent, or printed publication. When proper notice is given under this paragraph, the affidavit, patent, or printed publication shall be deemed as filed under § 1.640(b), § 1.640(e)(3), or § 1.672, as appropriate.

* * * * *

Dated: November 9, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–30015 Filed 11–22–00; 8:45 am]

BILLING CODE 3510–16–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MI75–7284a; FRL–6907–1]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is adjusting the applicability date for reinstating the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in Allegan County, Michigan and is determining that the area has attained the 1-hour ozone NAAQS. This determination is based on 3 consecutive years of complete, quality-assured, ambient air monitoring data for the 1997–1999 ozone seasons that demonstrate the area has attained the ozone NAAQS. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, and certain related requirements of part D of subchapter I of the Clean Air Act (CAA), do not apply to the Allegan area.

EPA is also approving the State of Michigan's request to redesignate Allegan County to attainment for the 1-hour ozone NAAQS. Michigan submitted the redesignation request for the Allegan area in two submittals dated September 1, 2000 and October 13, 2000. In approving this redesignation request, EPA is also approving the

State's plan for maintaining the 1-hour ozone standard for the next 10 years as a revision to the Michigan State Implementation Plan (SIP). In this direct final rule, EPA is also notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the Allegan, MI submitted maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan.

In the proposed rules section of this **Federal Register**, EPA is proposing approval of, and soliciting comments on, this SIP revision. If we receive adverse comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

DATES: This ''direct final'' rule is effective January 16, 2001, unless EPA receives adverse written or critical comments by December 26, 2000. If the rule is withdrawn, EPA will publish timely notice in the **Federal Register**.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Mooney at (312) 886–6043 before visiting the Region 5 Office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

SUPPLEMENTARY INFORMATION:

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I. Adjustment of Applicability Date for Reinstating the 1-Hour Ozone Standard

A. Why Did EPA Revoke the 1-hour Ozone Standard in Allegan?

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432) and June 9, 1999 (64 FR 30911), the EPA revoked the 1-hour ozone NAAQS in many areas around the country in anticipation of implementing the new 8-hour ozone NAAQS that was established in 1997. EPA revoked the 1-hour standard to allow areas that were showing attainment to redirect their focus toward meeting the new 8-hour standard. On June 9, 1999, the EPA revoked the 1-hour standard for the Allegan area because ozone monitors were showing attainment of the ozone NAAQS.

B. Why Did EPA Reinstate the 1-hour Ozone Standard in Allegan?

On May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on the 8-hour ozone NAAQS that blocked EPA's ability to implement the new standard. That action left nearly 3,000 U.S. counties without any federal public health standard for ozone. To remedy this situation, on July 20, 2000, EPA published a final rulemaking action in the **Federal Register** (65 FR 45181) to reinstate the 1-hour standard in areas where it had been revoked, including Allegan.

C. What Does Reinstatement Mean for Allegan?

For areas with clean air quality data, like Allegan, the July 20, 2000 rulemaking (65 FR 45182) specifies that reinstating the nonattainment designation will occur 180 days after EPA published the rulemaking, on January 16, 2001. EPA believes that it is appropriate to provide nonattainment areas with clean air quality data since revocation additional time to complete the redesignation process. Therefore, EPA delayed the applicability date of the final rule for 180 days for areas that were designated nonattainment at the time of revocation and continue to have clean data, to allow States to submit redesignation requests and EPA time to act on them prior to the January 16, 2001 applicability date. The July 20, 2000 rule specifies a procedure by which EPA can synchronize the effective date of the reinstatement and the redesignation. EPA is using that procedure in this action.

II. Determination of Attainment

A. What Action Is EPA Taking?

The EPA is determining that the Allegan ozone nonattainment area has attained the NAAQS for ozone. On the basis of this determination, EPA is also determining that certain CAA requirements do not apply to the Allegan area as long as it continues to attain the ozone NAAQS. These requirements are (section 172(c)(1)) attainment demonstration requirements and (section 172(c)(9)) contingency measure requirement.

B. Why Is EPA Taking This Action?

EPA believes it is reasonable to interpret provisions regarding attainment demonstrations and certain related provisions to not require SIP submissions, as described further below, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA made this interpretation, and described our legal rationale for it in a memo from John Seitz dated May 10, 1995. EPA is basing the determination that Allegan County has attained the ozone standard upon three years of complete, quality-assured, ambient air monitoring data for the 1997 to 1999 ozone seasons recorded at the Allegan monitoring site. These data demonstrate that Allegan County has attained the ozone NAAQS. Preliminary ozone monitoring data for 2000

continue to show that this area is attaining the ozone NAAQS.

C. What Would Be the Effect of This Action?

The requirements of section 172(c)(1) concerning the submission of a plan to ensure reasonable further progress (RFP) plan and the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment will not apply to Allegan County.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

The determination in this document does not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other states with respect to the NAAQS (see section 110(a)(2)(D)). The EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the CAA to require such emission reductions if necessary and appropriate to deal with transport situations.

D. What Is the Background for This Action?

The EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations and certain related provisions to not require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of Subchapter I (sections 171 and 172) as not requiring the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures, as explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995 (See *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996)).

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I of the Clean Air Act Amendments of 1990 (1990 Act). As EPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similarly, the EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564). EPA has exercised this policy most recently in approvals for the Cincinnati, OH and Muskegon, MI areas (65 FR 37879 and 65 FR 52651).

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for Allegan County from the 1997 through 1999 ozone seasons, as recorded at the Allegan monitoring site. This data is summarized in Table 1 of this document covering EPA's analysis of the redesignation request. Preliminary monitoring data for 2000 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that this area has attained the 1-hour ozone standard during the 1997–1999 period, which is the most recent three-year time period of air quality monitoring data. The State therefore is not required to submit an attainment demonstration, RFP, or a section 172(c)(9) contingency measure plan.

E. Where Is the Public Record and Where Do I Send Comments?

The official record for this direct final rule is at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. If we receive adverse comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

III. Redesignation Request

A. What Action Is EPA Taking?

The EPA is approving the redesignation request for the Allegan area because three years of ambient monitoring data demonstrate that the ozone NAAQS has been attained and the area has satisfied the other requirements for redesignation. The EPA is approving the maintenance plan submitted by the Michigan Department of Environmental Quality (MDEQ) as a revision to the SIP. The EPA is also notifying the public that we believe the motor vehicle emissions budgets for VOC and NO_X are adequate for conformity purposes and approvable as part of the maintenance plan.

B. What Would Be the Effect of the Redesignation?

The redesignation would change the official designation of Allegan County from nonattainment to attainment for the 1-hour ozone standard. It would also put a plan in place to maintain the 1-hour ozone standard for the next 10 years. This plan includes contingency measures to correct any future violations of the 1-hour ozone standard. It also includes motor vehicle emissions budgets for VOC and NO_X which would be used in any conformity determination that is made on or after the effective date of the maintenance plan approval.

C. What Is the Background for This Action?

The EPA originally designated the Allegan area as an ozone nonattainment area under section 107 of the 1977 CAA on March 3, 1978 (43 FR 8962). The EPA revisited this original designation in 1991 to reflect new designation requirements contained in the 1990 Act. On November 6, 1991 (56 FR 56694), the EPA designated Allegan County as an ozone nonattainment area. At the time of the 1991 designations, up to date monitoring data was not available for this area, nor had the State completed a redesignation request showing that it complied with the requirements of section 107 of the Act. Based on this, the EPA designated the area as nonattainment, but did not establish a nonattainment classification, establishing the area as an incomplete

data ozone nonattainment area. The preamble for the original designation contains more detail on this action (56 FR 56694).

The Allegan area has since recorded three years of complete, quality-assured, ambient air quality monitoring data for 1997–1999, thereby demonstrating that the area has attained the 1-hour ozone NAAQS.

On September 1, 2000, the State of Michigan submitted a redesignation request and section 175A maintenance plan for the Allegan ozone nonattainment area. This revised plan includes updated emissions inventory calculations and air quality monitoring data.

D. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, on April 16, 1992 (57 FR 13498) and supplemented the guidance on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994. (Nichols, October 1994)
2. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.
3. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.
4. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992)
5. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.
6. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

E. What Is EPA's Analysis of the Request?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined according to 40 CFR 50.9 and appendix H, based on three complete, consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The MDEQ submitted ozone monitoring data for the 1996–1998 and the 1997–1999 ozone seasons. Table 1 below summarizes the air quality data.

TABLE 1.—1-HOUR OZONE EXCEEDANCES IN THE ALLEGAN AREA

Site	Year	Exceedances measured	Expected exceedances
Allegan Monitor: 26–005–0003	1996	1	1
	1997	0	0
	1998	1	1
	1999	1	1

This data has been quality assured and is recorded in AIRS. During the 1997–1999 time period, the monitor recorded two exceedances of the ozone NAAQS, resulting in a three year average of .67 exceedances per year. Preliminary 2000 ambient air quality monitoring data indicates that the area continues to meet the ozone NAAQS, although an exceedance may have occurred on June 9, 2000. If this June 9, 2000 exceedance is confirmed, the annual number of expected daily exceedances would be 1 for Allegan County and the area would still show attainment of the 1-hour standard.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Before the Allegan area may be redesignated to attainment for ozone, it must have fulfilled the applicable requirements of section 110 and part D. The Calcagni memorandum dated September 4, 1992, states that areas requesting redesignation to attainment must fully adopt rules and programs that come due prior to the submittal of a complete redesignation request.

Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of the CAA. These requirements include but are not limited to the following: a SIP submittal containing rules the state adopted after reasonable notice and public hearing; provisions to establish and operate appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; a permit program to implement provisions of part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and

reporting; provisions for modeling; and provisions for public and local agency participation.

For purposes of redesignation, EPA reviewed the Michigan SIP to ensure that it satisfied all requirements under the amended CAA through approved SIP provisions. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. The EPA has analyzed the Michigan SIP and determined that it is consistent with the requirements of amended section 110(a)(2). (See also 61 FR 20458 and *Southwestern Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998)).

Part D: General Provisions for Nonattainment Areas

Before Allegan County may be redesignated to attainment, the area must fulfill the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonclassifiable nonattainment areas. Subpart 2 of part D establishes additional requirements for ozone nonattainment areas classified under section 186 of the Act. As described in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). However, as noted in the General Preamble, the subpart 2 requirements do not apply to ''not classified'' ozone nonattainment areas (57 FR 13525). EPA designated Allegan County as a ''not classified'' ozone nonattainment areas (56 FR 56694, November 6, 1991), codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, but not the requirements of subpart 2 of part D.

Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation.

EPA has determined that Michigan's redesignation request for Allegan County has satisfied all of the requirements under section 172(c) necessary for the area's redesignation to attainment. Many of the general requirements contained in section 172(c) are addressed by the State's pre-amendment submittal which EPA approved on May 6, 1980 (45 FR 29801). In part 2 of this rulemaking, entitled ''Determination of Attainment,'' EPA is determining that several of the section 172(c) requirements do not apply since the area has attained the ozone NAAQS. The requirements for emissions inventories under section 172(c)(3) and permits programs under section(c)(5) still need to be addressed in order to redesignate the areas. Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The base year emissions inventory for Allegan County is satisfied by the State's submittal of the 1991 inventory for this county in the redesignation request.

Section 172(c)(5) requires permits to construct and operate new and modified major stationary sources anywhere in the nonattainment area (a NSR program). The EPA has determined that areas being redesignated do not need an approved NSR program prior to redesignation provided that the area demonstrates maintenance of the standard without a NSR program in effect. A memorandum from Mary Nichols dated October 14, 1994 describes the rationale for this decision. See discussion in the Grand Rapids, Michigan document published on June 21, 1996 (61 FR 31831). EPA has also applied this policy in redesignations of Youngstown-Warren, Columbus, Canton, Cleveland-Akron-Lorain, Dayton-Springfield, Toledo, Preble County, Columbiana County, Clinton County, and Cincinnati Ohio, as well as Detroit, Michigan. Additional information on EPA's rationale is in the approval of the redesignation request for the Cincinnati area (65 FR 37879).

The State has demonstrated that Allegan County can maintain the standard without a NSR program in effect, and, therefore, the State need not have a fully approved NSR program prior to approval of the redesignation request for the area. The MDEQ's federally delegated PSD program will become effective in Allegan County upon redesignation to attainment.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. This requirement applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), and to all other federally supported or funded projects (''general conformity''). Section 176(c) of the CAA requires transportation conformity. EPA's transportation conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Section 176(c) provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA requires EPA to promulgate. The Federal general conformity regulations were finalized on November 30, 1993, and the Federal transportation conformity regulations were finalized on November 24, 1993. The Federal general conformity regulations have remained the same since that time, but the Federal transportation conformity regulations have been amended several times since 1993. EPA approved Michigan's general and transportation conformity SIPs on December 18, 1996 (61 FR 66607).

The Federal transportation conformity regulations were amended on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). Michigan submitted new transportation conformity rules on November 30, 1998, in response to the 1997 changes to the Federal transportation conformity regulations. However, the Michigan rules will need to be revised again due to the March 2, 1999 court decision (*Environmental Defense Fund* v. *Environmental Protection Agency,* U.S. Court of Appeals District of Columbia Circuit, No. 97–1637) which rescinded several sections of the Federal transportation conformity rule and asked EPA to revise several sections of the Federal rule.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Clean Air Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved state rules.

Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See, for example Grand Rapids redesignation at 61 FR 31835–31836 (June 21, 1996).

EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See, Tampa, Florida and Cleveland-Akron-Lorain redesignations 60 FR 52748 (December 7, 1995), and 61 FR 20458 (May 7, 1996), respectively. Consequently, EPA may approve the ozone redesignation request for Allegan County notwithstanding the lack of a fully approved conformity SIP.

The on-highway motor vehicle budgets for Allegan are 9.8 tons of NO_X/day and 5.3 tons of VOC/day, based on the area's 2011 level of emissions. Allegan, MI must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination made on or after the effective date of the maintenance plan approval.

The EPA believes the motor vehicle emissions budgets for VOC and NO_X are adequate for conformity purposes and approvable as part of the maintenance plan. Interested parties may comment on the adequacy and approval of the budgets by submitting their comments on this direct final rule.

If EPA receives adverse written comments with respect to the adequacy and approval of the Allegan emissions budgets, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will either respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

We will also announce our action on the Allegan emissions budgets on EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Michigan maintains that the Allegan area is the recipient of overwhelming amounts of ozone transported from the upwind Gary-Chicago-Milwaukee severe ozone nonattainment areas as demonstrated by its November 14, 1994 petition. The overwhelming transport demonstration includes urban airshed modeling (UAM) which shows that there is minimal to no change in ozone concentrations in Western Michigan even when Western Michigan VOC and NO_X emissions are entirely eliminated. The State, therefore, concludes that emission reductions within Allegan County would have little or no impact on ozone concentrations within this area. The State maintains that the improvement in air quality in Allegan is largely due to emission reductions achieved throughout the Lake Michigan region.

Nonetheless, the redesignation request demonstrates that permanent and enforceable emission reductions have occurred in the Allegan area as a result of the Federal Motor Vehicle Emission Control Program (FMVCP) and controls on industrial sources. The submittal provides a general discussion of development of the emission inventories for ozone precursors from 1991–1996 which includes estimates from EPA's NET inventory, Michigan's 1990 base year inventory, off-road mobile estimates from the Lake Michigan Air Directors Consortium (LADCO) inventory developed for use in the Lake Michigan Ozone Study (LMOS), and mobile source data using EPA's MOBILE5a mobile source emissions model. Although 1991 was not one of the years used to designate and classify the area, it was a nonattainment year. The VOC and NO_X emission inventories for the years 1991 and 1996 submitted by the State show a declining trend in emissions. The 1996 emission inventory is provided as the attainment year emission inventory.

According to the State's analysis, Allegan County reduced VOC emissions by 5.9 tons per day and NO_X emissions by 0.6 tons per day between 1991 and 1996. The emission reductions are due to a combination of FMVCP and industrial source controls.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10 year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with an implementation schedule to promptly correct any future air quality problems.

Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

An ozone maintenance plan should address the following five elements: Attainment inventory, demonstration of maintenance, monitoring network, verification of continued attainment, and a contingency plan.

Attainment Inventory

The State has adequately developed an attainment emissions inventory for 1996 that identifies VOC and NO_X emissions for the Allegan nonattainment area. EPA has determined that 1996 is an appropriate year on which to base attainment level emissions because monitors in the area showed attainment of the ozone NAAQS at the time. The methodologies used in developing these inventories are discussed in further detail in the State's redesignation submittal.

The attainment level of emissions are summarized below:

TABLE 2.—ALLEGAN 1996 ATTAINMENT INVENTORY—VOC AND NO_X (TONS PER DAY)

Source type	VOC	NO_X
Onroad mobile	6.5	9.8
Area	9.2	2.7
Point	4.5	8.4
Total	20.2	20.9

Demonstration of Maintenance

The 1991 emission inventory developed by MDEQ for the redesignation request is partially based on 1996 values using growth factors specific to Allegan County and the source classification code of each emitting process. The growth factors were made by the Economic Growth Analysis (EGAS) model for stationary sources (for point, stationary area, and nonroad mobile source categories). The State made onroad mobile estimates for 2011 using the MOBILE5a mobile source emissions model and Federal Highway Administration Performance Monitoring System traffic count data. Detailed information on the assumptions made in the inventory calculations are in EPA's TSD and in the State's submittal.

To demonstrate continued attainment, the State projected anthropogenic 1996 emissions of VOC and NO_X to 2011. These emission estimates are in the tables below and demonstrate that the VOC and NO_X emissions will decrease in future years. The results of this analysis show that the area is expected to maintain the air quality standard for at least ten years into the future. In fact, the emissions projections show that emissions will be reduced from 1996 levels by .6 tons of VOC and 3.3 tons of NO_X per day by 2011 in the Allegan area. These emission reductions will result from the implementation of FMVCP, Federal on-board vapor recovery rules, Federal National Low Emission Vehicle and Tier 2 Regulations, Title IV NO_X controls, and other federal rules expected to be promulgated for nonroad engines, autobody refinishing, commercial/consumer solvents, and architectural and industrial maintenance coatings. These estimates are conservative as they do not reflect NO_X reductions that will result from EPA's October 27, 1998 (63 FR 57356) rulemaking which requires states to reduce statewide NO_X emissions to address the regional transport of ground level ozone (NO_X SIP call).

TABLE 3.—ALLEGAN: VOC MAINTENANCE EMISSION INVENTORY SUMMARY (TONS PER DAY)

Source type	Year		
	1991	1996	2011
Point	3.9	4.5	5.7
Area	14.9	9.2	9.2
Onroad moble	7.3	6.5	4.7
Total	26.1	20.2	19.6

TABLE 4.—ALLEGAN: NO_X MAINTENANCE EMISSION INVENTOR SUMMARY (TONS PER DAY)

Source type	Year		
	1991	1996	2010
Point	8.3	8.4	8.4
Area	3.3	2.7	2.5
Onroad mobile	9.9	9.8	6.7
Total	21.5	20.9	17.6

The emission projections show that the emissions are not expected to exceed the level of the base year 1996 inventory during the 10-year maintenance period.

Monitoring Network

The State has committed to operate the ozone monitoring network in the Allegan area in accordance with 40 CFR part 58.

Verification of Continued Attainment

Tracking—Continued attainment of the ozone NAAQS in the Allegan area depends, in part, on the State's efforts to track continued attainment during the maintenance period. The tracking plan for the Allegan area consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58.

Triggers—Michigan contends that the high concentrations of ozone monitored and modeled in the Allegan area are due to transport from upwind areas such as Chicago and Milwaukee. The State also submits that modeling to date indicates that total elimination of anthropogenic VOC and NO_X emission sources in Allegan would not affect ozone concentrations in the area. The State concludes that continued maintenance of the ozone NAAQS is dependent on continued emission reductions from upwind areas. Consequently, the State identifies as the triggering event that will cause implementation of a contingency measure an actual monitored ozone violation of the NAAQS, as defined in 40 CFR 50.9, which it determines not to be attributable to transport from upwind areas. The State's redesignation request establishes that if the State monitors a violation, the State will inform EPA that a violation has occurred, review data for quality assurance, and conduct a technical analysis including an analysis of meteorological conditions leading up to and during the exceedances contributing to the violation to determine local culpability. The State will submit a preliminary analysis to the EPA and afford the public the opportunity for review and comment. The State will also solicit and consider EPA's technical advice and analysis before making a final determination on the cause of the violation. The trigger date will be the date that the State certifies to the EPA that the State air quality data are quality assured, and that the State has determined the exceedances contributing to the violation are not attributable to transport from upwind areas. The trigger date will be within 120 days after the violation is monitored.

If the EPA disagrees with the State's final determination and believes that the violation was not attributable to transport, but to the area's own emissions, authority exists under section 179(a) and 110(k), to require the area to implement contingency measures, and section 107, to redesignate the area to nonattainment.

Contingency Plan

Despite the best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the CAA, Michigan has provided contingency measures with a schedule for implementation if a future ozone air quality problem occurs. Once the triggering event is confirmed, the State will implement one or more appropriate contingency measures. The Governor or the Governor's designee will select the contingency measure within 6 months of the triggering event. Contingency measures contained in the plan include a plastic parts coating rule, a wood furniture coating rule, and gasoline loading (Stage I vapor recovery) rules. The State will develop rules for the three measures should they be necessary to address a violation of the ozone NAAQS. The State will implement one or more of these rules within 24 months of the Governor's decision to implement a contingency measure.

Commitment To Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has committed to submit a revised maintenance SIP 8 years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional 10 years.

F. Where Is the Public Record and Where Do I Send Comments?

The official record for this direct final rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. If EPA receives adverse written comments on this action, we will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule. We will not open a second public comment period. Parties interested in commenting on this action should do so at this time.

If we receive adverse written comments with respect to the adequacy and approval of the Allegan emissions budgets, or any other aspect of our approval of this SIP, by the time the comment period closes, we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. In this case, we will

either respond to the comments on the emissions budgets in our final action or proceed with the adequacy process as a separate action.

IV. Disclaimer Language Approving SIP Revisions

Ozone SIPs are designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. This redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the ozone emission limitations and restrictions in the approved ozone SIP. The State cannot make changes to ozone SIP regulations which will render them less stringent than those in the EPA approved plan unless it submits to EPA a revised plan for attainment and maintenance and EPA approves the revision. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

V. What Administrative Requirements Did EPA Consider?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-

effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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 January 16, 2001 unless EPA receives adverse written comments by December 26, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness area.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: November 15, 2000.

Gary Gulezian,

Acting Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (t) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(t) Approval—On March 9, 1995, the Michigan Department of Environmental Quality submitted a request to redesignate the Allegan County ozone nonattainment area to attainment. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act, as amended in 1990. Elements of the section 175A maintenance plan include a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the 1-hour ozone NAAQS, determined not to be attributable to transport from upwind areas, Michigan will implement one or more appropriate contingency measure(s) which are in the contingency plan. The menu of contingency measures includes rules for plastic parts coating, wood furniture coating, and gasoline loading (Stage I vapor recovery).

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.323 the table entitled ''Michigan—Ozone (1-hour standard)'' is amended by revising the entry for ''Allegan County Area: Allegan County'' and footnote to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Allegan County Area:				
Allegan County	January 16, 2001	Attainment.		
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

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BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1601

Freedom of Information Act Program

AGENCY: Chemical Safety and Hazard Investigation Board

ACTION: Final rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board adopts regulations establishing policies and procedures for requesting and disclosing records under the Freedom of Information Act (FOIA). The FOIA requires Federal agencies to create regulations establishing procedures for its implementation. These regulations will ensure the proper handling of agency records and requests for those records under the FOIA.

DATES: This rule is effective December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ray Porfiri, 202–261–7629.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 2000 (65 FR 59155), the Chemical Safety and Hazard Investigation Board published a proposed rule setting forth its proposed procedures for disclosure of records under the Freedom of Information Act (FOIA). The proposed rule provided for a 30-day comment period. No comments were received in response to the proposed rule and invitation for comments. This final rule is unchanged from the proposed rule.

These regulations implement the FOIA, 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, 110 Stat. 3048. The Board adopts the following set of regulations to discharge its responsibilities under the FOIA. The FOIA establishes: basic procedures for public access to agency records and guidelines for waiver or reduction of fees the agency would otherwise assess for the response to the records request; categories of records that are exempt for various reasons from public disclosure; and basic requirements for Federal agencies regarding their processing of and response to requests for agency records.

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by adopting it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Board will be nominal. Further, the ''small entities'' that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, we did not deem any action necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48.

List of Subjects in 40 CFR Part 1601

Administrative practice and procedure, Archives and records, Freedom of information.

Chapter VI—Chemical Safety and Hazard Investigation Board

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board establishes 40 CFR Chapter VI—Chemical Safety and Hazard Investigation Board, consisting of parts 1600 through 1699, reserves parts 1600 and 1602 through 1699, and adds part 1601 to read as follows:

PART 1600 [RESERVED]

PART 1601—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

PART 1602–1699 [RESERVED]

Subpart A—Purpose, Scope, and Applicability

Sec.
1601.1 Purpose and scope.
1601.2 Applicability.
1601.3 Definitions.

Subpart B—Administration

1601.10 Protection of records.
1601.11 Preservation of records pertaining to requests under this part.
1601.12 Public reading room.

Subpart C—Procedures for Requesting and Disclosing Records

1601.20 Requests for records.
1601.21 Response to requests.
1601.22 Form and content of responses.
1601.23 Appeals of denials.
1601.24 Timing of responses to requests.
1601.25 Disclosure of requested records.
1601.26 Special procedures for confidential business information.

Subpart D—Fees

1601.30 Fees to be charged—general.
1601.31 Fees to be charged—categories of requesters.
1601.32 Limitations on charging fees.
1601.33 Miscellaneous fee provisions.

Authority: 5 U.S.C. 552, 553; 42 U.S.C. 7412 *et seq.*

PART 1600 [RESERVED]

PART 1601—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

PART 1602–1699 [RESERVED]

Subpart A—Purpose, Scope, and Applicability

§ 1601.1 Purpose and scope.

This part contains the regulations of the United States Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board'' or ''agency'') implementing the Freedom of Information Act (''FOIA''). These regulations provide procedures by which members of the public may obtain access to records compiled, created, and maintained by the CSB, along with procedures it must follow in response to such requests for records.

§ 1601.2 Applicability.

(a) *General.* The FOIA and the regulations in this part apply to all CSB documents and information. However, if another law sets specific procedures for disclosure, the CSB will process a request in accordance with the procedures that apply to those specific documents. If a request is received for disclosure of a document to the public which is not required to be released under those provisions, the CSB will consider the request under the FOIA and the regulations in this part.

(b) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale, *e.g.,* by the Superintendent of Documents of the Government Printing Office, or by an authorized private distributor, the CSB will first refer the requester to those sources. Nevertheless, if the requester is not satisfied with the alternative sources, the CSB will process the request under the FOIA.

§ 1601.3 Definitions.

Appeals Officer means the person designated by the Chairperson to process appeals of denials of requests for CSB records under the FOIA.