Sunshine Act Meetings

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

Staff Briefing for the Board of Directors.

TIME AND DATES: 2 p.m., Tuesday, November 15, 1994.

PLACE: Room 0305, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning including reviewing a draft Request for Proposals for a financial advisor. Also discussion concerning the November 1 election results and general loan program business.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATES: 10 a.m., Wednesday, November 16, 1994.

PLACE: Jefferson Auditorium, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Swearing in newly elected Board members.
3. Approval of Minutes of the August 11, 1994, Board meeting.
4. Report on loans approved in the fourth quarter of FY 1994.
5. Summary of fourth quarter FY 1994 financial activity.
6. Report of ad hoc committee on privatization of the RTB.
7. Consideration of draft scope and objective for the Request for Proposals to assess the privatization of the Rural Telephone Bank.
8. Election of Board Officers: Chairperson, Vice Chairperson, Secretary, and Treasurer.
9. Establish date and location of next regular Board meeting.
10. Adjournment.

ACTION: 11th Biennial Stockholders Meeting.

TIME AND DATE: Following the Board of Directors Meeting (time approximate, 11 a.m.), Wednesday, November 16, 1994.

PLACE: Jefferson Auditorium, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders meeting:

1. Call to Order.
2. Establishment of a quorum of stockholders.
3. Approval of Minutes of the March 24, 1993, stockholders meeting.
4. Secretary's annual report on loans approved in FY 1993 and FY 1994.
5. Treasurer's annual report for FY 1993 and FY 1994.
6. Annual committee report on privatization of the RTB.
7. Annual committee report on prepayments.
8. New Business.
9. Adjournment.

Registration for the stockholders meeting.

(a) Voting Representatives may register on Tuesday, November 15, the day before the meeting, between 1–4 p.m. in Room 2832, South Building, USDA; or

(b) Wednesday, November 16, between 9–11 a.m. at the entrance to the Jefferson Auditorium.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: November 4, 1994.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 94–27818 Filed 11–7–94; 8:45 am]

BILLING CODE 3410–15–P

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 22, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 94–27855 Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 30, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–27856 Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, November 30, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–27857–Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, November 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 4, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27858 Filed 11–7–4; 11:06 am]

BILLING CODE 6210–1–P

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME:

November 18, 1994—7:30 a.m.—Closed Session

November 18, 1994—8:30 a.m.—Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, November 18, 1994

Closed Session (7:30 a.m.–8:30 a.m.)
—Minutes from October Meeting
—Grants and Contracts

Open Session (8:30 a.m.–9:30 a.m.)
—Minutes from October Meeting
—Chairman's Report
—Director's Report
—Committee Reports
—Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–27846 Filed 11–7–94; 9:54 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 15, 1994, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposal to Close the Springfield, MA Base Point Office
(2) Revision to Board Order 75–3, Section XIX, Agency Grievance Procedure
(3) Reengineering Initiative—Initial Plan
(4) Management of the Payment, Rate and Entitlement History (PREH) Project
(5) Pending Legislative Issues:
  A. H.R. 4277 and H.R. 4278—Amendments to Conform RRA to SSA
  B. Draft Legislative Language to Preclude Payment of Annuities, Tier I, tier II, & Supplemental, to Incarcerated Felons, Criminally Insane, etc.
  C. Legislative Proposals for the Fiscal Year 1996 Budget Submission
  D. Draft Bill Embodying Legislative Proposals for 2nd Session of 103rd Congress
  E. Disclosure of Tax Return Information
(6) Ethics issues:
  A. Frequent Traveler Programs
  B. Agency Designee for Determination Agency Interest in Acceptance of Free Attendance at Certain Meetings
(7) Proposed Revision to Incentive Awards Plan
(8) Filling Supervisory and Managerial GS–13 through GS–15 Vacancies
(9) Medicare Transaction System (MTS) Issue
(10) Plan to Improve the Quality and Timeliness of Claims Processing (BUSI)
(11) Cost-Saving Concepts
(12) Waiver of Contributions:
  A. Ellis & Eastern Company
  B. Employee Status Determination (Roth A. Gatewood)
  C. Timeline of Key Events and Contributions, Interest, and Penalties Due from Livingston Rebuild Center, Inc.
(13) Coverage Determinations:
  A. Marietta Industrial Enterprises, Inc.
  B. Great Southern Contracting, Inc.
  C. Pacific Standard Corporation—Request for Reconsideration of Employer Status
  D. Herzog Transit Services, Inc.
  E. Appeal of Border Pacific Railroad Company
  F. Appeal of National Railway System, Inc.
(14) Railroad Retirements Board Correspondence Manual
(15) Regulations:
  A. Parts 202 and 301, Employers Under the Rairoad Retirement Act and Railroad Unemployment Insurance Act
  B. Part 203, Employees Under the Railroad Retirement Act
  C. Part 220, Disability
  D. Part 226, Computing, Employee Spouse and Divorced Spouse Annuities
  E. Part 228 and 237, Computation of Survivor Annuities
  F. Part 230, Reduction and Non-Payment of Annuities by Reason of Work
  G. Part 225, Recovery of Overpayments
  H. Part 320, Initial Determinations under RUIA and Reviews and Appeals from Such Determinations
  I. Part 328, Voluntary Leaving of Work
  J. Part 345, Contribution and Contribution Reports—
  (1) Policy for Considering the Waiver of Interest and/or Penalty Assessments for Railroad Employers
(16) Labor-Management Partnership—Management Member Kever's Memorandum of October 11, 1994, and Related Issues
(17) Reorganization Memos: Mr. Kever's of October 26; Mr. Bower's of November 1, and Mr. Speakman's of November 2, 1994.
(18) Field Service Issues:
  A. Field Migration Schedule
  B. Recommendations Concerning the Function and Structure of the Field Service
  C. Base Point Office Study
(19) Fiscal Year 1994 Performance Appraisal Plans

Portion Closed to the Public

(A) Acting Director of Office of Retirement and Survivor Benefits
(B) Restructuring of the Washington Legislative Liaison Office (Abolishment of GS–4 Ofc. Automation Clerk Position & Establishment of GS–7, Ofc. Asst. Position)
(C) Vacancy Announcement for Facility Manager Position
(D) Pending Board Appeals:
  1. Lila Church Settlement Offer
  2. Amsk, Michael P.
  3. Barron, Wiley W.
  4. Baumgardner, Susan J.
  5. Beahm, Winston G.
  6. Benbow, Philip K.
  7. Coburn, Jr., Joe
  8. Deni, Margaret E.
  9. Grissom, Marcella
  10. Harrison, Robert T.
  11. Hunn, James L.
  12. King, Mary J.
  13. Kline, Woodrow C.
  14. Land, Doris L.
  15. L'Heureux, Authur/Dorothy
  16. Price, Edward H.
  17. Puffinbarger, Larry D.
  18. Quick, Jr., Edwin B.
  19. Watts, Gloria

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 4, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–27845 Filed 11–7–94; 9:55 am]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1451-93]
RIN 1115-AC72

Temporary Alien Workers Seeking H-1B, O, and P Classifications Under the Immigration and Nationality Act

Correction

In rule document 94-16674 beginning on page 41818 in the issue of Monday, August 15, 1994, make the following corrections:

§ 214.2 [Corrected]

In § 214.2:

1. On page 41835, in the second column, in paragraph (o)(8)(ii), in the last line, "practitioner" should read "petitioner".

2. On page 41837, in the third column, in paragraph (p)(3), in the definition for *Competition, event, or performance*, in the last line, "lien's" should read "alien's".

3. On page 41840, in the first column, after paragraph (p)(7)(i)(A), insert the following:

"(B) Except as provided in paragraph (p)(7)(i)(E) of this section, evidence of consultation shall be a written advisory opinion from an appropriate labor organization."

4. On page 41841, in the first column, in the first line, the paragraph designation "(i)" should read "(8)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 405

RIN 1505-AA48

Implementing Regulations for the Government Securities Act of 1986

Correction

In rule document 94-26545 beginning on page 53728 in the issue of Wednesday, October 26, 1994, make the following correction:

§ 405.3 [Corrected]

On page 53731, in the second column, in § 405.3, in paragraph (c)(5), in the paragraph designated (B), in the second line, "finds" should read "funds".

BILLING CODE 1505-01-D

federal register

Wednesday
November 9, 1994

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Refrigerant Recycling; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5101–8]

RIN 2060–AF05

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the rules on refrigerant recycling promulgated under section 608 of the Clean Air Act to clarify the conditions under which technician certification programs will be grandfathered, allowing technicians who had participated in voluntary technician training and certification programs prior to the publication of the rule to receive formal certification. EPA is also amending the rule to clarify the scope of the technician certification requirement and to provide a limited exemption from certification requirements for apprentices.

EFFECTIVE DATE: October 28, 1994.

ADDRESSES: Materials relevant to the rulemaking are contained in Air Docket No. A–92–01 at: Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The Air and Radiation Docket and Information Center is located in room M–1500, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Dockets may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Debbie Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, D.C. 20460 (202–233–9200). The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Final regulations published on May 14, 1993 (58 *FR* 28660) establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. The regulations require technicians to observe practices that minimize release of refrigerant to the environment. To ensure that technicians become knowledgeable of these requirements, § 82.161 of the final rule mandates that technicians be certified by passing a test. For Type II, Type III, and Universal technicians, the test must be a closed-book, proctored examination drawn from a bank of test questions kept by the Environmental Protection Agency (EPA) and administered in a secure environment by an EPA-approved certifying program. For Type I technicians, a mail-in program is permitted. Testing and training organizations can apply to EPA to become EPA-approved technician certifiers under § 82.161(c) by demonstrating that they can ensure test security, provide an adequate number of proctors during the examination, select questions randomly from the appropriate sections of the test bank, and provide proof of certification to technicians who pass the exams. Testing and training organizations must also demonstrate that they grade objectively and keep adequate records. The specific requirements of the program are presented in § 82.161 and appendix D of the final rule. To date, EPA has authorized over 90 organizations as technician certifying organizations.

II. This Action

A. Grandfathering

Under § 82.161(g), organizations that seek approval as certifying organizations can also apply to grandfather technicians who received training and testing under programs established prior to publication of the final rule in May 1993, which established the approval process for certification programs. Specifically, § 82.161(g) states:

> Persons seeking approval of a technician certification program may also seek approval for technician certifications granted previously under the program. Interested persons may submit to the Administrator at the address in § 82.160(a) verification that the program met all of the standards of § 82.161(c) and appendix D, * * * except for some elements of the test subject material, in which case the person must submit verification that supplementary information on that material will be provided pursuant to appendix D, section (j).

When EPA initially drafted the language requiring programs to meet "all of the standards of § 82.161(c) and appendix D," these standards were considerably more general than those that were ultimately incorporated into the rule. The proposal had discussed possible requirements in broad terms. For instance, although the proposal anticipated that tests would be proctored, it did not suggest a specific ratio of proctors to examinees, such as the 1:50 ratio that appeared in the final rule. Similarly, the proposal did not specify whether tests would be open- or closed-book. Instead, the proposal included general requirements that tests be proctored, that test security measures be in place, and that tests be graded objectively. EPA believed that many voluntary programs would meet these general requirements.

In response to comments, the requirements for certifying organizations grew more specific. EPA believed that increasing the specificity of the standards strengthened the technician certification program overall. However, EPA did not thoroughly reevaluate and revise its grandfathering provision to reflect the new, detailed requirements. Instead, the provision inappropriately continued to allow voluntary programs to be grandfathered only if they meet all the requirements of § 82.161(c) and appendix D, with a limited exemption concerning test subject material.

The Agency recognizes that if voluntary programs were held to each of the detailed standards, no voluntary technician certification program could be grandfathered. Appendix D contains the specific requirements of the technician certification program. Voluntary programs prior to the promulgation of the final rule could not have complied with these requirements, as they were not yet in existence. Section (a) (Test Preparation) of appendix D requires that "[e]ach certifying program must assemble tests by choosing a prescribed subset from the EPA test bank." However, the test bank did not become available until September 30, 1993. In addition, EPA requires programs to certify technicians with Type I, Type II, or Type III certifications, depending on the level of the test passed by the technician. EPA developed these categories after the close of the public comment period to the proposed rule. However, other logical categorization systems are possible, and until EPA promulgated the final rule, many technician certification organizations categorized technician types differently. Furthermore, section (a) requires a closed-book test, yet most testing organizations prior to the final rule offered only open-book tests. Finally, appendix D defines the ratio of technicians to proctors, and establishes recordkeeping and reporting requirements, all requirements that organizations certainly could not have complied with prior to the promulgation of the final rule.

Nevertheless, many voluntary programs substantially complied with

most of the standards of appendix D, even though they used alternative procedures to those eventually specified in appendix D. Thus, many programs did proctor tests (at least the equivalent of Type II, Type III, and Universal tests), ensure test security, objectively grade tests, and keep records. Several programs also covered most of the required subject matter in the core and at least some technical sections, even when they did not establish the same categories in their testing as were established in the final rule (Type I, II, etc.). Where the content of their voluntary testing fell short of that required by the final rule, programs expressed their willingness to provide additional testing and training as needed, and the final rule provided for this remedy.

EPA has always intended to grandfather these reasonably stringent programs. The purposes of the technician certification requirement are discussed fully in the preamble to the rule establishing the program (58 FR 28660, May 14, 1993). A primary goal of the requirement is to guarantee that technicians who handle refrigerants understand and practice safe refrigerant recovery and recycling techniques. Proper handling will minimize release of refrigerants to the atmosphere and the accompanying environmental harm.

In promulgating the certification provision, EPA determined that grandfathering reasonably stringent voluntary certification programs would significantly further the goals of the certification requirement in a number of ways. By training and testing technicians in recycling refrigerants before the rule was promulgated (on May 14, 1993), reasonably stringent voluntary programs prepared technicians to comply with the prohibition on venting that became effective on July 1, 1992, and probably significantly reduced refrigerant emissions. These programs also served as an impetus for developing a mandatory program, providing a model for that program. Indeed, EPA worked with several voluntary programs to develop the requirements of the mandatory program. In addition, many voluntary organizations provided questions for the test bank, determining the scope of the training and the current exam. Finally, EPA does not want to discourage future participation in voluntary environmental training. Requiring repeat testing for all technicians who voluntarily took adequate testing and training could discourage people from participating in future voluntary programs.

Any potential harm from grandfathering would arise from certifying some technicians on the basis of their participation in testing programs that unavoidably deviated from some of the specific requirements in appendix D. However, EPA will only grandfather those programs that substantially complied with most of the certification standards, and therefore largely achieved the basic goal of the certification requirement, to ensure that technicians understand proper refrigerant handling practices and the importance of such practices. In addition, a program can address any gaps in its coverage by providing supplementary information. Given substantial compliance and supplementary information, the marginal benefits derived from retesting would be relatively small. Moreover, such benefits must be compared to the burden of requiring retesting. Over 100,000 technicians participated in voluntary programs. Retesting would require almost all of these technicians to incur costs for time, travel and test administration. In light of the significant benefits and small potential harm expected from grandfathering reasonably stringent voluntary programs, EPA is modifying the requirements for grandfathering to ensure that an Agency drafting error does not disqualify these programs outright.

To carry out this intent, EPA today is amending the grandfathering provision of § 82.161(g) as the Agency proposed in the August 15, 1994 **Federal Register** notice (59 FR 41968). This paragraph currently states that "[i]nterested persons may submit to the Administrator at the address in § 82.160(a) verification that the program met all of the standards of § 82.161(c) and appendix D, or verification that the program met *all* of the standards of § 82.161(c) and appendix D, except for some elements of the test subject material, in which case the person must submit verification that supplementary information will be provided pursuant to appendix D, section (j)." (emphasis added). EPA is amending § 82.161(g) to read "Interested persons must submit to the Administrator at the address in § 82.160(a) verification that the voluntary certification program *substantially complied with most* of the standards of § 82.161(c) and appendix D of subpart F. (emphasis added). If the program did not test or train participants on some elements of the test subject material, the person must submit verification that supplementary information on the omitted material will be provided pursuant to appendix D of subpart F, section (j)."

In reviewing requests to grandfather technicians, EPA will assess the extent to which a program substantially complied with most of the requirements in each paragraph of § 82.161(c) and appendix D (paragraph (a) of appendix D being test preparation, (b), proctoring, (c), test security, etc.) and most of the basic concerns addressed by those paragraphs, considering the information that was available to the program at the time of its initial development. EPA believes that this is reasonable given the limited information available to these programs before the final rule was published and the question bank was released. For example, the proposed rule published on December 10, 1992, discussed the need for organizations to provide proctored tests under conditions that ensured test security, but did not specify that one proctor be provided for every 50 individuals taking the test as specified in the final rule. Under the approach taken in this document, voluntary programs that provided proctors, but did not necessarily provide exactly one proctor for every 50 individuals taking the test, would not be disqualified on that basis alone. EPA believes that the modification of the final rule to replace "met all" with "substantially complied with most" allows EPA to review these programs taking such circumstances into account.

Almost all commenters supported changing the language of § 82.161(g) to permit grandfathering of voluntary programs, although one commenter opposed grandfathering. A few commenters only supported grandfathering for the Type I level. Commenters who supported grandfathering cited EPA's rationale for making the change to permit it, stating that technicians and contractors in the air-conditioning and refrigeration industry required education on the new recycling requirements, and that voluntary programs fulfilled this need, probably significantly reducing refrigerant emissions. These commenters stated that any shortfalls in early testing and training could (and should) be remedied through providing supplemental information. Commenters also noted that failure to grandfather voluntary programs could discourage future participation in voluntary environmental education programs.

The commenter who opposed grandfathering argued that the certification testing being offered by new programs approved after the rule was published is significantly more difficult than that offered by one

voluntary certification program. As discussed below, EPA plans to evaluate voluntary certification programs on a case-by-case basis and to consider the content of the programs' testing in its grandfathering decisions. As discussed above, EPA will only grandfather voluntary programs that substantially complied with most of the certification standards and that send out any supplementary information that EPA considers necessary. EPA believes that the benefits of grandfathering such programs significantly outweigh the costs.

Three commenters supported grandfathering of voluntary programs only to the Type I level. These commenters claimed that none of the voluntary programs were as comprehensive or stringently administered as new programs approved after the rule was published; therefore, grandfathering of technicians who participated in these programs to the Type II or Type III level would be dangerous to the environment and unfair to technicians who worked hard to successfully complete new programs. However, the commenters believed that grandfathering to the Type I level was acceptable because of the smaller charge sizes and lesser safety concerns associated with small appliances. One of the commenters stated that EPA should not grandfather programs simply because they offered an appropriate testing environment, but should examine content of voluntary exams to ensure that those exams were "reasonably similar" to the exams now being used for certification. This commenter argued that, for example, programs that did not test participants on the final rule, including all of those offered before publication of the final rule, should not be grandfathered even to Type I unless participants took and passed a test drawn from the Core section of the question bank.

The commenters also stated that requiring grandfathered technicians to take further testing before granting them Type II or Type III certification would not represent an undue burden. One of the commenters expressed the opinion that the organizations that operated voluntary programs should make any retesting an administratively simple and accessible option, because they assumed this responsibility when they made a conscious decision to offer testing before certification requirements were finalized.

EPA agrees with these commenters that the content of voluntary testing and training, along with the administrative criteria listed in appendix D, must be considered in any grandfathering decision. EPA does not intend to grandfather a voluntary program for a given Type if the program did not include any test questions or training for that Type. Indeed, voluntary programs differed significantly in their coverage of the various Types. Some programs focussed exclusively on Type I, while others covered Types I through III. EPA considers it appropriate to evaluate these programs individually, rather than adopting an across-the-board policy to grandfather them all to the same level.

EPA considers it appropriate to permit voluntary programs to address gaps within the Types covered by their original testing and training by providing additional materials to past participants. If a program has substantially complied with the standards, the voluntary certification should have largely met the educational purposes of requiring certification. While there may be some areas that a voluntary program did not cover, providing additional information should ensure that technicians achieve an acceptable level of competency. Moreover, requiring voluntary programs to have anticipated all of the topics within a Type constitutes just as impossible a hurdle as requiring them to have anticipated every administrative requirement in appendix D. Even the original final rule published on May 14, 1994, recognized this and permitted programs to be grandfathered as long as they "submit verification that supplementary information on that material will be provided."

Thus, voluntary programs that did not fully cover the requirements of the final rule, for instance, will be permitted to address the omission by developing supplementary materials on that topic, submitting these materials to EPA for review and revision, and then sending these materials to past participants. Past participants will be required to sign a statement that they have read the new materials and to return it to the voluntary program operator before receiving their certification cards. EPA believes that this process will ensure that supplementary materials are of acceptable quality and that past participants read and learn them before being certified.

EPA disagrees with the assertion that retesting on a Type would not represent an undue burden to technicians who participated in a voluntary program that covered that Type. Although EPA strongly believes that proctored testing in Types II and III is worthwhile for technicians who have not already been tested on those Types, the Agency believes that the costs of such testing outweigh its benefits for technicians who have already been tested in the Types. Those costs include time taken to travel to the test site and take the test, travel costs, and the cost of the test itself. The differences between the Type II and Type III tests being offered by new programs and those offered by many voluntary programs are not significant enough to warrant these additional investments. However, the Agency again emphasizes that if Type II or Type III was *not* covered by a voluntary program, then past participants in that program will have to take proctored testing before they can be certified for that Type.

One commenter argued that EPA should require programs that operated after the publication of the final rule (May 14, 1993) to have met stricter standards than programs that operated before publication of the final rule. This commenter stated that programs operating after publication of the final rule, unlike programs operating earlier, knew both the administrative and content requirements that would have to be met by technician certification programs. The commenter claimed that some programs "enticed technicians to be certified through an abridged, open-book testing methodology prior to October 15, 1994, with promises of these substandard processes being grandfathered." The commenter believed that rewarding these programs and the technicians who participated in them by grandfathering the programs would be unfair to programs and technicians who attempted to meet higher standards.

Although EPA will consider the efforts of voluntary programs to update their testing content and procedures to conform to the requirements of the final rule after May 14, 1993, EPA will not require voluntary programs to have met all of those requirements to be grandfathered. First, grandfathering voluntary programs that substantially complied with the standards of § 82.161 and appendix D should further the environmental goals of requiring certification, even if such programs did not fully update in conformity with the requirements of the final rule. If a voluntary program was already substantially complying with the requirements of § 82.561 and Appendix D before May 14, 1993, then changes to its administrative practices after May 14, probably would not have had a significant impact on the overall quality of the program. At the same time, omissions from a program's training and testing can be addressed by supplying past participants with supplementary materials that participants must read before they receive their certification

cards, as discussed above. Omissions can be rectified in this manner regardless of when the original training and testing occurred.

The process of developing and disseminating supplementary materials also mitigates the unfairness perceived by the commenter; programs that updated their testing and training more swiftly need not develop, and their participants need not review, as much supplementary information as programs that did not update their testing and training. In addition, until September 30, 1993, voluntary programs continued to provide the only source of training in refrigerant handling. EPA believes that the environmental benefit of timely, reasonably stringent training and testing outweighed any costs associated with programs' failure to adhere to every requirement in the final rule.

Second, it was not possible for programs to fully comply with the standards of the final rule until September 30, 1993. The bank of test questions was not available to programs until EPA approved the first set of programs, so programs could not have included these questions in their testing before that date. Requiring voluntary programs to have included such questions would automatically prevent all voluntary programs from being grandfathered.

Third, programs were understandably reluctant to change their procedures and materials given their uncertainty over when EPA would announce the approval of the first set of technician certification programs and thereby make the bank of test questions available. As discussed below, the process of reviewing certification programs can vary greatly in length, depending upon the completeness of initial submissions and the speed with which programs respond to later inquiries. Voluntary programs, therefore, could not be certain whether the effort and expense of revising and reprinting old tests would be justified, since such revised tests would become obsolete once the program operator had access to the bank of test questions. The same uncertainty surrounded efforts to develop and disseminate new administrative procedures, since such procedures would also probably be revised once programs were approved.

Finally, while EPA did not approve of programs advertising an "easy" alternative to a future, closed-book test, determining whether each program that applies for grandfathering did or did not engage in such advertising would be very difficult. It would be even harder for EPA to determine whether advertising that did occur was a centrally organized campaign or an isolated incident. Thus, EPA does not plan to use reports of such advertising as a criterion in its grandfathering decisions.

EPA will, however, consider requiring recertification of grandfathered technicians after some period, perhaps two years, if EPA's experience enforcing the rule indicates that their training was not adequate. As noted in the final rule published on May 14, 1993, EPA reserves the right to require recertification of any or all technicians, if necessary.

Another commenter argued that EPA should grandfather only programs that included a "live" instructor and should not grandfather programs that offered testing without training. EPA will consider the training and testing offered by programs in their entirety rather than requiring a specific instruction technique. While a videotape cannot respond to questions from technicians as a "live" instructor can, a thorough and accurate videotape is preferable to an ill-informed instructor. Moreover, if technicians have succeeded in passing a comprehensive, difficult test without taking a special training course, EPA believes that they have demonstrated their knowledge of proper and legal techniques for refrigerant handling, which is the goal of technician certification.

EPA is extending the November 14, 1994 deadline until May 15, 1994, for those technicians who successfully completed a voluntary program that applies for grandfathering no later than December 9, 1994. During the extension period, those technicians who successfully completed a voluntary program may continue to service, maintain, repair, and dispose of appliances and may buy refrigerant using the certificates or cards issued by the voluntary program. This additional time will allow EPA to consider applications by voluntary programs for grandfathering and will enable grandfathered voluntary programs to provide supplementary information, if necessary, and proof of EPA-approved certification to grandfathered technicians. To make their past participants eligible for this extension, programs must apply (or have already applied) within 30 days of publication of this amendment (1) to be approved as a technician certification program under § 82.161(c), and (2) to grandfather technicians. This extension does not apply to technicians who did not participate in any voluntary program, or who participated in voluntary programs that have not applied and do not apply within the set period. These technicians must still be certified by November 14, 1994.

This extension provision is very similar to the one proposed. The one difference between the proposed and final provisions is that the proposed provision would have made the extension effective until six months after publication of the final rule, and the final provision makes the extension effective until May 15, 1995, six months after the effective date of the technician certification requirement. EPA made this change to establish a simple, memorable date for the expiration of the extension. Because EPA expects to announce most of its grandfathering decisions when the rule becomes effective, and because EPA expects the rule to become effective before November 14, 1994, technicians who successfully completed voluntary programs will still have at least six months to complete any additional training or testing necessary to become certified.

All commenters in favor of grandfathering supported providing an extension of the November 14 deadline to past participants in voluntary programs. Many commenters cited the reasons in the proposal, noting that the November 14 deadline did not anticipate the delay caused by this amendment to the regulations. The commenters agreed that it would be counter-productive to force technicians who completed a voluntary program to take additional testing simply because they do not know whether or not their voluntary program will be grandfathered. However, some commenters believed that this extension should be linked to the date that EPA approves or disapproves grandfathering of the voluntary program, rather than the date of publication of the final amendment or any other specific date. This would ensure, these commenters argued, that participants in these programs had sufficient time to complete additional testing and/or training, if necessary. In addition, two commenters argued that EPA should be required to complete review of grandfathering applications within a specific period (one commenter suggested 30 days). Finally, one commenter believed that voluntary programs should be required to inform their past participants within a specific period both whether or not the programs applied for grandfathering and whether EPA approved or disapproved their applications.

EPA agrees with the commenters that voluntary programs and/or their past participants should have sufficient time to provide or obtain additional training

or testing before the certification requirements go into effect for all technicians. Consequently, EPA has made a considerable effort to review grandfathering applications in a timely fashion. The Agency plans to announce the majority of its grandfathering decisions when this rule is published or shortly thereafter. EPA believes that this will leave voluntary programs and their past participants enough time to provide any required supplementary information and to complete any needed additional training or testing before the general six-month extension expires, making it unnecessary to issue separate, six-month extensions to each program.

Moreover, the Agency considers a fixed, uniform deadline for certification essential to effective compliance with and enforcement of the sales restriction. The sales restriction requires that every refrigeration wholesaler in the U.S. understand which certification cards issued by approved programs and which credentials issued by voluntary programs are valid for refrigerant purchase. If the credentials issued by voluntary programs "expired" on different dates, and if each expiration date were announced individually, compliance with the sales restriction would become unacceptably complicated for wholesalers.

EPA does not believe that imposing a deadline for review on itself is either necessary or practical. As noted above, the Agency expects to announce most, if not all, of its grandfathering decisions when this amendment is published. The only voluntary programs on which EPA will not have issued decisions will be those that have not yet applied at all and those that have not completed the necessary information requirements. The review process typically involves multiple contacts between EPA and the applying program; the speed with which it is completed depends as much upon the time taken by the program to respond to inquiries and develop submissions as the time taken by EPA to review them. Thus, even if it devotes all of its resources to the review process, EPA cannot guarantee that reviews will be completed within a given period.

EPA agrees, however, that voluntary programs should be required to inform past participants of EPA's decision and to provide any required supplementary information within a set period, so that technicians have sufficient time to review the supplementary information or to obtain additional training and testing if it is required. EPA is therefore modifying the proposed amendment to require that (1) voluntary programs that EPA has disapproved inform their past participants of EPA's decision within 30 days of their disapproval, and (2) programs that EPA has approved inform their past participants of EPA's decision and provide any supplementary information within 60 days of their approval. EPA believes that 30 days will provide sufficient time for disapproved voluntary programs to generate and mail their notifications while allowing technicians sufficient time (approximately five months, in most cases) to complete a certification program approved after May 14, 1994.

EPA is allowing 60 days rather than 30 days for approved programs because the Agency recognizes that printing and disseminating supplementary information may take longer than printing and mailing simple notifications. In addition, technicians who successfully completed voluntary programs that are approved for grandfathering will need less additional training and testing than technicians who participated in voluntary programs that are not approved. Finally, EPA is requiring programs approved for grandfathering to issue certification cards to technicians within 60 days of the programs' receipt of signed statements from the technicians indicating that the technicians have read the supplementary information. Based on discussions with voluntary programs, EPA believes that this will allow sufficient time for voluntary programs to generate and mail the cards, while allowing technicians enough time to read the supplementary information.

EPA does not believe that this notification requirement will impose an unreasonable burden on the voluntary programs that apply for grandfathering. These voluntary programs have undertaken to certify technicians in advance of the final regulations and have applied to EPA for grandfathering. Given their voluntary assumption of responsibility, it is reasonable to place on the voluntary programs the responsibilities (1) to inform their participants whether their applications for grandfathering were successful and (2) to send their participants certification cards in a timely fashion.

However, EPA is not requiring voluntary programs to notify participants whether or not the program has applied for grandfathering. EPA believes that it is the responsibility of technicians and/or their employers to obtain this information, and this information is (and has been) readily available from both EPA and voluntary technician certification programs. The Stratospheric Ozone Hotline has been distributing a list of programs that have applied for grandfathering since March, 1994. The list includes the following programs:

Amtrak Technical Training Center
Air Conditioning Contractors of America
CFC Reclamation and Recycling
Climate Control Institute, Inc.
Delaware County Community College
Environmental Training Group
Hartsog Trade School
Johnson Controls, Inc.
National Apartment Association
National Association of Power Engineers
People's Natural Gas
Refrigeration Environmental Protection Association
Refrigeration School, Inc.
Refrigeration Service Engineers Society
Rock Valley College
State of Alaska
State of Wisconsin, Department of Industry, Labor and Human Relations
Sears Product Services
Sequoia Institute
Tennessee Valley Technical Program
Texas Engineering Extension Service
United Association of Journeymen and Apprentices of the Plumbers and Pipe Fitting Industry of the United States and Canada
VGI Training Division, Video General Inc.
York International

Since they first appeared on this list, six of the programs, including Delaware County Community College, National Apartment Association, People's Natural Gas, Rock Valley College, Sequoia Institute, and Tennessee Valley Technical Program, have withdrawn their applications for grandfathering. However, because these programs appeared on the list, and because some of these programs withdrew relatively recently, EPA will grant past participants in these programs the six-month extension. These programs must inform their past participants that they have withdrawn their request for grandfathering by December 9, 1994, if they have not done so already, so that past participants can obtain certification through a program approved after May 14, 1993.

Additional programs may apply for grandfathering until December 9, 1994. EPA will provide wholesalers and other interested parties with a revised list at that time, if necessary.

One commenter believed that the amendment should allow technicians to continue to service equipment for six months from the promulgation date, as long as the equipment owner or operator could demonstrate that its technicians attended a voluntary certification program. This commenter believed that

the extension should apply even if the voluntary program does not apply for grandfathering. EPA believes that only technicians who participated in voluntary programs that apply for grandfathering should be granted the six-month extension. Without an application for grandfathering, EPA has no reason to assume that the training might have been adequate to significantly meet the goals of the technician certification program. The extension is premised on the assumption that in many cases the voluntary programs have ensured technician training adequate to meet the certification program goals, as would be shown by substantial compliance with most of the standards in § 82.161 and appendix D. In such cases, EPA expects to approve the grandfathering applications, and thus the extension will have avoided the need to recertify technicians who eventually would be grandfathered. Where the program has not applied for grandfathering, however, EPA has no basis for believing either that there was a reasonable possibility that the program significantly met the goals of certification, or that the technician would not have to recertify at the expiration of the extension period. EPA believes that *bona fide* voluntary certification programs will make the effort to apply for grandfathering, and that, in fact, most of those programs have applied already.

In addition to the changes outlined above, in this amendment EPA is clarifying how it will determine whether programs and individual technicians will be grandfathered for a given Type. Whether a voluntary certification program will be grandfathered for a Type will depend upon the coverage by the program of the material in that Type. Whether an individual technician will be grandfathered for a given Type will depend upon (1) whether the technician successfully completed a voluntary program that has been grandfathered for that Type, (2) whether the technician successfully completed the portions of the voluntary certification program that correspond to that Type, and (3) whether the technician reads any supplementary information required by the Administrator pursuant to § 82.161(g)(1) and returns a signed statement to that effect to the program. For clarity, EPA is also adding a definition of "voluntary certification program." EPA had also proposed adding a definition of "to be grandfathered" but the Agency has determined that this definition is unnecessary. The regulations will simply refer to the "approval" of a voluntary program or the "certification" of a technician under a voluntary program.

To maintain consistency, EPA is also modifying appendix D, section j. The revised section reads:

EPA will grandfather technicians who successfully completed voluntary programs whose operators seek and receive EPA approval to grandfather these technicians, in accordance with § 82.161(g). As part of this process, these certifying programs may be required to send EPA-approved supplementary information to ensure the level of the technicians' knowledge. Technicians will be required to read this supplementary information as a condition of certification. The certifying programs will also issue new identification cards meeting the requirements specified above.

EPA is deleting the second paragraph of appendix (D)(j). The deleted material reads:

Persons who are currently technicians must be certified by November 14, 1994. Technicians that participated in certification programs which do not become EPA-approved certifying programs must either receive EPA-approved supplemental information from the original testing organization or be certified by taking a test given by an EPA-approved certification organization by November 14, 1994.

This provision has been rendered redundant by the more specific requirements in § 82.161 (a) and (g). Also, technicians who participated in programs that are not approved for grandfathering do not have the option of becoming certified through receipt of EPA-approved supplemental information.

B. Clarification of the Scope of the Technician Certification Requirement

EPA is making several changes to clarify the scope of the technician certification requirement. Four provisions related to the scope of this requirement were somewhat inconsistent: the definitions of "technician," and "opening," the provision at § 82.154(l) that prohibits anyone but certified technicians from opening or disposing of appliances, and the technician certification requirements at § 82.161(a). In the August 15, 1994 notice, EPA proposed changes intended to eliminate the inconsistencies. First, EPA proposed to modify the definition of "opening" in order to distinguish it more clearly from the definition of "technician." In the proposed change, "opening" would have been defined as any service, maintenance, or repair on an appliance that *would* (instead of "could") be reasonably expected to release refrigerant from the appliance to the atmosphere unless the refrigerant were previously recovered from the appliance. Second, EPA proposed to modify the disposal provision of the definition of "technician" to include only those parts of the disposal process (e.g., evacuation of the equipment) that have the potential to release refrigerant. Third, the proposal linked the definition of technician to the certification requirement at § 82.161 by replacing the term "person" in that requirement with the term "technician." Fourth, EPA proposed to eliminate the prohibition requiring technician certification for "opening" appliances.

Commenters supported EPA's efforts to clarify the scope of the technician certification requirement. In particular, commenters supported EPA's efforts to exclude persons from the requirement who performed activities that have very little chance of releasing refrigerant, such as painting appliances or repairing empty appliances. However, some commenters disagreed with the proposed scope, and others believed that the proposed clarification either failed to remove all of the ambiguities or introduced new ones.

The proposed clarifications are necessary to accomplish the intended purposes of the provisions being revised. One important goal of the refrigerant recycling provisions is to clearly identify those conditions that will require evacuation of an appliance. Another critical element of the provisions is to state the kinds of activities that may be performed only by a certified technician. In addition, EPA intends the regulations to clearly indicate the types of situations that do not require evacuation and those activities that need not be performed by a certified technician.

In their current form, the provisions do not clearly distinguish maintenance, service, repair and disposal that should require technician certification from maintenance, service, repair and disposal that should require evacuation of the appliance or component to be serviced. EPA believes that technician certification requirements should be triggered by activities that carry a reasonable risk or probability of refrigerant release. Where there is a reasonable risk of release, certification ensures among other things that the technician knows how to minimize that risk and understands the environmental importance of avoiding a release. However, EPA believes that evacuation

requirements should be triggered by activities that would release refrigerant unless the refrigerant were recovered previously. Evacuation avoids such an otherwise inevitable release by emptying the appliance of refrigerant prior to the contemplated activity. (While some refrigerant will remain in an appliance even after the appliance has been evacuated pursuant to § 82.156, the Agency does not intend to require evacuation to levels below those specified in § 82.156.)

In the rule published May 14, 1993, EPA had linked both the technician certification and evacuation requirements to the definition of "opening." Thus, "technician" was defined as "any person who performs maintenance, service, or repair that could reasonably be expected to release" refrigerant, and "opening" was defined as "any service, maintenance, or repair * * * that could reasonably be expected to release refrigerant." Evacuation was required prior to opening, and only technicians were allowed to open appliances. EPA had linked these requirements believing that the same group of people who performed service that required evacuation would be those who engaged in activities that carry significant risk of refrigerant release.

In the proposed amendment, EPA recognized that there are some types of service, such as charging appliances, that should not trigger evacuation requirements but that carry a significant risk of refrigerant release. On the other hand, there are other types of service, such as replacement of compressors, that should trigger evacuation requirements but that, once evacuation is complete, carry no risk of refrigerant release. Moreover, there are some people who engage only in one or the other of these types of maintenance, service, repair, and disposal.

Accordingly, EPA proposed to detach the certification requirement from "opening" appliances by deleting prohibition § 82.154(l), which had required certification for persons who open appliances. In addition, EPA proposed to sharpen the distinction between the definitions of "opening" and "technician." Whereas both definitions had referred to maintenance, service, or repair, "that *could*" [emphasis added] reasonably be "expected to release refrigerant to the atmosphere," the proposed definition of "opening" was changed to "service, maintenance, or repair * * * that *would* [emphasis added] be reasonably expected to release refrigerant to the atmosphere." The evacuation requirements remained triggered by "opening" of appliances. Finally, EPA tied the certification requirements at § 82.161 to the definition of technician, clarifying that maintenance, service, repair, and disposal that has no reasonable chance of releasing refrigerant would not require certification. In this fashion, EPA attempted to convey that while technician certification requirements would be triggered by activities carrying a reasonable risk or probability of refrigerant release, evacuation requirements would be triggered by activities that certainly would release significant quantities of refrigerant unless the refrigerant were recovered previously.

Commenters have stated, however, that changing the "could" in the definition of "opening" to "would" does not sufficiently define the types of maintenance, service, repair, and disposal that require evacuation of the appliance or component to be serviced. In addition, commenters asserted that, due to the ambiguity of the term "could," the proposed definition of technician fails to sufficiently define the types of maintenance, service, repair, and disposal that should require technician certification. Commenters noted that there are a variety of types of activities that might still be included in the certification requirement although EPA did not intend certification to cover these activities. Procedures such as painting appliances, tightening nuts and bolts on fully charged appliances, and disposing evacuated appliances "could" release refrigerant. As commenters pointed out, a dropped paint brush or wrench has a minute chance of rupturing a refrigerant line, while tightening nuts and bolts could release refrigerant in the unlikely event of bolt shearing or failure. In addition, commenters noted that under the current definition, certification might be required for maintenance, service, repair, and disposal of evacuated appliances because small amounts of refrigerant would be released even from evacuated appliances.

Commenters suggested a variety of alternative methods for clarifying the scope of the evacuation and technician certification requirements. Many commenters suggested that EPA explicitly list in the definitions of "opening" and "technician" the activities that it intended to include in or exclude from those definitions. For instance, one commenter proposed explicitly excluding disposal of empty appliances from the definition of "technician." Another commenter recommended adding a statement to the definition of "opening" that read, "opening does not include any activity intended by design to close or tighten the system, including but not limited to tightening nuts and bolts to reduce refrigerant leaks." A third commenter suggested including "adding or removing class I or class II refrigerant from an appliance" in the definition of "opening."

Commenters also suggested explicitly listing included or excluded activities in other provisions of the regulation, such as the evacuation requirements at § 82.156(a) and the prohibition at § 82.154(l). (Some commenters did not appear to realize that EPA was proposing to delete this prohibition.) One commenter suggested that EPA add language to § 82.156(a) clarifying that "[a]dding refrigerant does not, in itself, require evacuation." A second commenter proposed excluding from § 82.154(l) "persons who repair, service, or maintain appliances that do not contain refrigerant at the time work is performed." A third commenter suggested adding a provision that would prohibit anyone but certified technicians from adding or removing refrigerant from appliances.

In addition, commenters recommended other changes to the definition of "opening." These commenters focussed on the phrase, "would be reasonably expected to release refrigerant," which they found subjective and unclear. One commenter suggested substituting "would create a reasonable probability" for "would be reasonably expected." Two commenters recommended eliminating the concept of refrigerant release from the definition altogether and defining "opening" as "entry into the refrigeration circuit of an appliance." One of these defined "entry" as "any action that is intended by design to violate the integrity of an enclosure that contains or would contain the refrigerant."

There are clearly a number of ways in which the scopes of the certification and evacuation requirements could be clarified. To keep the rule as straightforward as possible, EPA has chosen to place the conditions that trigger these requirements in the definitions of "technician" and "opening" respectively and to use the definitions alone to delineate the scopes. In addition, as proposed, EPA is eliminating the prohibition at § 82.154(l), which introduced confusion by linking technician certification requirements to the definition of "opening."

As discussed above, EPA believes that evacuation requirements should be triggered by activities that would release refrigerant unless the refrigerant were

recovered previously. This includes any maintenance, service, or repair that leaves the appliance open to the atmosphere for more than an instant. It does not include connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to charge refrigerant into or recover refrigerant from the appliance. While these procedures may release refrigerant, the releases are small and unavoidable. Moreover, most of the procedures are fundamentally inconsistent with refrigerant recovery; their purpose would be defeated by it.

In view of these considerations, EPA is establishing the following definition of "opening:"

Opening an appliance means any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

EPA believes that the revised definition of "opening" responds to the concerns raised about the proposed definition and clarifies the scope of activities subject to evacuation requirements. By replacing "would be reasonably expected" with "would," the revision minimizes any subjectivity that may have been in the proposed definition and clarifies that the activities covered are those that would release, not just could release, refrigerant if the refrigerant were not recovered first. The revised definition also recognizes that there are some types of maintenance, repair, and disposal whose purpose is not consistent with refrigerant recovery and that therefore should not trigger evacuation requirements.

EPA does not believe that "entry into the refrigerant circuit" is sufficiently clear, in itself, to serve as the definition of "opening." Even combined with the suggested definition for "entry," the suggested definition of "opening" may be interpreted to include more than the commenters evidently intended. One could argue, for instance, that attaching hoses and gauges to an appliance could be construed as an "action that is intended by design to violate the integrity of an enclosure that contains or would contain the refrigerant." When the hose is attached, the previously self-contained appliance has an opening in it, even if this opening leads only to a charging cylinder or gauge instead of to the atmosphere. In fact, EPA believes that the language in the proposed definition of "entry" is more useful in the definition of "technician" than in the definition of "opening," and as discussed below, the Agency is using this language in the former.

Some of the commenters suggested defining "opening" in a way that would prevent "opening" from ever occurring if the evacuation requirements of § 82.156(a) were observed. One commenter, for example, suggested that EPA revise the definition to read, "Opening an appliance means entry into the refrigerant circuit of an appliance containing a class I or class II refrigerant, unless the refrigerant were previously recovered from the appliance." Another commenter recommended that EPA change the definition to read, "Any repair, service, or maintenance on an appliance that would create a reasonable probability that the physical integrity of the refrigeration circuit would be compromised and allow a release of refrigerant from the appliance to the atmosphere. Recovery of the refrigerant from the refrigeration circuit by a certified technician before beginning such repairs, service, or maintenance shall create a rebuttable presumption that there is no reasonable probability that a release of refrigerant from the appliance would be allowed as a result thereof."

EPA developed the term "opening" to describe the activities before which refrigerant should be recovered. Neither the existing nor the proposed definition of "opening" requires actual refrigerant release; instead, the definitions refer to activities that would ("could" in the existing definition) release refrigerant if the refrigerant were not previously recovered. The activities can take place either while the appliance is fully charged or after it is evacuated; they are considered "opening" either way. In this way, EPA established a simple trigger that can be invoked in the evacuation requirements at § 82.156(a) as follows: "all persons opening appliances * * * must evacuate * * *." If "opening" never occurs, then the evacuation requirements are never triggered. Alternative ways of triggering evacuation requirements, such as stating that recovering refrigerant establishes a rebuttable presumption that opening does not occur, add unnecessary complication and confusion to the regulatory structure.

As stated above, EPA believes that technician certification requirements should be triggered by activities that carry a reasonable risk or probability of refrigerant release. The Agency believes that activities that carry a reasonable risk of refrigerant release are those that are intended to move across the boundary of the refrigerant circuit, or "violate the integrity of the refrigerant circuit," as one commenter put it, while refrigerant remains in the appliance. These conclusions flow directly from the physical structure of refrigeration systems, including enclosed refrigerant circuits. As long as the refrigerant circuit is not violated, there is no risk of release expected. However, the risk of release increases dramatically immediately upon violation of the refrigerant circuit.

Violation of the refrigerant circuit includes attaching hoses and gauges to add or remove refrigerant and to measure pressures within the appliance. It also includes field assembly of pre-charged split systems, which involves establishing a new connection between previously separate refrigerant enclosures. It does not include activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance (unless the nut or bolt is obviously weakened and may be reasonably expected to shear and result in refrigerant release). EPA agrees with commenters that the chances of release during these activities are remote. EPA intended the phrase "could be reasonably expected to release" to prevent these remote possibilities from triggering the certification requirements, particularly since certification would not reduce the likelihood of such accidents occurring.

Activities that carry a reasonable risk of refrigerant release also exclude maintenance, service, repair, or disposal of appliances that have already been evacuated pursuant to § 82.156, unless the service consists of recharging the appliance. As stated in the proposal, EPA does not believe that individuals who service, maintain, repair, or dispose of only empty appliances need to be certified, since releases have already been minimized to the extent possible through evacuation. While maintenance, service, or repair on the empty appliance could conceivably have an impact on future releases, particularly if performed incorrectly, technician certification does not, and cannot, address every aspect of repair that could lead to such releases. Thus, requiring persons who repair empty appliances to be certified would not significantly reduce the likelihood of such releases. However, requiring certification for the individual who recharges the appliances probably will

significantly reduce the likelihood of such releases, because EPA's bank of test questions emphasizes the need to test appliances for leaks before recharging them. By performing such testing, the individual who recharges the appliance will be able to detect and rectify many of the problems that would lead to subsequent emissions from the appliance.

Just as EPA considers certification important for persons recharging appliances, the Agency considers certification important for persons who determine whether or not appliances have been evacuated adequately to be opened. However, the revised definition of technician, without changes elsewhere in the rule, might permit uncertified persons to make this determination in one instance. Specifically, the revised definition excludes individuals who move refrigerant within an appliance (e.g., into a receiver) and who thereby evacuate a component to be serviced. The revised definition also excludes individuals who open evacuated appliances or components. While EPA does not believe that either of these activities requires certification in itself, EPA recognizes that when they are performed in sequence by uncertified technicians, there is a risk that the appliance will be opened before it has been properly evacuated pursuant to § 82.154(a). Thus, EPA is inserting a sentence into § 82.154(a) that will require verification of evacuation by certified technicians. § 82.156(a) is amended to read:

(a) Effective July 13, 1993, all persons opening appliances except for MVACs for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. All persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. Effective December 9, 1994, certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

To make the definition of technician as clear as possible, EPA is explicitly listing activities that do or do not have a reasonable probability of releasing refrigerant in the definition of technician. The revised definition reads as follows:

Technician means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release class I or class II refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

EPA is also adding the following definition of "refrigerant circuit:"

Refrigerant circuit means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

There was some disagreement among the commenters regarding the kinds of maintenance, service, repair, and disposal that should require technician certification. Two commenters supported requiring certification of individuals who add refrigerant to appliances; however, one commenter opposed this requirement. This commenter argued that requiring certification for persons who add refrigerant to industrial process refrigeration was "extremely burdensome," since even transferring refrigerant from one portion of an industrial process refrigeration appliance to another (such as an internal receiver) could be construed as "adding refrigerant." In addition, the commenter stated that "the regulated community was lead (sic) to believe that the simple addition of refrigerant to a system * * * did not have to be certified." The commenter also stated that EPA staff told him in March of 1994 that persons who charge equipment do not need to be certified. Finally, the commenter stated that if EPA intended to require certification of persons who add refrigerant to industrial process refrigeration systems, EPA should establish a new certification category for such persons and should permit such persons an additional six months to become certified, since EPA was reversing its earlier position regarding the need for such persons to be certified.

EPA does not believe that requiring certification for persons who add refrigerant to industrial process refrigeration systems is unduly burdensome. First, transferring refrigerant from one part of a refrigeration circuit to another (including receivers that are separated from the operating circuit only by internal valves) will not require certification under the new definition of technician. The definition excludes activities that do not "violate the integrity of the refrigerant circuit." Thus, technicians who only transfer refrigerant within industrial process units will not have to be certified. Second, at least three other users of industrial process refrigeration commented on the rule, and none of them expressed concern that certification of persons adding refrigerant to industrial process refrigeration systems would be "burdensome." In fact, one of these commenters recommended that EPA add a provision to the regulation to specifically prohibit anyone but certified technicians from adding or removing refrigerant from appliances. Third, EPA believes that certification of persons adding refrigerant to industrial process systems (as opposed to transferring refrigerant within such systems) is justified because any disturbance of a refrigeration circuit has the potential to release significant quantities of refrigerant, for instance if a charging hose is not properly attached to a servicing aperture or if a valve is not resealed after charging.

To support the position that persons charging appliances should not be certified, the commenter also cited language from the preamble to the May 14, 1993 rule. This stated that persons who charge appliances during manufacture and transfer refrigerant from container to container did not have to be certified. The commenter implied that these activities were equivalent to charging appliances during servicing. However, in the same discussion cited

by the commenter, EPA repeatedly distinguished between these activities and servicing of appliances. EPA believes that transferring refrigerant between containers and charging during manufacture are in general less complex, more routinized, and in the case of charging during manufacture, more automated than charging appliances in the field. Thus, while EPA did not include appliance manufacturing personnel in its definition of "technician," it did include appliance "installers," whose only contact with refrigerant may be during the charging process.

EPA recognizes that there was some confusion within the regulated community regarding the scope of the certification requirement. In fact, EPA undertook this rulemaking in part to eliminate such confusion. However, EPA does not believe that the confusion justifies granting persons charging appliances their own category of certification or an additional six months to meet certification requirements. As noted above, only one commenter objected to the clarification that persons adding refrigerant must be certified; other commenters from the same sector supported this requirement.

One commenter supported EPA's clarification that installers of appliances must be certified. This commenter stated that the applicability of the certification requirement to installers had not been clear in the final rule published on May 14, 1993, but that the proposed definition corrected this problem. The commenter requested that EPA "continue to be consistent on this matter by prohibiting the sale of pre-charged split systems and components to 'do-it-yourself' installers such as homeowners."

Precharged components are parts of appliances that are sold with refrigerant already contained in them. Pre-charged split systems are air conditioners that are typically sold as two parts, one of which contains the evaporator, the other, the condenser. Both parts also contain refrigerant and must be joined at the installation site for the air conditioner to function.

As noted above, EPA agrees with the commenter that installers of pre-charged split systems and components should be certified, because joining the two halves of a split system during installation involves violation of the refrigerant circuit. Moreover, EPA agrees that sales of pre-charged split systems and other pre-charged appliance components should be limited to certified technicians to ensure that only certified technicians install them. The sales restriction provision (§ 82.154(n) in the rule published on May 14, 1994) contains an exception permitting the sale to uncertified persons of refrigerant contained in an appliance. While individual pre-charged components are clearly not "appliances," pre-charged split systems, although not fully assembled, arguably could be considered "appliances." Thus, the exception might be interpreted to permit the sale of pre-charged split systems to uncertified persons. EPA is revising this exception to remove this ambiguity and clarify that it allows the sale to uncertified persons of refrigerant contained in appliances only with fully assembled refrigerant circuits. This will prohibit the sale of split systems to anyone but certified technicians.

While this clarification of the sales restriction follows logically from the clarifications to the scope of the technician certification requirement that were proposed, the regulated community should have a reasonable period of time to conform to the revised sales restriction. The old exception to the sales restriction for refrigerant contained in appliances will therefore remain in effect until 60 days after publication of this final rule.

Another commenter argued that persons performing maintenance, service, or repair that are required during emergencies or that release only "de minimis" quantities of refrigerant should not need to be certified. This commenter stated that in an emergency, prompt action is often necessary in order to protect lives, property, and the environment. If a system were to develop a large leak during the night shift, for example, the entire refrigerant charge could be lost, necessitating shutdown of the process, before a certified technician was able to respond to a special call. All that might be required to repair the leak is tightening the nuts holding a flange together, an operation that would not be performed any better by a certified technician than by other plant personnel. The commenter stated that if EPA did not allow an exception to the certification requirements for emergencies, the commenter's staff may have no option but to "sit idly as entire charges of refrigerant escape." The commenter recommended that EPA establish the following exception to the certification requirements:

Nothing in this subpart is intended to prohibit servicing or maintenance activities performed by a person not certified as a technician pursuant to § 82.161, if the person is qualified by training and/or experience to perform the task safely and effectively, where: * * * (2) The servicing or maintenance activity is necessary due to an emergency; no technician certified for that type of appliance pursuant to § 82.161 is available; and postponing the activity is likely to result in significant releases of refrigerant, significant hazards to health, safety or the environment, or substantial property damage.

EPA recognizes that emergency situations may arise where a certified technician is not immediately available to perform needed repairs. However, EPA is reluctant to establish a special exception for emergencies for a number of reasons. First, EPA has clarified above that many procedures that would reduce leakage, such as tightening the nuts on the flange in the commenter's example, do not require certification because they are not expected to violate the integrity of the refrigeration circuit. Second, EPA does not consider the certification requirement overly burdensome. If operators of air-conditioning and refrigeration equipment believe that there is a significant chance that an emergency leak may occur, they can ensure that a certified technician is available on-site or on-call during every shift. This certainly provides a credible alternative to sitting "idly as entire charges of refrigerant escape." Third, the language suggested by the commenter for the exception includes several undefined, subjective terms, including "qualified," "emergency," "available," "significant" (applied both to "releases" and "hazards"), and "substantial." Even if EPA considered the exception necessary, defining these terms would be very difficult. Consequently, the exception would be difficult to apply and enforce, and absent a clearly demonstrated need for such a provision, EPA is reluctant to adopt this exception.

The commenter also requested an exception from certification requirements for persons performing maintenance, service, or repair that release only "de minimis" quantities of refrigerant and that do not require the use of recycling or recovery equipment. The commenter argued that plant operators would be fully qualified to perform minor repairs such as changing a gauge, if the maintenance does not involve evacuating the appliance and any resulting losses of refrigerant are *de minimis*. According to the commenter, such operators are already familiar with procedures such as closing valves to isolate high-pressure materials and removing and installing gauges; these procedures apply to much of the equipment in industrial facilities in addition to refrigeration equipment. Thus, workers who are not refrigeration

technicians would be able to perform these tasks with no greater loss of refrigerant than a certified technician would experience. The commenter claimed that if technicians were required to be certified to perform these procedures, the commenter's training costs would rise by a factor of ten, based on the need to have at least two certified technicians on-site (in case one went on vacation) for four or five shifts per day. The commenter recommended that EPA adopt an exemption for activities releasing "de minimis" quantities of refrigerant very similar to the exemption recommended for emergencies.

Again, EPA is reluctant to establish an exemption based upon subjective terms such as "qualified" and "de minimis," absent a clearly demonstrated need for such a provision. EPA is especially reluctant to adopt a provision that might invite uncertified technicians to speculate whether releases would or would not be "de minimis." While uncertified technicians may be sufficiently "qualified by training or experience" to make an appropriate determination of a repair that would produce only de minimis releases and to complete the repair with minimal release, EPA has no assurance that this will be the case. The purpose of technician certification is to provide this assurance. If technicians are indeed "qualified by training or experience" to violate the integrity of a refrigerant circuit, then they should be able to pass the certification test without extensive or expensive additional training.

Moreover, EPA believes that the commenter's method for estimating increased training expenditures exaggerates these expenditures. For instance, rather than certifying nine additional persons per plant, the commenter could defer certain types of maintenance for less than 24 hours until a certified technician was on shift, or could arrange to have a certified technician on-call during night shifts or during vacations of a shift's usual certified technician.

C. Limited Exemption From Certification Requirements for Apprentices

As was proposed, EPA is amending the rule to clarify that apprentices who meet certain requirements are exempt from the certification requirement for two years. A person would be considered an apprentice if he or she (1) were currently registered as an apprentice in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor's Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau), and (2) had been registered as an apprentice for less than two years. An apprentice would not need to be certified as long as he or she were closely and continuously supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the atmosphere. However, uncertified apprentices would not be able to purchase refrigerant after November 14, 1994. This provision clearly would not permit uncertified technicians who were not in a training program to perform, under a certified supervisor, service, maintenance, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the atmosphere.

EPA believes the apprenticeship exemption conforms with the goals of requiring certification. In establishing this exemption, EPA recognizes that field training programs in air conditioning and refrigeration provide a legitimate and valuable alternative or addition to classroom training. This exemption will allow bona fide trainees to gain field experience that will help them to obtain certification. Apprentices with such experience should better understand and apply the information on which certification tests them.

Limiting this exemption to registered apprentices under direct supervision and with no more than two years experience ensures that the exemption does not undercut the environmental protection goals of certification. Limiting the exemption to apprentice programs helps to ensure that supervision by certified technicians is available. In addition, the provision specifically requires close and continual supervision for the exemption to apply. Supervision should ensure that the apprentice follows environmentally safe practices. Moreover, the two-year time limit provides adequate time for the apprentice to gain useful field experience and seek certification, but narrowly bounds the period of any remaining environmental risk.

Most commenters supported an exemption from certification requirements for apprentices. However, many commenters believed that the exemption should be expanded to include persons who were not registered as apprentices with the Bureau of Apprenticeship and Training. Some commenters also believed that the exemption should be lengthened beyond two years. One commenter opposed the exemption.

Some commenters arguing for expansion of the exemption believed that it should also apply to students in classrooms. EPA wishes to clarify that the current rule *already* exempts students in vocational schools, community colleges, and university engineering programs from technician certification requirements, because work that is performed on appliances in classrooms or teaching laboratories strictly for educational purposes is not considered maintenance, service, or repair. EPA issued an applicability determination containing this conclusion on March 18, 1994 (Number 20). To the extent that prison training programs involve work that is strictly educational, students in those programs are also exempt from certification requirements.

Other commenters arguing for expansion of the exemption believed that it should also apply to trainees who work in the field but who are not registered with the Bureau of Apprenticeship and Training. One of these commenters noted that DOL-registered apprenticeship programs tend to be concentrated in the northeast and in heavily unionized areas, and that trainees in other areas may not use such programs as a means to learn the trade. This commenter believed that trainees should be permitted to submit an application to EPA to defer certification for up to two years, during which period a "learner's permit" could be issued to the trainee. Another commenter stated that many private sector contractors are discouraged from committing to formal, four-year apprenticeship programs by the Bureau's recordkeeping requirements and approval process. According to this commenter, prospective trainees often share contractors' reluctance to commit to a four-year program, preferring to be paid by competency level instead of by years in the program. The commenter believed that the requirement that trainees be supervised by certified technicians would prevent journeymen from masquerading as trainees, since it is expensive to send two workers to a site when one is sufficient. Both commenters believed that trainees should be supervised by certified technicians.

EPA recognizes that some trainees in air-conditioning and refrigeration maintenance, service, and repair are not currently registered with the Bureau of Apprenticeship and Training (or a recognized State Apprenticeship Council). However, EPA believes that third-party registration of apprentices and apprenticeship programs is critical to ensuring that only *bona fide* apprentices take advantage of the apprenticeship exemption. The

requirement that apprentices be supervised by certified technicians may discourage some technicians from misrepresenting themselves as apprentices, but does not replace the requirement that the apprentice be registered with the Bureau of Apprenticeship and Training. This is because the supervision requirement is more difficult to enforce than a requirement that uncertified apprentices be registered with the Bureau. The suggested approach that EPA register apprentices and issue two-year learner's permits would demand more resources to implement and enforce than are justified by the exemption.

The apprenticeship exemption is practicable from an enforcement and administration perspective only if it can be linked to an existing registration system, and the only existing, nation-wide registration system that EPA is aware of (or that commenters mentioned) is that operated by the Bureau of Apprenticeship and Training. In discussions with EPA, the Department of Labor has emphasized that the Bureau registers any program that meets its requirements, including both union and non-union programs throughout the U.S. EPA considers compliance with these requirements a reasonable condition for granting field training programs the privilege of exempting their participants from the technician certification requirements.

Two commenters believed that EPA should extend the apprenticeship exemption from two years to three to five years to better match the length of typical apprenticeships. These commenters stated that extending the exemption would permit apprentices to thoroughly learn proper and legal refrigerant handling techniques. However, other commenters believed that the two-year term was appropriate or acceptable. One trainer noted that the end of the second year of training was the logical point at which a trainee would be prepared for certification. EPA agrees that a two-year exemption provides sufficient opportunity for trainees to become ready to pass the certification test. While beneficial, further training is not essential to certification. Also, as noted above, strictly limiting the time period for the apprenticeship exemption constrains the period of any possible heightened environmental risk.

One commenter believed that there should be no exemption for apprentices. This commenter argued that delaying the certification requirement could lead to "a nonchalant attitude to safe refrigerant handling" among apprentices. In addition, the commenter claimed that close supervision of apprentices by certified technicians is not always feasible, because a single journeyman may supervise several apprentices at once, at different locations. Another commenter argued that apprentices should be required to be certified in the Core Type, which focuses on environmental and safety issues, because passage of this section of the test does not require a working knowledge of the trade.

EPA does not believe that establishing the two-year apprenticeship exemption from the certification requirement would lead apprentices to develop a cavalier attitude toward safety. Safety and environmental training can and should begin as soon as an apprentice begins his or her training in air conditioning and refrigeration. Also, one commenter noted that their program provides classroom training for certification, but they believe on-the-job training is necessary to teach the proper procedures; this emphasizes the importance of allowing safety and environmental procedures to be taught in a hands-on setting. In addition, after the certification requirement goes into effect, technicians learning proper refrigerant handling will have the additional incentive of realizing that they must take and pass a test on this topic after two years. For the above reasons, EPA does not believe that certification in Core Type would provide sufficient environmental benefits to justify the burden of requiring apprentices to undergo the certification process in two separate steps.

Regarding the ability of journeymen to closely supervise apprentices, EPA emphasizes that if close supervision is not possible, then unsupervised apprentices must not be permitted to perform maintenance, service, repair, or disposal that could release refrigerant from the appliance to the environment. However, unsupervised apprentices may perform maintenance, service, repair, or disposal that could not be reasonably expected to release refrigerant, such as repair of evacuated appliances or electrical work.[1]

D. Miscellaneous Corrections and Response to Comments

1. Correction to Definition of "Recover"

EPA is correcting a typographical error in the definition of "recover." As discussed in the preamble to the May 14, 1993, final rule (58 FR 28671), EPA had intended to adopt the definition of "recover" developed by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE). The ASHRAE definition reads, "to remove refrigerant in any condition from a system and store it in an external container without necessarily testing or processing it in any way" (ASHRAE Guideline 3–1990). However, EPA inadvertently omitted the phrase "and store it in an external container" from the definition adopted in the final rule. EPA is therefore revising and clarifying the definition by restoring this phrase to it.

2. Correction to Prohibition § 82.154(g)

EPA is also correcting a typographical error in prohibition § 82.154(g). In the direct final regulation published on August 19, 1994, this prohibition incorrectly cited the definition of "reclaimed" at § 82.152(q). The prohibition indicated that the definition was found at § 82.152(g). With the addition of the definition of "apprentice," the definition of "reclaim" will now found be at § 82.152(r), and EPA is revising prohibition § 82.154(g) to reflect this change.

3. Correction to Required Practice § 82.156(e)

EPA is also restoring a phrase that was inadvertently omitted from § 82.156(e). This provision states, "Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC-like appliance." EPA intended to except MVACs as well as MVAC-like appliances from this provision, which might otherwise be interpreted to supersede the recycling requirements of the section 609 refrigerant recycling rule published on July 14, 1992. EPA has always intended the section 609 regulation to govern the servicing of MVACs. Thus, EPA is revising the provision to read, "Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC or MVAC-like appliance."

4. Correction to Reclaimer Certification Provisions

In the direct final rule published on August 19, 1994, EPA revised the reclaimer certification provisions at § 82.164 to reflect EPA's adoption of the updated ARI 700–1993 industry

[1] EPA is aware that there are other federal and state requirements for proper supervision, as one commenter noted, and the Agency does not intend to provide any kind of exemption from such requirements.

standard for reclaimed refrigerant. As discussed in the preamble to the direct final rule (59 FR 42951), the revised standard differs from its predecessor, ARI 700–1988, in three main respects: (1) ARI 700–1993 includes eleven additional refrigerants, (2) ARI 700–1993 doubles the permissible water levels in liquid phase R–11 and R–113, and (3) where ARI 700–1988 allowed 0.5 as the maximum percentage by weight of "other refrigerants," ARI 700–1993 allows 0.50 as the maximum percentage by weight of "all other organic impurities, including other refrigerants."

Also as noted in the direct final rule, EPA made the change to the reclaimer certification provisions to maintain consistency between these provisions and the definition of reclaim. The revised provisions were intended to apply to reclaimers who became certified for the first time after October 18, 1994, the effective date of the direct final rule. EPA did not intend to require refrigerant reclaimers who had already been certified to become certified again. However, certified reclaimers have pointed out that the revised provisions could be interpreted to require recertification.

EPA considers such recertification unnecessary. As stated in the preamble to the final rule, the goal of reclaimer certification is to ensure that reclaimers are "fully aware of the regulations regarding reclaimed refrigerant" (58 FR 28700). Certified reclaimers have already demonstrated, through their original certifications, that they are aware of most of the regulations regarding reclaimed refrigerant, including the basic requirements to purify and analyze the refrigerant, to limit emissions to 1.5 percent of the refrigerant reclaimed, and to dispose of wastes from the reclamation process in accordance with all applicable laws and regulations. The only requirements of which they may not be aware are the changes to the ARI 700 standard enumerated above. Any failure to accommodate these changes, while undesirable, is not likely to have a significant adverse environmental or economic impact.[2] In fact, one of the changes represents a relaxation of the ARI 700–1988 standard.

Moreover, based on information submitted by certified reclaimers and the Air-Conditioning and Refrigeration Institute (the industry standard-setting group that developed ARI 700–1988 and –1993), EPA believes that most certified reclaimers either are aware or can be made aware of the new standard without recertifying. For instance, many reclaimers either participated in the development of ARI 700–1993 standard themselves or work with analytical laboratories that participated in the development of the standard. In addition, EPA plans to distribute copies of the direct final regulation, which includes the updated standard, to all certified reclaimers.

Finally, EPA will be undertaking a rulemaking in the near future to address refrigerant purity and transfer issues generally. EPA will be considering changes to the reclaimer certification provisions at that time. This will give the Agency an opportunity to revisit the recertification issue, if necessary.

Thus, in order to clarify that certified refrigerant reclaimers need not recertify, EPA is adding a sentence to the reclaimer certification provisions that states "Persons who certified under § 82.164 before October 18, 1994, need not recertify under this section."

5. Comments Outside the Scope of This Rulemaking

EPA received some comments that related to issues outside the scope of this rulemaking. One commenter advocated requiring certification of persons who dispose of small appliances. This commenter argued that disposers might not only release refrigerants, violating Clean Air Act requirements, but could be "liable as cogenerators" under other environmental statutes. EPA did not intend to request comment on whether disposers should be certified in the proposed rule published August 15, 1994; the part of the proposed definition of technician that excluded disposers of small appliances was identical to that in the final rule published May 14, 1993. The rationale for this exclusion may be found at 58 FR 28705.

The same commenter recommended that all certification programs that conform to § 82.161 be eligible for state required continuing education credits for licensing. Although EPA believes that this may be a good idea, eligibility for state continuing education credits is determined by the states, not EPA.

One commenter stated that EPA should amend the rule to permit transfers of used, unreclaimed refrigerant among subsidiaries of the same company. This issue is outside the scope of this rulemaking. However, EPA plans to undertake a rulemaking in the near future that will address refrigerant purity and transfer issues. EPA will take the comment into consideration at that time.

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated

[2] The one possible exception to this generalization is the broadening of the scope of the standard to include 11 additional refrigerants. If a new refrigerant was not reclaimed because the reclaimer did not know the purity standards for that refrigerant, the dirty refrigerant could harm air-conditioning and refrigeration equipment in which it was subsequently used. However, the 11 refrigerants added to the standard currently make up only a small fraction of the refrigerant that is reclaimed. Moreover, EPA believes that most certified reclaimers, when faced with a refrigerant whose purity standards they do not know, are likely to make an effort to discover these purity standards in order to retain their customers.

community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

IV. Effective Date and Public Participation

This amendment is effective upon signature by the Administrator. This expedited effective date is necessary to effectuate the provision of the amendment extending the November 14, 1994 deadline for certification of technicians that successfully completed voluntary certification programs. The provisions regarding grandfathering do not place any significant burdens on affected parties prior to thirty days after publication, although programs that are disapproved for grandfathering will have to notify their participants within thirty days of EPA's disapproval of their application. The provision acts to allow grandfathering of voluntary certification programs previously barred under the regulations. The clarification of the scope of the technician requirements also should not place any burden on affected parties. The provision clarifies the scope of the activities covered by the certification and evacuation requirements. This relieves persons performing activities that might have been previously covered by the requirements from complying with the requirements. The apprenticeship exemption is similar. Given the lack of burden upon affected parties and the need to grant an immediate exemption from the November 14, 1994 deadline, the Agency finds good cause for expediting the effective date of the rule. EPA believes that this is consistent with 5 U.S.C. 553(d)(1) and (3).

Three provisions of this rule are being issued without notice and comment. The first provision corrects the typographical error in § 82.154(g) mistakenly citing the definition of "reclaimed" as § 82.152(g) instead of § 82.152(q). The error was introduced in the direct final rule of August 19, 1994 (59 FR 42950). The context of the citation makes it clear that this is an erroneous citation, thus raising no need for public notice of its correction. The Agency believes that this circumstance provides good cause to find public notice of this amendment unnecessary under sections 307(d) and 553(a)(3)(B).

The second provision adds MVACs to the exclusion of MVAC-like appliances from § 82.156(e). That section allows refrigerant to be returned to the appliance from which it is recovered or another appliance owned by the same person without being recycled or reclaimed. Applying § 82.156(e) to allow the return of refrigerant to MVACs without being recycled or reclaimed would directly conflict with the requirements for "properly using" equipment for servicing MVACs under section 609 of the Clean Air Act, as amended and EPA's implementing regulations. See § 82.30(e). This conflict was the reason that MVAC-like equipment was excluded from § 82.156(e) in the May 1993 final rule (59 FR 28708). The rationale applies even more strongly to MVACs themselves, which were erroneously omitted from the exclusion. This is a minor correction that merely eliminates the conflict between the two provisions and any resulting confusion over which provision governs. This correction does no more than clarify the regulations to be consistent with the section 609 regulations and the current general understanding throughout the industry. These circumstances provide good cause for the Agency to find public notice of this amendment unnecessary under sections 307(d) and 553(a)(3)(B).

The third provision clarifies the Agency's position on certification of reclaimers under § 82.164. In the August 19, 1994 direct final rule (59 FR 42950), EPA updated the refrigerant purity standards in accordance with the most recent industry standards, and set a new deadline of October 18, 1994 for reclaimers to be certified under these standards. The Agency intended this change to require reclaimers to certify under the new, rather than the old, standard, but only for those reclaimers that certified for the first time after the October 1994 effective date. It did not intend to require recertification of already certified reclaimers.

The deadline for certification under the new standard has already passed, and all reclaimers that have not recertified could be considered technically out of compliance. This makes it important for the Agency to clarify the coverage of the rule expediently, and makes the delay of a notice and comment rulemaking procedure contrary to the public interest. The Agency finds that these circumstances provide good cause under sections 307(d) and 553(a)(3)(B) to proceed with this rulemaking without public notice.

V. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Recovery and recycle, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: October 28, 1994.

Carol M. Browner,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by redesignating paragraphs (u) through (y) as (w) through (aa), redesignating paragraphs (b) through (t) as paragraphs (c) through (u), revising newly designated paragraphs (o), (s), and (z), and by adding new paragraphs (b), (v), and (bb) to read as follows:

§ 82.152 Definitions.

* * * * *

(b) *Apprentice* means any person who is currently registered as an apprentice

in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor's Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training). If more than two years have elapsed since the person first registered as an apprentice with the Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training), the person shall not be considered an apprentice.

* * * * *

(o) *Opening* an appliance means any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

* * * * *

(s) *Recover* refrigerant means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

* * * * *

(v) *Refrigerant circuit* means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

* * * * *

(z) *Technician* means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release class I or class II refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or to measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

* * * * *

(bb) *Voluntary certification program* means a technician testing program operated by a person before that person obtained approval of a technician certification program pursuant to § 82.161(c).

§ 82.154 [Amended]

3. Section 82.154 is amended by revising paragraph (g)(1); by removing paragraph (l); by redesignating paragraphs (m) through (o) as (l) through (n) respectively; by redesignating newly designated paragraphs (m)(2) through (m)(6) as (m)(3) through (m)(7) respectively; by adding paragraphs (m)(2) and (m)(8); and by revising paragraphs (m)(6) and (m)(7) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) * * *

(1) The class I or class II substance has been reclaimed as defined at § 82.152(r);

* * * * *

(m) * * *

(2) The buyer has successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(2) expires on May 15, 1995.

* * * * *

(6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit;

(7) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair; or

(8) The refrigerant is charged into an appliance by a technician who successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(8) expires on May 15, 1995.

4. Section 82.156 is amended by revising paragraph (a) introductory text and by revising paragraphs (a)(1)(i), (a)(2)(i) introductory text, and (e) to read as follows:

§ 82.156 Required practices.

(a) Effective July 13, 1993, all persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. All persons opening appliances except for MVACs for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. Effective January 9, 1995, certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

(1) * * *

(i) Evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and the maintenance, service, or repair is not major as defined at § 82.152(k); or

* * * * *

(2)(i) If evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and if the maintenance, service, or repair is not major as defined at § 82.152(k), the appliance must:

* * * * *

(e) Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC or MVAC-like appliance.

* * * * *

5. Section 82.161 is amended by revising paragraph (a) introductory text; by removing the word "Persons" and adding in its place "Technicians" in paragraphs (a)(2) through (a)(5); by revising paragraph (a)(1), by revising paragraph (g); and by adding paragraph (a)(6) to read as follows:

§ 82.161 Technician certification.

(a) Effective November 14, 1994, technicians, except technicians who successfully completed voluntary certification programs that apply for approval under § 82.161(g) by December 9, 1994, must be certified by an approved technician certification program under the requirements of this paragraph (a). Effective May 15, 1995,

all technicians must be certified by an approved technician certification program under the requirements of this paragraph (a).

(1) Technicians who maintain, service, or repair small appliances as defined in § 82.152(x) must be properly certified as Type I technicians.

* * * * *

(6) Apprentices are exempt from this requirement provided the apprentice is closely and continually supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the environment. The supervising certified technician is responsible for ensuring that the apprentice complies with this subpart.

* * * * *

(g)(1) Any person seeking approval of a technician certification program may also seek approval to certify technicians who successfully completed a voluntary certification program operated previously by that person. Interested persons must submit to the Administrator at the address in § 82.160(a) verification that the voluntary certification program substantially complied with most of the standards of § 82.161(c) and appendix D of subpart F of this part. If the program did not test or train participants on some elements of the test subject material, the person must submit supplementary information on the omitted material to the Administrator for approval and verify that the approved information will be provided to technicians pursuant to section j of appendix D of subpart F of this part. In this case, the person may not issue a certification card to a technician until he or she has received a signed statement from the technician indicating that the technician has read the supplementary information. Approval may be granted for Type I, Type II, or Type III certification, or some combination of these, depending upon the coverage in the voluntary certification program of the information in each Type. In order to have their voluntary programs considered for approval, persons must submit applications both for approval as a technician certification program and for approval as a voluntary program by December 9, 1994.

(2)(i) Persons who are approved to certify technicians who successfully completed their voluntary programs pursuant to § 82.161(g)(1) must:

(A) Notify technicians who successfully completed their voluntary programs of the Administrator's decision within 60 days of that decision;

(B) Send any supplementary materials required pursuant to § 82.161(g)(1) to technicians who successfully completed their voluntary programs within 60 days of the Administrator's decision; and

(C) Send certification cards to technicians who successfully completed their voluntary programs within 60 days of receipt of signed statements from the technicians indicating that the technicians have read the supplementary information.

(ii) Persons who are disapproved to certify technicians who successfully completed their voluntary programs pursuant to § 82.161(g)(1) must notify technicians who successfully completed their voluntary programs of the Administrator's decision within 30 days of that decision.

(iii) Persons who withdraw applications for voluntary program approval submitted pursuant to § 82.161(g)(1) must inform technicians who successfully completed their voluntary programs of the withdrawal by the later of 30 days after the withdrawal or December 9, 1994.

(3) Technicians who successfully completed voluntary certification programs may receive certification in a given Type through that program only if:

(i) The voluntary certification program successfully completed by the technician is approved for that Type pursuant to § 82.161(g)(1);

(ii) The technician successfully completed the portions of the voluntary certification program that correspond to that Type; and

(iii) The technician reads any supplementary materials required by the Administrator pursuant to § 82.161(g)(1) and section j of appendix D of subpart F of this part, and returns the signed statement required by § 82.161(g)(1).

* * * * *

6. Section 82.164 is amended by revising the introductory text to read as follows:

§ 82.164 Reclaimer certification.

Effective October 18, 1994, all persons reclaiming used refrigerant for sale to a new owner, except for persons who properly certified under this section prior to October 18, 1994, must certify to the Administrator that such person will:

* * * * *

7. Appendix D to subpart F is amended by revising section j to read as follows:

Appendix D to Part 82 Subpart F—Standards for Becoming a Certifying Program for Technicians

* * * * *

j. Grandfathering

EPA will grandfather technicians who successfully completed voluntary programs whose operators seek and receive EPA approval to grandfather these technicians, in accordance with § 82.161(g). As part of this process, these certifying programs may be required to send EPA-approved supplementary information to ensure the level of the technicians' knowledge. Technicians will be required to read this supplementary information as a condition of certification. The certifying programs will also issue new identification cards meeting the requirements specified above.

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