

addressing the proposed amendment to the definition of "reclaim" in either of the proposed rulemakings.

EPA believes that it is pertinent to take final action to clarify the definition of "reclaim" in this final rule, since the Agency has found that many in the regulated community believe that purity and/or reclamation equates to characterization of the used refrigerant with the use of a gas chromatograph, while ignoring the presence or failing to test for the presence of various contaminants as required by today's action and delineated in appendix A (*i.e.*, water, chloride, acidity, high boiling residue, particulates/solids, non-condensables, and other impurities including other refrigerants). Therefore, EPA has chosen to amend the definition in the rule being promulgated today, due to the definition's close association with IRG-2 and the importance of the clarification as it applies to refrigerant reclamation and the transfer of used refrigerant.

EPA is adopting the ARI Standard 700-1995, with modification, into regulation as appendix A of 40 CFR part 82, subpart F. At this time, EPA is not adopting the ARI Standard 700-1995 requirements for refrigerant blends that were not included as a part of the initial May 14, 1993, final rule. The adoption of refrigerant blends into appendix A of 40 CFR part 82, subpart F was proposed in the NPRM for the "substitutes" rule (63 FR 32064; June 11, 1998) and will be discussed in a subsequent rulemaking.

EPA has always interpreted 40 CFR 82.154(g) and 82.164 to require persons who "reclaim" refrigerant to reprocess the refrigerant to *all* of the specifications of appendix A (based upon the ARI Standard 700-1993 and now the 1995 version of the Standard) that are applicable to that refrigerant and to verify that the refrigerant meets those specifications using the analytical methodology prescribed in section 5 of appendix A (*i.e.*, Appendix-93 to ARI Standard 700-1993 and now Appendix-C to the 1995 version of the Standard) or alternate test methods that produce equivalent results. Therefore, EPA has amended the definition of "reclaim" by removing the reference to a "purity" standard and thereby making the definition more consistent with the full range of requirements provided in appendix A. Failure to abide by these protocols to assure that used refrigerant meets the requirements of appendix A, based upon the ARI Standard 700-1995, and may violate the prohibition against the sale of used refrigerant that has not been "reclaimed" (established under § 82.154(g)). This amendment to the

definition of reclaim does not add additional requirements upon reclaimers, but ensures that the regulations explicitly reflect EPA's long standing interpretation of what constitutes "reclaimed" refrigerant.

C. Revocation and Suspension Procedures

Under 40 CFR part 82, subpart F, failure to abide by any of the provisions of subpart F may result in the revocation or suspension of EPA approval for technician certifying programs, recovery/recycling equipment testing organizations, as well as self certifications by refrigerant reclaimers. The NPRM contained specific revocation and suspension procedures for both the existing recovery and recycling equipment and the technician certification programs, as well as for the proposed third party laboratory and reclaimers programs.

In cases of revocation or suspension, EPA proposed that the Agency notify the certification program in writing regarding the action. The NPRM also specifies procedures concerning the proposed methods for a previously approved certification program to challenge a decision of revocation or suspension. In such cases, the NPRM stated that the program could request a hearing within 30 days; however, the program would have to submit in writing the program's objections and supporting data. If, after review of the request, the Agency agreed that the program had raised a substantial and factual issue, EPA would provide a hearing and assign a Presiding Officer. The Agency could direct that all arguments and presentation of evidence be concluded within a specified time of no less than 30 days from the date that the first written offer of a hearing was made and could direct that the decision of the Presiding Officer would be final. EPA proposed that the decision of the Presiding Officer would be final without further proceedings, unless there was an appeal or motion for review by the Administrator within 20 days of the decision. On appeal, EPA proposed to provide the Administrator with all the powers that he or she would have in making the initial decision, including the discretion to require or permit briefs, oral arguments, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. EPA requested comments on these procedures.

EPA proposed that these procedures would apply to section 608 technician certifying programs, equipment testing organizations, the proposed laboratory certification program, and the

certification of reclaimers. However, since EPA is not promulgating third-party certification programs for either laboratories or reclaimers at this time, EPA is not establishing revocation procedures for these programs through today's action.

EPA received comment indicating that the revocation procedures should provide for the consideration of legal as well as factual issues. The final procedures state that EPA will give notice of the basis for the revocation or suspension in advance, and that the program will have an opportunity to demonstrate or achieve compliance with the provisions of subpart F. The program may raise legal issues in responding to EPA's notice.

EPA received comment indicating that the provisions should specify minimum qualifications for, and impartiality of, presiding officers. The commenter states that the presiding officer should be an attorney, preferably an administrative law judge, and should be independent of EPA's enforcement branch or the Department of Justice.

EPA understands this commenter's concerns; however, EPA disagrees with the need to include these criteria. EPA does not believe that it is necessary to specify prerequisites that the Administrator should use for determining who is an appropriate presiding officer. EPA believes that the Administrator will use her best judgement to ensure that a presiding officer is someone who can effectively act in an impartial manner and possesses appropriate knowledge to carry out all necessary duties.

The same commenter also indicated that the procedures for appealing adverse decisions are evidence that the regulations are too detailed. The commenter believes the regulations should be scaled back to impose only those requirements that the commenter believes protect the environment. However, the commenter further noted that the procedures seem fair and appropriate. The commenter states that this is the only program, established under the Clean Air Act, that specifies revocation procedures.

EPA first notes that there are other programs established under authority of the Clean Air Act that specify revocation procedures (*e.g.*, the mobile source regulations at 40 CFR 86.094-30(c)(1)-(5), referencing the hearing procedures at 40 CFR 86.078-6). When drafting the procedures applicable to subpart F of part 82, EPA reviewed where and how similar procedures have been used. Moreover, EPA believes that these regulations, taken in their entirety, serve to protect human health and the