

6560-50 U. S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-]

National Emission Standards for Hazardous Air Pollutants
for Source Category: Organic Hazardous Air Pollutants
from the Synthetic Organic Chemical Manufacturing
Industry and Other Processes Subject to the Negotiated
Regulation for Equipment Leaks; Determination of MACT
"Floor."

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule

SUMMARY: On December 31, 1992 (57 FR 62608), the EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). This rulemaking is commonly called the Hazardous Organic NESHAP or the HON. In the final action regarding the December 31, 1992 proposal, which was signed on February 28, 1994, and published in the Federal Register on April 22, 1994 (59 FR 19402), EPA deferred taking final action regarding provisions applicable to medium storage vessels due to the need to resolve an issue of statutory interpretation of section 112(d)(3)(A) of the Act. On March 9, 1994 (59 FR 11018),

EPA reopened the comment period to request additional comment on the appropriate interpretation of this statutory provision and the effect of that interpretation on the appropriate control requirements for medium storage vessels at facilities subject to the HON.

This action announces EPA's final decision regarding the interpretation of Clean Air Act §112(d)(3)(A) for purposes of the HON and the final decision regarding control provisions applicable to medium storage vessels in SOCOMI facilities subject to the HON. The decision announced in this action regarding the interpretation of Clean Air Act §112(d)(3)(A) for purposes of the HON will be presumptively followed in subsequent MACT rulemakings, but it will not be binding. Although EPA believes that Congress intended one interpretation -- referred to as the "Higher Floor Interpretation" -- in Clean Air Act §112(d)(3)(A), EPA also believes that the Agency retains discretion in important respects in setting Floors for MACT standards. EPA intends to exercise its discretion, within the statutory framework, to promulgate MACT standards that best serve the public interest.

EFFECTIVE DATE: (Insert date of publication in the
FEDERAL REGISTER .)

See Supplementary Information section concerning judicial review.

ADDRESSES: Dockets. The following dockets contain supporting information used in developing the proposed provisions. Docket Number A-90-19 contains general information used to characterize emissions and control costs for the industry and Docket A-90-21 contains information on storage vessels. These dockets are available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M1500, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: On technical issues, Dr. Janet S. Meyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254. For further information on the legal issue addressed in this notice, contact Michael S. Winer, Assistant General Counsel, Air and Radiation Division (2344), Office of General Counsel,

Environmental Protection Agency, 401 M Street, S.W.,
Washington, D.C. 20460, telephone number (202) 260-7606.

SUPPLEMENTARY INFORMATION: Judicial Review: Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this notice is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Public Comment: Approximately 55 comment letters were received in response to the March 9, 1994 (59 FR 11018) reopening of the comment period. The majority of these letters were from industries or industrial trade associations, arguing in favor of the less stringent "Lower Floor Interpretation." Environmental groups, State or local governments and labor unions argued almost uniformly in favor of the more stringent "Higher Floor Interpretation." The EPA considered all public comments in framing the final policy for MACT floor determination and in selection of the requirements for medium storage

vessels. The major issues raised by the comments are addressed in this preamble. The EPA's responses to all the comments can be found in docket A-90-19, Subcategory VI-B.

I. Summary of Decision on MACT Floor Determination

This section describes EPA's decision with respect to the interpretation of Clean Air Act section 112(d)(3)(A) for purposes of this rulemaking. As set forth in more detail below, EPA believes that one of the interpretations of section 112(d)(3)(A) -- referred to as the "Higher Floor Interpretation" -- is the better and more natural reading of the statutory language.

A. Background

Section 112(d)(3) of the Clean Air Act provides that

Emissions standards promulgated under this subsection for existing sources...shall not be less stringent...than -

(A) the average emission limitation achieved by the best performing 12 percent of existing sources ...

42 U.S.C. section 7412(d)(3). Existing sources for which the Administrator lacks emissions information and those that have recently achieved LAER are excluded from consideration. Id. (For categories or subcategories with fewer than 30 sources, standards may not be less stringent than "the average emission limitation achieved

by the best performing 5 sources." CAA sec.112(d)(3)(B)). The minimum level of stringency defined by this language has come to be known as the MACT Floor.

In the March 9, 1994 Federal Register, EPA published a notice soliciting comment on "the appropriate interpretation of" section 112(d)(3)(A). Two interpretations of section 112(d)(3)(A) were discussed. Under the first, referred to as the "Higher Floor Interpretation," EPA would look at emission limitations achieved by each of the best performing 12 percent of existing sources, and average those limitations. "Average" would be interpreted to mean a measure of central tendency such as the arithmetic mean or median. (The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The median is the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude).

Under the second, "Lower Floor Interpretation," EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This second interpretation

groups the words "average emission limitation" into a single phrase, and asks what "average emission limitation" (accounting for variability over time, or between different pollutants being emitted from a facility) is "achieved by" all members of the best performing 12 percent.

B. EPA's Interpretation of Section 112(d)(3)(A)

The EPA believes that the "Higher Floor Interpretation" is a better reading of Clean Air Act section 112(d)(3)(A) than the "Lower Floor Interpretation." This conclusion is based on a review of the statute, legislative history and comments received in response to EPA's March 9 notice.

1. The Statutory Language

Section 112(d)(3)(A) requires that standards be no less stringent than "...the average emission limitation achieved by the best performing 12 percent of existing sources...". The EPA believes that the most natural and straightforward reading of this language would have EPA first determine the emission limitations achieved by sources within the best performing 12 percent, and then average those limitations. This is the method described above as the "Higher Floor Interpretation."

The EPA believes that if Congress had intended the Lower Floor Interpretation, language other than that actually used in section 112(d)(3)(A) would have been far more natural. For example, Congress could easily have expressed the Lower Floor Interpretation by requiring standards to be no less stringent than "the emission limitation achieved by all sources within the best performing 12 percent." Similarly, Congress could have required standards to be no less stringent than "the average emission limitation achieved by the worst performing member of the best performing 12 percent," or "the emission limitation (averaged over time to take account of variability in the effectiveness of control) achieved by all sources within the best performing 12 percent." Any of such phrases would have been a more natural way to convey the Lower Floor Interpretation than the language Congress chose. However, the actual language of section 112(d)(3)(A) provides, in straightforward fashion, that standards may be no less stringent than the "average emission limitation achieved by the best performing 12 percent...". To glean the Lower Floor Interpretation from this language is a strain; words and concepts not set forth in the statute

must be added or inferred.

The language of section 112(d)(3)(B) makes this point even clearer. That section requires that standards for existing sources in categories or subcategories with fewer than 30 sources be no less stringent than

the average emission limitation achieved by the best performing 5 sources...

42 U.S.C. section 7412(d)(3)(B). If an interpretation parallel to the Lower Floor Interpretation were intended, it would have been more natural for this provision to read "the emission limitation achieved by the 5th best performing source."

2. The Legislative History

The legislative history lends strong support to the view that, in passing section 112(d)(3)(A), Congress intended the Higher Floor Interpretation.

On the House side, the language that would eventually become section 112(d)(3)(A) was offered as a compromise amendment by Rep. Dingell on the House Floor on May 23, 1990. (The language of the amendment was identical to section 112(d)(3)(A) as ultimately enacted into law; only the numbers were different). Rep. Dingell yielded time to Rep. Collins "for purposes of explaining the amendment." Legislative History of 1990 CAA

Amendments at 2896. In doing so, Rep. Collins noted that she had originally supported slightly more stringent numbers than those included in the amendment, and that under her original proposal

the average of emissions from the 10 percent cleanest sources would be the MACT standard. In cases where there are less than 30 sources in a category or subcategory, the average of the 3 cleanest sources would determine the standard.

Id. She went on to explain that under the compromise amendment introduced by Rep. Dingell

MACT for existing stationary sources would be the average of the best 15 [percent] of technologies within each category or subcategory. For categories or subcategories where there are less than 30 sources, the standard is based on the average emissions from the best performing 5 sources.

Legislative History of 1990 CAA Amendments at 2897.

Rep. Collins' formulations are consistent with the Higher Floor Interpretation, not the Lower. The "average of the 3 cleanest sources" cannot mean, as the Lower Floor Interpretation would require, the level of control achieved by all three of the "cleanest sources." Nor can the "average of the best 15 [percent] of technologies" mean a technology as good as that used by all sources within the top 15 percent.

Another discussion of section 112(d)(3) is similar.

On October 27, 1990, Sen. Durenberger (a principal supporter of the Clean Air Act Amendments) explained the provision on the Senate floor. His explanation was as follows:

The standard may not be less stringent than the average of the emission levels achieved by the best performing 12 percent of the existing sources within the category... The Administrator is to exclude from the calculation of the average of top 12 percent any source which met the following conditions...

Legislative History of 1990 CAA Amendments at 870 (Cong. Rec. S16929 - Oct. 27, 1990). The second sentence of Sen. Durenberger's statement, in particular, is inconsistent with the Lower Floor Interpretation. Sen. Durenberger makes clear that the "average" called for in the statute is of the "top 12 percent," not the emission limitations achieved over time at each individual source.

No legislative history was found that supports the Lower Floor Interpretation. The EPA believes that the legislative history indicates that individual legislators -- including those central to the drafting of section 112(d)(3) -- understood the word "average" to mean that once the emission limitations achieved by the best performers in a category had been determined, those results should be averaged. This is the method of the

Higher Floor Interpretation, not the Lower.

3. Issues Raised in Public Comment

a. Arguments Concerning the Statutory Language

(i) Plain Meaning of the Statute. Several

commenters argued that the meaning of the statute was plain on its face and that Congress clearly intended the Higher Floor Interpretation. These commenters argued that when section 112(d)(3)(A) is read as a whole in its most natural way, the Congressional intent in favor of the Higher Floor Interpretation is clear. They argued that if Congress had intended the Lower Floor Interpretation, it would have used different language in the statute.

The EPA agrees with these comments. As set forth in greater detail above, EPA believes the plain statutory language strongly favors the Higher Floor Interpretation.

(ii) Congress' Failure to Use the Words "of the". Several commenters argued that if Congress had meant the Higher Floor Interpretation, it would have added the words "of the" to the statute, so that section 112(d)(3)(A) would read "the average of the emission limitations achieved by the best performing 12 percent."

These commenters saw the absence of the words "of the" in the statute as evidence that Congress intended the Lower Floor Interpretation.

The EPA agrees that the statute would be more clear if Congress had used the words "of the," but disagrees with the conclusion drawn by these commenters for two reasons. First, standard English usage often permits dropping the prepositions "of the" without changing the meaning of a phrase. (For example, "the biggest mountain in North America" has the same meaning as "the biggest of the mountains in North America." "Best singer in the band" has the same meaning as "best of the singers in the band.") The same cannot be said, however, for the various phrases and concepts that must be read into section 112(d)(3)(A) in order to arrive at the Lower Floor Interpretation. Phrases like "the worst performing member of..." or "averaged over time..." simply are not dropped as part of standard English. Their absence from section 112(d)(3)(A) -- unlike the absence of the words "of the" -- must be considered significant in interpreting the provision.

Second, although the words "of the" do not appear in section 112(d)(3)(A), they were used by key legislators

in summarizing that section prior to passage of the 1990 Clean Air Act Amendments. As noted above, when Sen. Durenberger (a principal supporter of the Clean Air Act Amendments) spoke on the Senate floor on October 27, 1990, he explained section 112(d)(3)(A) as follows:

The standard may not be less stringent than the average of the emission levels achieved by the best performing 12 percent of the existing sources within the category...

Legislative History of 1990 CAA Amendments at 870 (Cong. Rec. S16929 - Oct. 27, 1990) (emphasis added). As also noted above, when Rep. Collins introduced the provision in the House, she described it as follows:

the average of emissions from the 10 percent cleanest sources would be the MACT standard. In cases where there are less than 30 sources in a category or subcategory, the average of the 3 cleanest sources would determine the standard.

Legislative History of 1990 CAA Amendments at 2896 (emphasis added) (describing a provision with identical language but different numbers than the one ultimately enacted into law). In EPA's view, the fact that Congress did not use the words "of the" in section 112(d)(3)(A) is fully consistent with standard English. However, the fact that key legislators did use these words in describing the provision to their colleagues, in combination with the failure of those legislators to use

the phrases on which the Lower Floor Interpretation depends, provides a strong indication that Congress intended the Higher Floor Interpretation in enacting section 112(d)(3)(A).

(iii) Purpose of the Word "Average". Several commenters argued that the word "average" in section 112(d)(3)(A) should be read to require averaging not of emissions from different sources within the top 12 percent, but instead of emissions from individual sources at different times, or from different emission points, or made up of different HAP. The EPA does not agree that the word "average" in section 112(d)(3)(A) can reasonably be read to serve this purpose. First, such a reading is difficult, if not impossible, to reconcile with the provision of section 112(d)(3) establishing a "floor" for new sources. Under those provisions, new source standards may not be less stringent than

the emission control that is achieved in practice by the best controlled similar source.

42 USC section 7412(d)(3). Notably, Congress did not use the word "average" in this provision. If the word "average" in section 112(d)(3)(A) was intended to refer to averages across time, or between emission points, or among different HAP, then Congress must have intended

that such averaging would take place for existing source standards, but not for new source standards. There is no reason to believe Congress intended this implausible result.

There is a much more likely explanation: that to the extent Congress contemplated that averaging across time, or between emission points, or among HAP would play a role in either existing or new source MACT standards, it considered the terms "emission limitation" and "emission control" fully adequate to reflect that fact. In EPA's air program, emission limitations have routinely been expressed in terms of averages across time, for example, without any special statutory direction or authority. There is no reason to believe that Congress would have thought that special instructions were needed to ensure that EPA continued this practice, and even less reason to believe Congress would have thought special instructions were needed with respect to existing source standards, but not new source standards.

Furthermore, the legislative history of section 112 casts doubt on the interpretation of the word "average" offered by these commenters. When Congress comprehensively revised section 112 in the Clean Air Act

Amendments of 1990, it based the revisions in substantial part on the Clean Water Act's effluent guidelines program. [See, e.g., Remarks of Sen. Durenberger, Cong. Rec. S516 (January 30, 1990) ("...this approach to regulation of toxic air pollutants is not without precedent. A program very similar to the one I have just described has already been implemented under the Clean Water Act")]. Under that program, certain limits (known as "BPT limits") have long been based on the "average of the best" performance at existing facilities. [See generally Remarks of Sen. Muskie, Legislative History of Federal Water Pollution Control Act of 1972 at 169-70 ("The Administrator should establish the range of 'best practicable' levels based upon the average of the best existing performance by plants of various sizes, ages and unit processes.")]. In determining "average of the best" under the Clean Water Act, EPA has historically identified the best performers in an industrial category, and then averaged their performances. This methodology is consistent with the Higher Floor Interpretation and not the Lower.

(iv) Proximity of the Word "Average" to the Words "Emission Limitation". Several commenters argued that

the proximity of the word "average" to the words "emission limitation" suggests that "average" modifies "emission limitation," and not the entire phrase following those words. The EPA does not agree with this argument. In English, adjectives often modify not only the noun immediately following, but an entire phrase. In the phrase "the biggest mountain in North America climbed by members of the Washington, D.C. Climbing Club," for example, the adjective "biggest" modifies the entire remainder of the phrase. There is no reason to conclude that the word "average" in section 112(d)(3)(A) plays a different role.

(v) Use of the Words "Achieved By". Several commenters argued that the use of the words "achieved by" in the statute indicates that all sources within the top 12 percent must be achieving the emission limitations used to set the MACT Floor.

The EPA does not agree with this argument. The EPA believes the argument depends both on inferring the presence of the word "all" in section 112(d)(3)(A), and (as discussed above) on ignoring, or incorrectly construing, the meaning of the word "average." Section 112(d)(3)(A) simply does not say "the emission limitation

achieved by all sources within the best performing 12 percent...". Congress' use of the words "achieved by" cannot reasonably be stretched to accomplish such a rewriting of the statute.

b. Arguments Concerning Structure of the Statute.

Several commenters argued that elements of the statute's structure support the Lower Floor Interpretation. For example, some commenters argued that the Lower Floor Interpretation best reflects EPA's authority to consider cost and other factors in setting standards more stringent than MACT Floor. Other commenters argued that the Lower Floor Interpretation best reflects the distinction between existing source MACT and new source MACT.

The EPA does not agree with these arguments. In fact, the Higher Floor Interpretation fully preserves both of these structural elements of the statute. With the Higher Floor Interpretation, just as with the Lower, EPA still has authority to establish existing source standards more stringent than the Floor based on enumerated criteria. With the Higher Floor Interpretation, just as with the Lower, there is still a distinction between the Floor for existing sources and

the level of control required for new sources. (Under section 112(d)(3), standards for new sources must be at least as stringent as "the emission control that is achieved in practice by the best controlled similar source"). The fact that there may be "less distance" to travel above the Floor with the Higher Floor Interpretation does not establish an inconsistency between that interpretation and other parts of the statute, nor does it mean that the interpretation is flawed in any way.

Furthermore, structural arguments tend to favor the Higher Floor Interpretation more strongly than the Lower. Section 112 was passed in its current form to ensure quick and dramatic reductions in air toxics emissions. Congress was frustrated with the slow pace of toxics control prior to 1990, and many members in part blamed EPA for weak controls. See, e.g., H. Comm. Rep. 101-490 at 150-54, 322-23; S. Rpt. 101-228 at 128-33. The structure and purpose of section 112 as a whole indicates that section 112(d)(3)(A) was intended to establish a stringent minimum level of control for hazardous air pollutants.

c. Additional Arguments. Several commenters argued

that the Higher Floor Interpretation would require EPA to set MACT Floors that failed to correspond to real-world control technologies.

The EPA does not agree with this argument. The EPA believes that the argument depends upon a flawed premise: that the word "average" can only mean "arithmetic mean." In fact, there are a number of conventional methods for determining the average of a data set, including the median. Congress did not mandate a particular method of determining "average" or central tendency in section 112(d)(3)(A), and the choice of methodology -- whether median, mean, or some other measure -- can often change the results markedly. For example, if the five facilities that make up the top 12 percent of a source category are achieving reductions equal to 99 percent, 98 percent, 95 percent, 94 percent and 93 percent, EPA need not set the MACT Floor equal to the arithmetic mean of these values, which is 95.8 percent. Using the Higher Floor Interpretation, EPA could set the MACT Floor equal the median of these values, which is 95 percent.

This discussion responds to the most significant comments on legal issues received in response to the March 9, 1994 Federal Register notice. Other comments on

legal issues are addressed in item number VI-B-61 in docket A-90-19.

C. Conclusion

The EPA believes that Congress spoke with clarity in section 112(d)(3)(A) of the Clean Air Act. That provision -- requiring standards to be no less stringent than "the average emission limitation achieved by the best performing 12 percent of existing sources" -- lends little support for an interpretation under which standards might be set at the emission limitation achieved by the worst performing member of the best performing 12 percent of existing sources. The legislative history offers no support for such an interpretation, and indeed points strongly in the opposite direction. The EPA believes that the Higher Floor Interpretation represents the best reading of the statutory language.

II. DISCRETION IN SETTING FLOORS FOR MACT STANDARDS

In today's notice, EPA announces its conclusion that Congress intended the Higher Floor Interpretation. The effect of this decision, however, is not to identify any particular number (e.g. the 94th percentile) as the Floor

for all MACT standards. EPA retains discretion in important respects in setting Floors for MACT standards, and intends to exercise its discretion, within the statutory framework, to promulgate MACT standards that best serve the public interest.

EPA believes the Agency retains substantial discretion, within the statutory framework, to set MACT Floors at appropriate levels. For example, because Congress did not define the term "average" in §112(d)(3), or in the legislative history, it implicitly delegated the authority to EPA to do so. The choice of methodology -- whether mean, median, mode, or some other measure -- can often change the results. (The mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The median is the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude. The mode is the value that occurs most often in a set of measurements). As some commenters noted, the "average of the best performing 12%" corresponds to the 94th percentile when the word "average" is construed to be the "median." If, however, "average" is construed to be the

"arithmetic mean" or "mode," a different result may obtain. EPA construes the word "average" in §112(d)(3) to authorize the Agency to use any reasonable method, in a particular factual context, of determining the central tendency of a data set. In addition, EPA has discretion to use its best engineering judgment in collecting and analyzing the data, and in assessing the data's comprehensiveness, accuracy and variability, in order to determine which sources achieve the best emission reductions. EPA also has discretion in determining how to analyze the data, and thus in determining the appropriate "average" in each category or subcategory.

There are other important ways that EPA retains discretion in setting MACT floors. For example, Congress authorized EPA to subcategorize source categories based on classes, types and sizes of sources, which will result in different Floors for different subcategories. CAA §112(d)(1). Using this authority, EPA can tailor standards to certain characteristics of particular emission units and sources. EPA retains flexibility, for example, to conclude that the production processes used at particular sources in the relevant category are sufficiently different from processes used at other

sources in the same category to justify the creation of a new subcategory.

These examples are not meant to be exhaustive. EPA has only begun the process of setting MACT standards. As EPA gains experience in setting MACT Floors, other issues may arise that will require EPA to exercise its discretion in determining, for each case, what represents the average emission limitation achieved by the best performing 12% of existing sources (or the best performing five sources, in categories or subcategories with fewer than 30 sources).

III. PRECEDENTIAL IMPACT OF TODAY'S DETERMINATION

In its March 9, 1994 notice, EPA stated that "the MACT floor decision...in this rulemaking will have broad precedential effect, and will be presumptively followed in subsequent MACT rulemakings." 59 FR 11018. Several commenters objected this statement, arguing that the issue of how best to interpret section 112(d)(3)(A) should have been addressed in a separate, generally applicable rulemaking.

The EPA wishes to emphasize that, although today's decision concerning the interpretation of Clean Air Act

section 112(d)(3) for purposes of the HON will be precedential for future rulemakings, it will not be binding. Specifically, EPA will fully consider all comments on individual MACT standards, including those regarding the proper interpretation of the language in sec. 112 (d)(3)(A), received on or before the close of the comment periods for those standards.

IV. APPLICATION OF MACT FLOOR DECISION TO MEDIUM STORAGE VESSELS AT FACILITIES SUBJECT TO THE HON

As described in the March 9, 1994 Federal Register reopening the comment period, EPA requested comment on whether the control requirements for medium storage vessels previously proposed by EPA would be appropriate in the event those proposed controls were to be determined to be more stringent than the floor. Only four commenters addressed the question of the appropriate controls requirement for medium storage vessels and provided rationale for their opinions. Of these commenters, only one submitted information which purported to represent control information for SOCFI storage vessels. This information was reviewed and found to not provide any information on control performance and to represent storage vessels associated with non-SOCMI

processes (i.e., other source categories) as well as SOCOMI processes. Therefore, the submitted information could not be used to revise the database. The EPA review of this information is contained in item VI-B-62 in docket A-90-19. This section of the preamble, therefore, only presents the basis for the final decision on control requirements for medium sized storage vessels.

For medium vessels, about 8 percent of the vessels are controlled with either a 90-percent efficient control device or an IFR or EFR with a continuous seal. All of the controlled medium-sized vessels contained liquids with vapor pressures of 13.1 kPa (1.9 psia). Because the arithmetic mean characteristics of the top 12 percent of the medium vessels would not represent the performance of any known technology, the EPA used the median as the average for these vessels. Thus, for medium-sized storage vessels, the floor determined by the average characteristics of the top 12 percent of the sources would require control of vessels storing liquids with vapor pressures of 13.1 kPa (1.9 psia) by either a 90-percent efficient control device or an IFR or EFR with a continuous seal.

In selection of the control provisions for medium-

sized storage vessels, EPA considered the regulatory alternatives that were presented in the April 22, 1994 Federal Register notice. These alternatives reflected a combination of: (1) the floor control for medium-sized storage vessels, which at the time of proposal, were equipped with the floor controls and (2) the proposed control provisions for medium-sized storage vessels which were equipped with no control or less efficient controls than the performance of the revised floor component for the source-wide floor. The EPA did not develop a regulatory alternative corresponding to application of the revised floor control level to all storage vessels. Such an alternative would have essentially the same control costs as the proposed control provisions, but would result in a lower emission reduction. Because the floor control would represent a less economically efficient option and would add to the complexity of the rule, this option was not formally evaluated.

For medium storage vessels at existing sources, control at the regulatory alternative used to represent the floor control was estimated to cost \$ 2.4 million/yr and to result in an emission reduction of 370 Mg/yr (110 tons/yr). The regulatory option for control level beyond

the floor component is estimated to further reduce emissions by less than 100 Mg/yr (110 tons/yr) at an additional cost of \$4 million/yr, or \$48,000/Mg for each additional Mg of emission reduction. Due to the relatively high incremental costs and low emission reductions of this alternative, the EPA believes that the control level for the medium storage vessels component of the source-wide floor represented the maximum reduction achievable considering cost and other impacts.

IV. ADMINISTRATIVE REQUIREMENTS

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A)].

B. Paperwork Reduction Act

The information collection requirements of these provisions in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act,

44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by the EPA (ICR No. 1414.02), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW (2136), Washington, DC 20460, or by calling (202) 260-2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register.

The reporting and recordkeeping burden of the information collection requirements of the provisions for medium sized storage vessels are included in the estimate of the overall reporting burden, which is presented in ICR No. 1414.02. The information collection requirements for the entire rule has an estimated annual reporting burden averaging 1,400 hours per response, and an estimated annual recordkeeping burden averaging 5,400 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief,

Information Policy Branch, EPA, 401 M Street, S.W., (Mail code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12866

This final action regarding provisions applicable to medium sized storage vessels in facilities subject to the HON has been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Administrator has assessed the potential costs and benefits of the regulatory action. The methods for and results of these cost and benefit analyses are described in the HON's Regulatory Impact Analysis (RIA). The RIA was included in the HON docket at proposal, and thus it was made available for public comment.

Executive Order 12866 also requires that the record for "significant" rules include an assessment of the potentially effective and reasonably feasible alternatives to the planned action. The potentially effective and reasonably feasible alternatives to the control requirements in the HON were also analyzed as part of the rule development process. The methods for

and results of these analyses are described in the HON's Background Information Document (BID). The BID was included in the HON docket at proposal, and thus it was also available for public comment. In addition, many of the alternative requirements considered by the Administrator were described in the preamble for the HON proposal.

The potential costs associated with selection of the final provisions are primarily the result of statutory requirements. All elements of the cost that are not directly attributable to statutory requirements were deemed appropriate because the Administrator determined that they were necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits--both quantitative and qualitative--of this rule, the Administrator has determined that the benefits justify the costs.

The Administrator has also determined that this regulatory action does not unduly interfere with State, local and tribal governments in the exercise of their governmental functions.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (5 U.S.C. 601 et

seq.) requires the EPA to consider potential impacts of Federal regulations on small business entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Regulatory impacts are considered significant if any of the following criteria are met: (1) compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

The potential costs of the requirements for medium sized storage vessels were considered as part of the economic impact analysis for the entire regulation. The assessment of the economic impacts of the overall regulation were presented in the April 22, 1994 Federal

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Register (59 FR 19449). Therefore, the addition of the
final provisions to the standard does not alter the
conclusion that the standard is not expected to have a
significant economic impact on a substantial number of
small firms.

Pursuant to the provisions of 5 U.S.C. 605(b), I
hereby certify that this attached rule will not have an
economic impact on small entities because no additional
costs will be incurred.

List of Subjects in 40 CFR Part 63

Environmental Protection, Air pollution control,
Hazardous substances, Reporting and Recordkeeping
requirements.

Date

Carol M. Browner
Administrator

For the reasons set out in the preamble, title 40, chapter I, part 63 subpart G of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 63 continues to read as follows:

Authority: sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, et seq., as amended by Pub. L. 101-549, 104 Stat. 2399).

Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

2. Table 5 of the appendix to subpart G is revised to read as follows:

TABLE 5. GROUP 1 STORAGE VESSELS AT EXISTING SOURCES

Vessel Capacity (cubic meters)	Vapor Pressure ^a (kilopascals)
75 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 5.2

^aMaximum true vapor pressure of total organic HAP at storage temperature.