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## EPA Proposes Rescinding Certain HFC Rules for Refrigeration and Air-Conditioning Appliances

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On September 18, 2018, the U.S. Environmental Protection Agency (“EPA”) released an [advance copy of a rule](#) proposing to rescind the agency’s 2016 extension (“2016 Rule”) of certain appliance refrigerant leak repair rules to appliances that use non-ozone depleting substitute refrigerants such as hydrofluorocarbons (“HFCs”). Additionally, the proposed rule requests public comment on whether, alternatively, the 2016 Rule’s extension of refrigeration management requirements to substitute refrigerants should be rescinded in its entirety.

The proposed rule will likely affect entities that own, service, recycle, or dispose of refrigeration and air-conditioning appliances and refrigerants, as well as manufacturers and retailers of refrigerants and services for the refrigeration and air-conditioning industry. Interested stakeholders will have 45 days to submit comments once the proposed rule is published in the Federal Register. In addition to submitting comments, stakeholders are invited to a public hearing on the proposed rule that will take place at EPA headquarters 15 days after the rule is published in the Federal Register.<sup>[1]</sup>

### The Proposed Rule

The proposed rule would rescind certain leak repair and maintenance requirements found at 40 C.F.R. § 82.157 for non-ozone depleting substitute refrigerants. If the rule is finalized, appliances containing at least 50 pounds of substitute refrigerants would no longer be required to: conduct leak rate calculations when such refrigerants are added to appliances; repair appliances leaking such refrigerants above certain thresholds; or retrofit or retire appliances that are not repaired, among other requirements that would be rendered inapplicable.

EPA is also requesting comment on whether the 2016 Rule’s extension of 40 C.F.R. Part 82, Subpart F refrigerant management requirements to substitute refrigerants should be rescinded in its entirety. In addition to leak repair and maintenance requirements, the 2016 Rule extended other refrigeration management requirements to appliances containing substitute refrigerants, including the following:

Certification requirements for contractors and technicians purchasing or handling refrigerants for use in appliances;

The use of certified refrigerant recovery equipment to remove refrigerant from appliances to certain levels before servicing or disposal;

Requirements for disposers of small appliances, such as scrap recyclers and landfills, to ensure and document that refrigerants have been recovered; and

Reclaiming refrigerants to industry purity standards prior to being sold.

Finally, EPA is proposing to extend by six to twelve months the January 1, 2019 deadline for appliances containing substitute refrigerants to comply with 40 C.F.R. § 82.157, and requests comment on whether such a compliance date extension is necessary. Although EPA is proposing to rescind those leak repair and maintenance



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requirements for HFCs, the agency is proposing this extension as an interim measure in case final action on the proposed rule does not occur within a reasonable time before the compliance date.

## The 2016 Rule and EPA Regulation of HFCs

The proposed rule is consistent with EPA's previously stated intent to rescind certain parts of the 2016 Rule. After industry coalitions challenged the 2016 Rule in the U.S. Court of Appeals for the D.C. Circuit, one industry group submitted an administrative petition for reconsideration of the rule to EPA. In response, EPA announced in an August 2017 letter that it would issue a proposed rule revisiting the extension of the refrigerant management regulations to non-ozone depleting substitutes such as HFCs. The D.C. Circuit case<sup>[2]</sup> has been held in abeyance while EPA determined how to proceed with the 2016 Rule.

EPA's actions regarding the 2016 Rule are part of a broader effort under the Trump Administration to roll back several regulatory requirements pertaining to HFCs. In April 2018, EPA announced that it would suspend application of a 2015 rule under the Significant New Alternatives Policy ("SNAP") regulating HFCs in certain end uses ("SNAP Rule 20"). See 83 Fed. Reg. 18431 (Apr. 27, 2018). The agency took this action in response to a partial vacatur of SNAP Rule 20 in *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451 (D.C. Cir. 2017) ("Mexichem"). EPA's suspension of SNAP Rule 20 is being *challenged in the D.C. Circuit*,<sup>[3]</sup> and a petition for certiorari is pending before the U.S. Supreme Court regarding the *Mexichem decision*.<sup>[4]</sup> In another case,<sup>[5]</sup> EPA asked the D.C. Circuit to partially vacate SNAP Rule 21 consistent with the court's decision in *Mexichem* regarding SNAP Rule 20.

The Administration has not taken a position on whether it intends to ratify the Kigali Amendment adding HFC controls to the Montreal Protocol, despite broad industry support for the pact. Implementation of U.S. obligations under that amendment under domestic law would be more difficult in the face of these HFC deregulatory actions.

## Environmental Group and State Response

Given the above background, any action by EPA to rescind portions of the 2016 Rule will almost certainly be challenged by environmental groups. Moreover, even if federal requirements are rescinded, affected entities should anticipate states taking action to "fill the void."

In March 2018, the California Air Resources Board ("CARB") adopted rules replacing some of the SNAP Rule 20 regulations vacated in *Mexichem* and SNAP Rule 21 regulations potentially affected by that decision. Additionally, California Governor Jerry Brown recently signed the California Cooling Act (SB 1013) codifying into state law SNAP Rules 20 and 21 (subject to changes made by state statute or regulation), supplementing CARB's authority to adopt rules limiting the use of HFCs, and creating an economic incentive program to accelerate the transition from HFCs to alternative substances. New York, Maryland, and Connecticut have also recently announced plans to take similar action.

Accordingly, while affected entities should strongly consider engaging with EPA on the proposed rule to protect their interests, regulatory certainty regarding the use of HFCs will likely remain elusive for the foreseeable future.

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[1] Stakeholders can register for the hearing by emailing [spdcomment@epa.gov](mailto:spdcomment@epa.gov) at least two days before the hearing, stating whether they would like to have a speaking time reserved.

[2] *NEDA v. EPA*, Case No. 17-1017 (D.C. Cir.).

[3] *NRDC v. Wheeler*, Case No. 18-1172 (D.C. Cir.).

[4] *NRDC v. Mexichem*, Case No. 18-2 (U.S.).

[5] *Mexichem v. EPA*, Case No. 17-1024 (D.C. Cir.).

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