

Due to the August 8, 2017 US Court of Appeals decision vacating the July 20, 2015 EPA HFC Delisting Rule and subsequent appeal/stay to that decision by impacted stakeholders on September 22, 2017 the July 20, 2015 EPA HFC Delisting Rule is still effective until further action taken by the US Court of Appeals.

On August 8, 2017, a federal D.C. Circuit Court ruled that the Environmental Protection Agency (EPA) overstepped its authority under the Clean Air Act (CAA) with the 2015 rule that required companies to replace non-ozone-depleting hydrofluorocarbons (HFCs) with other chemicals. *Mexichem Fluor, Inc. v. EPA*. The court vacated the portion of the rule that required companies to stop using HFCs that the Agency had previously approved and remanded the rule to the EPA. (Basically, beginning January 2017, R404A and other HFC's were prohibited for specific sectors of refrigeration and lower GWP refrigerants such as R448A would be needed to replace them, with additional deadlines following thereafter.) Absent an appeal or further rulemaking (given the remand), the order vacating the prohibition of the use of these HFC refrigerants was slated to go into effect by September 22, 2017.

However, on September 22, 2017, the Natural Resources Defense Council (NRDC), Honeywell International, Inc. and Chemours Company, FC, LLC intervened for the Environmental Protection Agency (EPA) and filed an appeal. The appeal requests that all 9 judges in the Court of Appeals for the District of Columbia Circuit rehear the case that was overturned by a three-judge panel last month.

The appeal means that the original order to vacate is stayed. In other words, the appeal delays the effective date of the August 8, 2017 decision until the Court of Appeals for the DC Circuit reviews the appeal and makes a further decision. (The decision can be in the form of a denial, thereby reinstating the August 8 decision or a full rehearing and a subsequent decision.) Until then it's as if the court never ruled and the original SNAP EPA rule goes back into effect.

As a store operator that means until further notice you will not be able to commission a store with the delisted HFC refrigerants and will have to use a SNAP approved low GWP refrigerant (R448A or similar), with the caveat – that a ruling otherwise which may be tomorrow or in 2 years could reverse course and allow refrigerants such as R404A again.

A copy of the August ruling can be found here:

[https://www.cadc.uscourts.gov/internet/opinions.nsf/3EDC3D4817D618CF8525817600508EF4/\\$file/15-1328-1687707.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3EDC3D4817D618CF8525817600508EF4/$file/15-1328-1687707.pdf)

A copy of the September appeal can be found here:

https://www.nrdc.org/sites/default/files/nrdc-snap-petition-for-rehearing-and-addendum_2017-09-22.pdf

A link to Hussmann's website which includes more information on the acceptable refrigerants can be found here:

<http://www.hussmann.com/en/NewsArticles/Overview-of-DOE-EPA-Regulations-S-1-18-2017.pdf>