EPA disagrees with this commenter. While EPA understands that accidents do occur, EPA believes that if the events are such that the leak rate surpasses the 15 percent or 35 percent thresholds, the necessary repairs should be made to ensure that the owners or operators of the appliances are in compliance. Such repairs would include replacement of the broken pipe or rupture disk that led to the accidental release. Such repairs would also include correcting any condition that repeatedly led to an accidental release (e.g. over pressurization). Moreover, since many leaks occur because of one-time events, such as ruptured pipe, it would be impossible to draw clear distinctions of what would be included in leak repair calculations.

One commenter stated that EPA should clarify that the owners or operators may hire contractors to determine the full charge. The commenter further believes that throughout the rule EPA should recognize the role of contractors who service refrigeration appliances. As stated earlier in this preamble, EPA recognizes that the owners or operators may have contractual arrangements with contractors or technicians who actually perform maintenance and repair work on the appliances subject to the leak repair provisions. While the work may be performed under such arrangements, the personnel are in effect acting as an agent of the owners or operators.

One commenter stated that EPA should clarify how to determine the full charge for appliances with multiple independent compressors and refrigerant loops. As EPA has stated elsewhere in this notice, the charge of an appliance is based on the charge of an individual refrigerant loop/circuit where that loop/circuit is not interconnected and that contains a normal charge of 50 pounds of refrigerant or more. EPA distinguishes between those that are independent and those that are interconnected, perhaps employing multiple compressors (e.g. parallel systems).

4. Best Efforts

EPA received several comments concerning the term "best efforts," as used in § 82.156(i)(2). Several commenters agreed with the Agency's interpretations. These commenters stated that it was appropriate to exclude formal protocols from the interpretation of best efforts because of wide variations in the regulated community. One commenter stated that each leak is unique and best efforts to repair a small leak will differ from those taken to repair larger leaks. A formal definition

would either be too complex or ineffective at capturing all the scenarios.

One commenter requested that EPA include a formal definition of best efforts in the final rule. The commenter stated that the lack of a formal definition could create uncertainty as to what the rule requires. The commenter recognized that the description of best efforts discussed in the NPRM originated with industry. The commenter provided two possible ways to better characterize a best efforts approach. The approach includes providing more description in § 82.156(i)(2) and/or creating a specific definition in § 82.152. The commenter suggested the following definitions:

best efforts means a repair method is used that is reasonably expected to be effective on the particular type of leak, based on past experience;

or

best efforts means that, during an extension of the 30-day period for repairs, the owner or operator repairs significant leaks to the extent practical during the 30 days, by using a repair method that is reasonably expected to be effective based on past experience, on those leaks that do not require an extension of time.

While EPA understands the benefits of having a formal definition for any term used in regulations, EPA does not believe these definitions solve the problem discussed in the NPRM. In the NPRM, EPA states that its concerns are the lack of formal protocols in the best efforts approach described by EPA. EPA characterizes a best efforts approach in the NPRM as implying that a methodology for repair that is reasonably expected to be effective based on past experience and potentially may include consultation (60 FR 3994). EPA does not believe the commenter's suggested language incorporates all of the concepts described in the NPRM. Adopting an inadequate definition does not benefit EPA or the regulated community. EPA requested comments on a definition hoping that perhaps an industry standard could be cited. Throughout the regulations promulgated under section 608, EPA refers to industry standards. Without the existence of such standards, EPA believes that a formal definition is not the best approach.

Several commenters stated that EPA should modify the proposed regulatory language in § 82.156 (i)(2) and (i)(2)(ii) to distinguish best efforts from sound engineering/professional judgment. The commenters are concerned that EPA erroneously included sound engineering/professional judgment in the definition of best efforts. The

commenters stated that the intention behind best efforts was that the owners or operators should do what is necessary within reason to repair leaks within 30 days in situations where longer extensions beyond 30 days are necessary to conduct repairs due to the unavailability of spare parts or compliance with other federal, state, or local regulations. In further discussions with the commenters, it appears that over time any initial distinction that EPA and CMA made in the settlement agreement between best efforts and sound engineering/professional judgment has become convoluted. EPA believes that the rationale for using the term best efforts for repairing leaks that required an extension beyond the initial 30 days was to ensure that where there are multiple leaks or where a leak can be partially repaired, the owners or operators will complete all reasonable actions during the initial 30 days. The result will be to reduce the leak rate as much as possible during the initial 30 days where additional time is necessary to complete all repair activities. Additional comments submitted by CMA confirm this interpretation. Therefore, EPA is amending § 82.156(i)(2) to remove the references to best efforts. Instead, EPA will state that the owners or operators must conduct all necessary leak repairs that do not require additional time beyond the initial 30 or 120 days. EPA believes that this change in language more adequately conveys the intent of this provision, which is to allow additional time, while ensuring that all that can be done has been done.

5. Static and Dynamic Tests

EPA received many comments supporting the use of static and dynamic tests. While these commenters agreed with the need for these tests, several suggestions for when the tests should be used and alternative terminologies were suggested. These comments will be discussed in greater detail later in this subsection. EPA received one comment opposing the use of static and dynamic tests. The commenter stated that static and dynamic tests are not precisely reliable methods on which to base a requirement to retrofit a piece of equipment. The commenter stated that it had documented cases where the results of such tests have been inconclusive. The commenter further believes that the tests are overly burdensome and unnecessary. The commenter believes that the tax and cost of refrigerants should provide the necessary incentives.