

ISSUE BRIEF |

NAFEM Evaluating Next Steps as U.S. Court of Appeals denies Petition for Review on Commercial Refrigeration Equipment Energy Conservation Standards: Members must meet new standards by March 2017.

October 4, 2016

What is the status of NAFEM's petition requesting review of the U.S. Department of Energy's (DOE) new energy consumption standards for some classes of commercial refrigeration equipment (CRE)?

On August 8, 2016, the U.S. Court of Appeals for the Seventh Circuit issued its decision denying the petition. The decision means manufacturers of the 49 classes of commercial refrigeration equipment covered under the new rule must be ready to comply with the new standards in just six months, by March 27, 2017.

Why did the Court deny the petition?

The Court deferred to the DOE and its decision-making to overcome NAFEM's position that DOE violated the Energy Policy Conservation Act and the Administrative Procedure Act in creating the CRE rule. According to NAFEM Legal Counsel Jeff Longworth, "Arguing against an agency is always an uphill battle. It's especially disheartening that the court did not look beyond the DOE's words and into the substance and technical impact of the case."

Why did NAFEM file the petition with the U.S. Circuit Court of Appeals?

NAFEM continues to believe the final CRE rule is neither technologically feasible nor commercially justifiable, the DOE's assessment was flawed, and the regulatory burden on manufacturers was not fully considered. Having no other recourse, NAFEM filed the Petition for Administrative Appeal in May 2014. The Air-Conditioning, Heating and Refrigeration Institute (AHRI) also filed a separate petition at the same time.

What additional steps did NAFEM consider to have these standards overturned or the timing for the implementation extended?

NAFEM considered several potential follow-up measures that included:

1. Filing for an "*en banc*" hearing. This means that all of the judges on the Seventh Circuit Court would elect to hear the case anew, rather than the three who heard arguments and issued the Court's opinion;
2. Requesting additional discussion with DOE to reiterate specific errors that may lead to future compliance problems; and,
3. Inviting legislative involvement.

To assist with its evaluation, NAFEM requested its members provide information about the practical impact the rule will have their businesses. Based on the feedback received, NAFEM chose to not further pursue an *en banc* hearing and the deadline for requesting such a hearing has passed.

Responses are still being received and NAFEM will further evaluate if additional discussions with DOE and/or legislative involvement are warranted.

Complete details on the final rule are available at

http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/27.

What does NAFEM need me to do?

The association continues to gather information and is willing to assist members with being able to clearly illustrate the errors in the final rule and explain why the final standard is not technologically feasible nor economically justified. If you haven't already shared the following information with NAFEM's outside legal counsel, please do so ASAP. Individual company responses will be held in the strictest confidence and only consolidated information will be shared with NAFEM.

1. Will the CRE rule cause you to stop offering for sale and making certain CRE models because they cannot comply with the new standards? If so, how many models and in which DOE product categories do they fall?
2. Do you have any models for which you think compliance with the new standards may be an issue, but for which you have not yet conducted the testing/analysis? If so, how many models and in which DOE categories do they fall?
3. Will you have to shut down production, in whole or in part, at any facility?
4. Will this cause you to lay off workers?
5. Will this endanger the financial viability of your company?

There are two ways you can provide this feedback:

1. Call NAFEM Legal Counsel directly to discuss:
 - Tammy Helminski – Tammy.Helminski@btlaw.com; +1.616.742.3926
 - Jeff Longsworth – Jeffrey.Longsworth@btlaw.com; +1.202.408.6918
2. Provide information in the [attached spreadsheet](#) (complete only what you can; you may not have inputs on all or even most columns) and email to Tammy or Jeff;

What organization is implementing the change(s)?

The U.S. Department of Energy (www.energy.gov), under the authority of the Energy Policy and Conservation Act, implemented this change as part of its mission to “ensure America’s security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions.”

What did NAFEM do to help address the industry’s needs prior to the final rule being issued?

Throughout the public comment and review process, NAFEM regularly conveyed the industry’s concerns about the proposed changes in partnership with allied industry organizations, including the Air-Conditioning, Heating and Refrigeration Institute (AHRI), Association of Home Appliance Manufacturers (AHAM), National Automatic Merchandising Association (NAMA) and others.

NAFEM actively and aggressively represented its members’ interests in the policy arena with DOE by providing public comments, submitting formal written requests to elected and appointed officials, forming coalitions with stakeholders and operators from a variety of industries, and helping member companies get involved as well.

Is there a process to request an “exemption”?

Individual companies should note that DOE regulations provide an “exemption process” that companies may find helpful for certain products that cannot meet the CRE standard. DOE’s exemptions website is: <http://energy.gov/eere/buildings/exceptions-doe-rules-and-regulations>. According to DOE’s regulations: A person seeking relief may file an “Application for Exemption” with DOE’s Office of Hearings and Appeals (OHA). The application must contain all the factual background to justify DOE granting such an exemption “to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens” that would otherwise result.

Who should I contact with questions?

NAFEM will continue to keep its members apprised of the its next steps through NAFEM Online and other communication. For questions on this topic, please contact Charlie Souhrada, CFSP, director of member services at NAFEM headquarters: csouhrada@nafem.org or 312.821.0201.