

environment, and that providing regulatory text consistent with current practices does not alter that degree of protection. The Agency's ability to suspend or revoke programs based upon their noncompliance with EPA regulations further safeguards the environment.

Through today's action, EPA is promulgating procedures to revoke approval, of third-party certification programs for technician certifying programs and equipment testing organizations and self-certification by refrigerant reclaimers, based on failure to comply with the provisions of 40 CFR part 82 subpart F. Revocation procedures are established for approved equipment testing organizations, technician certifying programs, and reclaimer self certifications by amending 40 CFR 82.160(d), 82.161(e), and 82.164(g). In developing this final rule, EPA decided to apply the procedures to the revocation or suspension of self-certification of reclaimers, as well as the existing third-party certification programs for technician certifying programs and testing organizations for refrigerant recovery/recycling equipment. Accordingly, today's action includes procedures for the revocation and/or suspension of programs approved to certify technicians, programs approved to certify recovery and/or recycling equipment, and self-certification of refrigerant reclaimers. EPA believes that this broader approach will safeguard the environment by establishing greater oversight of reclaimers and third-party certifying programs.

D. Technician Certification and the Sales Restriction

EPA received comments concerning technician certification and the sales restriction that were beyond the issues presented in the NPRM. Comments concerning exemption of the technician certification requirements and the applicability of refrigerants under the Significant New Alternatives Policy (SNAP) will not be addressed in this final rule, but are addressed in the accompanying *Industrial Recycling Guide-2 Comment Summary* contained in EPA Docket Number A-92-01 VIII. All comments that address aspects of the proposed regulatory changes are discussed below.

1. Recordkeeping

EPA stated in the NPRM that the Agency is concerned with the maintenance of records¹ by approved

certifying programs for technicians that no longer administer the section 608 certification test. Currently, there are more than 90 EPA-approved technician certification programs that provide testing in accordance with § 82.161 and appendix D to subpart F. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice per calendar year. It has come to the Agency's attention that since the bulk of existing technicians has become certified, and the certification market now focuses on those first entering this field, some EPA-approved certification programs may choose to discontinue providing this service. EPA believes that the likelihood of programs withdrawing will increase over time. EPA stated in the NPRM that if a technician's certification credentials are lost and the program no longer exists, it may not be possible for the technician to receive duplicate credentials, thus denying the technician the ability to purchase class I or class II refrigerants or to legally perform aspects of his or her job.

Currently, programs that have been approved to administer the test must maintain records for at least three years (40 CFR part 82, subpart F, appendix D; 58 FR 28734). However, EPA does not believe that a mechanism exists that would effectively ensure that these records are maintained and are made available to EPA if a program goes out of business. Furthermore, even if the program does continue to maintain the records, access to the records may be difficult if the program itself no longer exists. Therefore, EPA proposed options aimed at ensuring that technicians can receive replacement credentials in instances where their certifying program is no longer in business or in instances where the request for the records exceeds the three-year minimum recordkeeping provision.

EPA discussed several options in the NPRM and requested comment. The first two proposed options would require maintenance of records by EPA. First, EPA could require programs leaving the certification business to forward their records to EPA, and thus the Agency would be responsible for maintaining those records. In the NPRM, EPA noted that the Agency may not have adequate resources for maintaining these records effectively. A second option would be to have the programs send the records to EPA and have the Agency choose a suitable existing certification program to

maintain the records and forward the records to that program. EPA stated in the NPRM that the Agency is uncertain as to what criteria should be used for choosing the appropriate program. With more than 90 existing programs, all approved based on the same criteria, EPA would have difficulty in selecting a single program.

A third option would be to have the program that intends to cease operation identify an active program that is willing to accept the records and notify EPA. In this scenario, all pertinent information, including the records relating to the technicians and the testing information would be forwarded to another program. The program discontinuing certification activities would notify EPA of the identity of the certification program that it had identified as the new repository of its records, and the recipient of the records would notify EPA upon receipt of the records. EPA stated in the NPRM that the third option represented the most equitable approach. Therefore, EPA proposed to promulgate the third option. In addition, EPA requested comments regarding whether EPA should extend the minimum length of time that records must be maintained beyond the three-year minimum requirement.

The Agency received several comments supporting option one, but none specifically addressing whether or not EPA should select an appropriate program for the transfer of the records, as detailed in the second proposed option. In response to the first proposed option, one commenter stated that EPA's unwillingness to store certification records is evidence that third party certification of technicians should not be required.

EPA certainly supports the maintenance of records stating which certifying programs have certified which technicians, but EPA is reluctant to have information regarding each individual technician and their test scores maintained by the Agency. In addition, EPA does not believe the Federal government should develop a central registry or database for certified technicians. EPA's reluctance to maintain such a database is based in part on a discussion held during a meeting on April 3, 1995. That meeting was a forum for the EPA-approved section 608 technician certification programs to discuss concerns with EPA regarding the section 608 technician certification program. At that meeting, several representatives of approved technician certification programs expressed their desire to have the programs maintain information rather

¹ Certifying programs must maintain records that include, but are not limited to, the names and

addresses of all individuals taking the tests, the scores of all certification tests administered, and the dates and locations of all testing administered.