

## ISSUE BRIEF

# U.S. Court of Appeals upholds decision to vacate EPA rule requiring manufacturers to replace HFC refrigerants, foam-blowing agents

January 31, 2018

### What did the U.S. Circuit Court decide?

The U.S. Court of Appeals for the District of Columbia Circuit has denied a petition to rehear its [earlier decision](#) to “vacate,” or strike down, portions of a 2015 rule under the Environmental Protection Agency’s (EPA) Significant New Alternatives Policy (SNAP). EPA’s 2015 SNAP rule would have required manufactures to stop using specific hydrofluorocarbon (HFC) refrigerants and foam-blowing agents commonly used in a number of commercial foodservice equipment categories. Provisions of the vacated EPA ruling were to go into effect between July 2016 and January 2020.

### Why did the court make this decision?

According to the court, the Clean Air Act Section 612 *only* delegates to EPA the authority to require manufacturers to replace ozone-depleting substances. Since HFCs are not ozone-depleting substances, EPA cannot rely upon Section 612 as its authority to regulate or prohibit using HFCs pursuant to SNAP. The court issued its original opinion overturning EPA’s 2015 SNAP rule in August 2017. A petition for rehearing was filed one month later. The DC Circuit rejected that petition for rehearing on January 26, 2018.

### How will this final decision impact the foodservice equipment industry?

Portions of EPA’s 2015 SNAP rule that relate to HFCs have been vacated and remanded to EPA for further consideration. EPA has not revealed its next steps or further actions. In the interim, the State of California has communicated its intent to adopt regulations consistent with EPA’s 2015 SNAP rule limiting HFCs, despite the judicial remand. Other states may do the same. The U.S. Senate is considering a proposal to achieve comparable results and prevent/reduce the use of those same HFCs through its ratification process for the [Kigali Amendment](#) to the Montreal Protocol. Finally, EPA also may have other authority under the Clean Air Act that could achieve comparable results prohibiting using certain HFCs, a process that even the DC Circuit recognized in its August 2017 opinion articulating that Section 612 itself does not provide such authority.

### Can my company use R404A, R134a, R407C and R410A?

Based on the court’s original 2017 decision, EPA cannot ban the continued use of affected HFCs under its SNAP authority. However, EPA may use other authorities to attempt to achieve the same outcome, but the Agency has not revealed how it intends to proceed. Companies should recognize various ongoing, worldwide efforts to remove HFCs from use, and any continued use in the U.S. may be of limited duration. In addition, EPA is not necessarily prohibited from developing new limits that it could apply retroactively, with certain limitations.

### What should my company do to address this issue?

This evolving situation should be monitored closely. EPA still has several statutory options to regulate HFCs. Manufacturers are strongly encouraged to continue to explore alternative refrigerant options, but at least for now, the previously prohibited HFCs are legal to use under federal regulations.

### What is NAFEM doing to address this issue?

NAFEM’s Government Relations Team will continue actively monitoring proposed restrictions on HFCs and EPA’s strategy for responding to the court’s remand. We will keep members informed via our monthly *Advocacy Update* e-newsletter and Issue Briefs. For additional questions, contact Charlie Souhrada, CFSP, NAFEM vice president, regulatory & technical affairs: [csouhrada@nafem.org](mailto:csouhrada@nafem.org); +1.312.821.0212.