

approved program and notify EPA as to which program the records have been given. Programs receiving records from a defunct program will also notify EPA. If no other program is willing to take those records on behalf of the defunct program, the program must forward the records to EPA. In these instances EPA will maintain this information and make it available to technicians as appropriate, until such a time when EPA can locate a program that is willing to accept responsibility and maintenance of the records. EPA is also extending the recordkeeping requirement of appendix D for certifying programs beyond the current three year period by requiring these programs to maintain records for as long as they are in business.

2. Sales Restriction on Refrigerants Approved for Use With Motor Vehicle Air Conditioners (MVACs)

In the NPRM, EPA stated that the Agency was concerned with the ability of technicians certified under a section 609 technician certification program, in accordance with § 82.40, to purchase any ozone-depleting refrigerant in any size container. EPA is concerned with reports that technicians with section 609 certifications are purchasing refrigerants that are not acceptable for use in MVACs, and that such refrigerants are either being improperly installed in MVACs or used by those technicians to service other appliances in violation of the regulations promulgated under Section 608. At the time that the sales restriction was drafted and promulgated in 1993 (58 FR 28714; May 14, 1993), EPA was aware that potential substitutes for R-12 for use in MVACs could include HCFC refrigerants or a refrigerant blend with an HCFC component. Therefore, EPA did not restrict the types of refrigerants that could be purchased by those with section 609 certification. Since that time, EPA has promulgated regulations—the Significant New Alternatives Policy (SNAP)—regarding acceptable and unacceptable alternatives to class I and class II refrigerants in specific refrigeration and air-conditioning end uses, under section 612 of the Act. Since SNAP now clearly delineates which refrigerants are acceptable for use as substitutes to R-12 in MVACs, EPA proposed that the sales restriction should employ a similar provision.

EPA received one comment asking that the Agency review the statutory provision (section 609(e)) barring the sale of small containers of R-12 (and other class I and class II substances suitable for use in MVACs) to anyone

other than a technician who has been properly trained and certified under section 609. The commenter requested that EPA lift the restriction on sales of small containers.

EPA has no authority to promulgate regulations that are inconsistent with the statutory language. Therefore, the sales of small containers of class I and/or class II refrigerants must remain restricted pursuant to Section 609(e) of the Act.

EPA received one comment requesting that EPA clarify that SNAP acceptability is not the criterion to decide which substitute refrigerants may be purchased by technicians certified under section 609. The commenter stated that EPA had proposed to specify that MVAC technicians may purchase only those substitute refrigerants that are used in MVACs whether or not the refrigerants have been approved under SNAP.

The Agency proposed to amend the sales restriction to specify that section 609 certified technicians may only purchase CFC-12 (R-12) or SNAP-approved substitutes containing ozone-depleting refrigerants that have been found suitable for use in MVACs. EPA proposed (61 FR 7873) to modify the sales restriction, found at § 82.154(m)(3), to restrict the sale or distribution or the offer for sale or distribution of class I and class II refrigerants to technicians certified by a program approved under § 82.40 and certified in accordance with § 82.34 (*i.e.*, 609 technicians). The modification limits refrigerant purchases, by section 609 technicians, to R-12 and substitute refrigerants, containing a class I or class II substance, that are listed as acceptable for use in MVACs in accordance with all regulations promulgated under section 612 of the Act.

EPA received several comments supporting the proposed change to the sales restriction. Commenters stated that it was appropriate to distinguish between refrigerants used by technicians certified by a section 609 certification program and those certified in accordance with the requirements promulgated under section 608. One commenter stated that the result of EPA's proposed modification would be that the sales restriction would not apply to any refrigerant listed as acceptable under SNAP that did not consist in whole or in part of a class I or class II substance, such as the HFC refrigerant R-134a.

EPA would like to clarify that the sales of refrigerants (including HFC refrigerants such as R-134a) are not currently regulated under the sales restriction unless the refrigerant consists

in whole or in part of a class I or class II substance (such as the case with several SNAP-acceptable refrigerant blends). EPA proposed a sales restriction on substitute refrigerants on June 11, 1998 (63 FR 32044), and the sales restriction for substitute refrigerants will be addressed in the final version of that proposed rule.

Therefore, through today's action EPA is amending the refrigerant sales restriction by amending § 82.154(m). EPA is further restricting the sale or distribution or the offer for sale or distribution of class I and class II refrigerants, that are suitable for use in MVACs, to technicians certified by a program approved under § 82.40 and certified in accordance with § 82.34 (*i.e.*, section 609 certified technicians). In accordance with 40 CFR 82.34(b), this modification limits refrigerant purchases, by such section 609 technicians, to CFC-12 (*i.e.*, R-12) and substitute refrigerants, containing a class I or class II substance, that are listed as acceptable for use in MVACs in accordance with all regulations promulgated under section 612 of the Act. Furthermore, only technicians certified under section 609 are allowed to purchase such ozone-depleting refrigerants in containers containing less than 20 pounds of such refrigerant, in accordance with § 82.34(b).

3. Transfers Between Subsidiaries

EPA proposed to permit transfers of used refrigerant between wholly-owned subsidiaries, without requiring refrigerant reclamation prior to such a transfer. As discussed in the NPRM, this proposal arose from specific requests for such relief that EPA had received from several entities that are organized as holding companies with wholly-owned subsidiaries. After considering such requests, EPA stated that the relationship between two subsidiaries should provide sufficient means to ensure that transfers between the subsidiaries would be "akin to transfers within one company." Therefore, EPA proposed to provide an exception to the sales restriction for the transfers of refrigerant between two wholly-owned subsidiaries of the same holding company.

EPA also received requests to permit the transfer of unreclaimed used refrigerant between subsidiaries that are not wholly-owned by the same holding company. As discussed in the NPRM, given that these types of subsidiaries would involve other investors who might have less of a commitment to each of the subsidiaries involved in the transactions, EPA did not believe that transfers between these types of