

EPA received two requests to extend the comment period for the NPRM.

EPA contacted the commenters after receiving the request for additional time. EPA informed them that while the official comment period would remain 30 days, EPA would accept and respond to comments received after the close of the comment period as long as those comments were received within a reasonable time frame. In today's action, EPA has included consideration and discussion of all comments, including those that were received after the close of the official comment period.

EPA received comment indicating that the refrigerant purity requirements and the sales restriction are basically consumer protection requirements, and that EPA should turn the issue over to the Consumer Products Safety Commission. The commenter believes that EPA may be going beyond its enabling legislation by establishing rules that are aimed at protecting consumers, rather than the environment. Specifically, the commenter believes that the purity of resold recovered refrigerants should not be the interest of EPA since EPA is chartered to protect the "purity of our environment." The commenter further stated that EPA's actions could result in "promoting rather than eliminating refrigerant dumping into the atmosphere," since according to this commenter, "most refrigerant being recovered from air-conditioning and refrigeration equipment is being vented, and the lack of refrigerant reclamation is a result of the lack of financial incentives for reclamation." The commenter believes that this situation is encouraged by manufacturers' associations that are sabotaging efforts to reuse refrigerants. The commenter also questioned the timing of the NPRM and the lack of an Agency requirement for sound service practices such as proper evacuation before charging appliances, installation of filter-dryers, and other proper service techniques.

EPA does not believe that the proposed requirements go beyond the Agency's statutory authority. Under section 608(a) of the Act, as amended in 1990, EPA is required (by no later than January 1, 1992) to promulgate regulations establishing standards and requirements that will maximize the recapture and recycling of refrigerants during the service, repair, or disposal of appliances and industrial process refrigeration equipment. EPA believes that the standards promulgated in the initial final rulemaking (58 FR 28660; May 14, 1993) properly implemented this statutory mandate. The NPRM was based on new developments between

1993–1996 and recognizes that today there are more options available that still maximize the recapture and recycling of refrigerants without compromising the goals of protecting human health and the environment, including the adoption of updated versions of industry specifications for refrigerants and recovery equipment certification (*i.e.*, ARI Standard 700–1995 and ARI Standard 740–1995, respectively). Furthermore, in the May 14, 1993 final rule and the February 29, 1996, direct final rule, EPA noted that the reclamation requirement encourages careful handling of refrigerant and prevents irretrievably contaminated (for instance through mixture with other refrigerants) refrigerant from being introduced into the marketplace, where it could lead to damage to equipment and eventual venting of refrigerant (58 FR 28679; May 14, 1993 and 61 FR 7725; February 29, 1996).

While some of the options discussed in the NPRM (61 FR 7859) clearly would help protect the owners and operators of the appliances (those that EPA believes the commenter has characterized as consumers), the essence of these requirements is not consumer protection, but remains protection of human health and the environment, consistent with EPA's mission. Today's final rule does not change the refrigeration sales restriction requiring that used refrigerant be reclaimed by a certified reclaimer prior to sale to a new owner; therefore, consumers will be afforded a level of protection since this rule restricts the transfer of used refrigerant. While this constitutes an ancillary consumer benefit worth noting, the primary goal of today's action is to minimize the release of ozone-depleting substances to the lowest achievable level by preventing equipment damage and subsequent refrigerant release. Without monitoring the quality of used refrigerant, substandard refrigerant may be charged into an appliance, and the consequent damage to the appliance may result in release of the ozone-depleting refrigerant.

EPA does not share the commenter's belief that today's action will result in the promotion rather than the elimination of illegal refrigerant venting. The phaseout of class I refrigerants has made these refrigerants a commodity worth recovering, and the Agency believes that the marketplace will dictate similar results as class II refrigerants are phased out. A requirement that used refrigerant meets a standard set of specifications, prior to resale, will insure that less venting occurs as a result of equipment failure

caused by contaminated refrigerant that would otherwise have been transferred to a new owner without being reclaimed.

In addition, reports provided to EPA do not lead the Agency to believe that there is a lack of reclamation or economic incentives for reclamation. There are more than 50 EPA-certified reclaimers in the United States, who reported that approximately 2.0 and 6.1 million pounds of R–12 and R–22, respectively, were reclaimed during 1999. Similar reports reveal that approximately 1.7 and 7.1 million pounds of R–12 and R–22, respectively, were reclaimed during 2000. Reclamation trends lead the Agency to believe that while reclamation of class I refrigerants will decrease as stocks decrease, that future reclamation of all refrigerants will continue in the foreseeable future.

EPA agrees that sound and responsible service practices are important. EPA has a section of the regulations devoted to required practices (*i.e.*, § 82.156) and requires that technicians follow practices that are designed to reduce the emissions of ozone-depleting substances. EPA hopes that all technicians and contractors comply with reasonable service standards established and adopted by the industry, as well as standards established by EPA to ensure that the highest degree of responsible service is provided. For these reasons, EPA believes that today's action is consistent with the Agency's mandate under the Act.

EPA received comments that supported EPA's efforts while noting that EPA must consider the impact of the NPRM on the industrial process refrigeration industry as well as on other segments of the entire air-conditioning and refrigeration industry. Commenters stated that EPA may have proposed a rulemaking that addressed the concerns and needs of the commercial and residential refrigeration sectors without full consideration of the impacts and potential application of the proposed requirements to other segments of the industry and will do little to assist in the goals of introducing greater flexibility for the industrial process refrigeration industry.

EPA understands these concerns and has been careful to consider the impacts of today's action on the owners and operators of industrial process refrigeration equipment. For example, this rule allows greater flexibility by allowing the transfers of refrigerants between parent companies and their subsidiaries. The community affected by regulations promulgated under section