

608 is diverse. Since promulgating the initial final rulemaking in 1993, EPA has amended the regulations several times to address the various needs of specific sectors. For example, in recognition that industrial process refrigeration equipment is custom-built, the August 8, 1995, amendments, to the leak repair requirements (60 FR 40420), provided additional time for owners and operators of industrial process refrigeration equipment to repair, retrofit, or retire equipment when replacement parts are not readily available. EPA believes that the Agency has recognized the diversity of the affected community, and, where appropriate, has tailored specific regulatory actions to address the uniqueness of the affected community.

EPA received a number of comments on the NPRM. EPA addresses many of the issues raised in comments in the preamble of this final rule. EPA also addresses comments in the corresponding *Industrial Recycling Guide-2 Comment Summary* document. This document may be found in EPA Docket Number A-92-01 VIII.

## V. Final Rule

### A. Contractor Reclamation and Third-Party Certification Programs

EPA proposed more flexible requirements, based on industry guidelines, for recycling refrigerants in the February 29, 1996 NPRM (61 FR 7858). EPA proposed to permit contractors to recycle refrigerants, draw a representative sample of the refrigerants, send the sample to a laboratory that would be certified by an EPA-approved certifying entity, and where the refrigerant sample met the criteria established by ARI Standard 700, to sell the refrigerant and charge the refrigerant into an appliance owned by someone other than the owner of the appliance from which the refrigerant was initially recovered. EPA stated in the NPRM that this approach, based on IRG-2, would provide greater flexibility for contractors and technicians while maintaining the integrity of the refrigerant supply. The proposed protocol relied on recordkeeping and reporting requirements concerning the custody and control of the refrigerant. This proposed protocol would have provided an alternative to the current requirements to send recovered refrigerant to a reclamation facility prior to selling and installing that refrigerant into an appliance with different ownership. Central to this approach was the proposed adoption of third-party certification programs for both laboratories and reclaimers. As

proposed, EPA would rely on the technical knowledge of approved third parties to ensure the capabilities of the certified laboratories and reclaimers.

EPA received several detailed comments regarding the proposed structure of and likely participation in these third-party programs. EPA received comments both favoring and opposing contractor recycling and the two third-party certification programs for laboratories and reclaimers. Many commenters suggested changes in the proposed structure for the program and various ways to modify programmatic requirements while still ensuring that refrigerant purity is maintained. Several commenters identified specific concerns regarding the appropriateness of delegating various functions to private-sector third-parties and whether EPA may unintentionally establish a monopoly in a case where only one entity has shown interest in becoming a third party certifying organization. A few commenters opposed the proposed rulemaking, because they believed that the proposal would establish two different reclamation standards: one for contractors and another for refrigerant reclaimers, thus hurting contractors and wholesalers as well as penalizing companies that attempt to comply with the goals of the Act.

These comments have prompted EPA to more broadly explore variations on the proposed program that could meet the needs of both the regulated community and the Agency without compromising the goals of environmental protection, (as noted above, all comments submitted in response to the February 29, 1996, NPRM are contained in Air Docket A-92-01). Therefore, at this time, EPA is not prepared to promulgate final requirements for the following three provisions: (1) The potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different owners; (2) the potential adoption of a third-party certification program for reclaimers; and (3) the potential adoption of a third-party certification program for laboratories. EPA has decided to separate these three issues from the rest of the NPRM and to complete action on these three provisions in either a separate final rule or possibly by re-proposing some or all of these three items.

This decision to separate these three items is not a signal of the Agency's agreement or disagreement with any of the comments received. EPA is merely indicating a need to further consider these comments prior to taking final action on any of these three proposed

provisions. EPA believes a flexible approach to reclamation can be developed that avoids any perceived inappropriate delegations of authority and also does not preclude competition. To ensure that the public has adequate opportunity to comment, if EPA pursues a structure that varies significantly from what was discussed in the February 29, 1996, NPRM, EPA will issue a revised proposal and provide additional opportunity for comments.

Since EPA is not finalizing action on contractor reclamation or the related provisions for third-party certification of reclaimers and laboratories through today's action, EPA is not responding at this time to the comments the Agency received regarding these three items. When EPA takes additional action with regard to these provisions, EPA will respond to the comments in the accompanying notice.

While EPA clearly believes it is appropriate and necessary to delay action on these three items, it has taken steps to avoid a lapse in the current reclamation requirements. Such a lapse could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination could cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects. Therefore, in a separate rulemaking published in the **Federal Register** on December 27, 1996 (61 FR 68506), EPA extended the effectiveness of the current refrigerant specifications indefinitely.

### B. Definition of Reclaim and Adoption of the ARI Standard 700 Specifications for Fluorocarbon and Other Refrigerants

In the NPRM, EPA included a change to the definition of "reclaim," at § 82.152, that included a reference to the updated ARI Standard 700-1995. EPA proposed, in the subsequent "substitutes" proposed rule (63 FR 32058; June 11, 1998), to amend the definition of "reclaim" to reflect the update of the refrigerant specifications standards at appendix A from standards based on ARI Standard 700-1993 to standards based on ARI Standard 700-1995, and to clarify that to "reclaim" refrigerant means to reprocess the refrigerant to all of the specifications of the appendix. The Agency did not receive any comments specifically