IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL,

Petitioner,

v.

E. SCOTT PRUITT, Administrator,
U.S. Environmental Protection Agency, and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondents.

Case No. 18-1172

PETITION FOR REVIEW

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15, the Natural Resources Defense Council hereby petitions the Court for review of the final action of Respondents E. Scott Pruitt, Administrator, U.S. Environmental Protection Agency, and U.S. Environmental Protection Agency to suspend EPA's final rule prohibiting certain uses of hydrofluorocarbons, published in the Federal Register on April 27, 2018 at 83 Fed. Reg. 18,431 and titled "Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program."

Dated: June 26, 2018

Respectfully submitted,

/s/ Peter J. DeMarco

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Petitioner Natural Resources Defense Council, makes the following disclosures:

Non-Governmental Corporate Party to this Action: Natural Resources Defense Council (NRDC).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NRDC, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Dated: June 26, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2018, the foregoing Petition for Review and Rule 26.1 Corporate Disclosure Statement of the Natural Resources Defense Council have been served by first-class mail on each of the following:

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable Jefferson Beauregard Sessions, III
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
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Matthew Z. Leopold
General Counsel
U.S. Environmental Protection Agency
Mail Code 2310A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

/s/ Peter J. DeMarco
Peter J. DeMarco

Attachment:

U.S. Environmental Protection Agency,
Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program, 83 Fed. Reg. 18,431 (Apr. 27, 2018)

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter B: Outdoor Burning				
*	*	*	*	*
Section 111.203	Definitions	7/7/2017	4/27/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
Section 111.217	Requirements for Certified and Insured Prescribed Burn Managers.	7/7/2017	4/27/2018, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2018–08662 Filed 4–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2003–0118; FRL–9977–05–OAR]

Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of guidance and stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing this document to dispel confusion and provide regulatory certainty for stakeholders affected by EPA's Significant New Alternatives Policy program final rule issued on July 20, 2015, and the decision of the Court of Appeals for the District of Columbia Circuit in the case of *Mexichem Fluor, Inc.* v. *EPA*. The 2015 Rule changed the listings for certain hydrofluorocarbons in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. It also changed the listings for certain hydrochlorofluorocarbons being phased out of production under the Montreal Protocol on Substances that Deplete the Ozone Layer and section 605 of the Clean Air Act. The court vacated the 2015 Rule ''to the extent it requires manufacturers to replace HFCs with a substitute substance'' and remanded the rule to EPA for further proceedings. This document provides guidance to stakeholders that, based on the court's partial vacatur, in the near-term EPA will not apply the HFC listings in the 2015 Rule, pending a rulemaking. This document also provides the Agency's plan to begin a notice-and-comment rulemaking process to address the remand of the 2015 Rule. The Agency is also providing notice of a stakeholder meeting as part of the rulemaking process.

DATES: EPA will hold a stakeholder meeting on May 4, 2018 to enable stakeholders to provide input as the Agency prepares to engage in rulemaking to address the court's remand of the 2015 Rule. The meeting will be held at 9:30 a.m. to 12:30 p.m. ET on Friday, May 4, 2018 at EPA, William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW, Washington, DC 20004. Information concerning this meeting will be available on the EPA website: *https://www.epa.gov/snap.* Please RSVP for this meeting by contacting Chenise Farquharson at *farquharson.chenise@epa.gov* by April 27, 2018.

FOR FURTHER INFORMATION CONTACT: Chenise Farquharson, Stratospheric Protection Division, (6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7768; email address: *farquharson.chenise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This document provides information related to the EPA's Significant New Alternatives Policy (SNAP) program final rule (2015 Rule) issued on July 20, 2015 (80 FR 42870), and the decision of the Court of Appeals for the District of Columbia Circuit in the case of *Mexichem Fluor, Inc.* v. *EPA,* 866 F.3d 451 (D.C. Cir. 2017). The 2015 Rule changed the listings for certain hydrofluorocarbons (HFCs) in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. The listings were changed from acceptable, or acceptable subject to use conditions, to unacceptable, or acceptable subject to narrowed use limits (*i.e.,* acceptable only for limited uses for a specified period of time). The 2015 Rule also changed the listings for certain hydrochlorofluorocarbons (HCFCs) being phased out of production under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and section 605 of the Clean Air Act (CAA). The court vacated the 2015 Rule ''to the extent it requires manufacturers to replace HFCs with a substitute substance'' and remanded the rule to EPA for further proceedings.

Through this document, EPA is taking three actions in response to the court's decision: (1) Providing guidance to stakeholders on how EPA will implement the court's partial vacatur of the 2015 Rule in the near term, pending a rulemaking; (2) providing information on the Agency's plan to address the court's remand of the 2015 Rule through rulemaking; and (3) providing notice of a stakeholder meeting to help inform the Agency as it begins developing a

proposed rule in response to the court's remand. EPA is issuing guidance to dispel confusion and provide regulatory certainty in the near term for users in the refrigeration and air conditioning, foam blowing and aerosol end-uses affected by the HFC listing changes in the 2015 Rule; thus, this document may be of interest to the following:

TABLE 1—POTENTIALLY REGULATED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS code	Description of regulated entities
Industry	238220	Plumbing, Heating, and Air Conditioning Contractors.
Industry	324191	Petroleum Lubricating Oil and Grease Manufacturing.
Industry	325199	All Other Basic Organic Chemical Manufacturing.
Industry	325412	Pharmaceutical Preparation Manufacturing.
Industry	325510	Paint and Coating Manufacturing.
Industry	325520	Adhesive Manufacturing.
Industry	325612	Polishes and Other Sanitation Goods.
Industry	325620	Toilet Preparation Manufacturing.
Industry	325998	All Other Misscellaneous Chemical Product and Preparation Manufacturing.
Industry	326140	Polystyrene Foam Product Manufacturing.
Industry	326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.
Industry	333415	Air Conditioning and Warm Air Heating Equipment and Commerial and Industrial Refrigeration Equipment Manufacturing.
Industry	336211	Motor Vehicle Body Manufacturing.
Industry	3363	Motor Vehicle Parts Manufacturing.
Industry	336611	Ship Building and Repairing.
Industry	336612	Boat Building.
Industry	339113	Surgical Appliance and Supplies Manufacturing.
Retail	423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.
Retail	423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
Retail	44511	Supermarkets and Other Grocery (except Convenience) Stores.
Retail	445110	Supermarkets and Other Grocery (except Convenience) Stores.
Retail	445120	Convenience Stores.
Retail	44521	Meat Markets.
Retail	44522	Fish and Seafood Markets.
Retail	44523	Fruit and Vegetable Markets.
Retail	445291	Baked Goods Stores.
Retail	445292	Confectionary and Nut Stores.
Retail	445299	All Other Specialty Foods Stores.
Retail	4453	Beer, Wine, and Liqour Stores.
Retail	446110	Pharmacies and Drug Stores.
Retail	44711	Gasoline Stations with Convenience Stores.
Retail	452910	Warehouse Clubs and Supercenters.
Retail	452990	All Other General Merchandise Stores.
Services	72111	Hotels (except Casino Hotels) and Motels.
Services	72112	Casino Hotels.
Retail	72241	Drinking Places (Alcoholic Beverages).
Retail	722513	Limited-Service Restaurants.
Retail	722514	Cafeterias, Grill Buffets, and Buffets.
Retail	722515	Snack and Nonalcoholic Beverage Bars.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this document.

B. How can I get copies of this document and other related material?

1. *Docket.* EPA has not established a new docket for this document. Publicly available information on the related 2015 Rule can be found under Docket ID No. EPA–HQ–OAR–2014–0198. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys (*https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

II. How is EPA responding to the court's decision on the July 2015 SNAP final rule?

Through this document, EPA is taking three actions in response to the court's decision: (1) Providing guidance to stakeholders on how EPA will implement the court's partial vacatur of the 2015 Rule in the near term, pending a rulemaking; (2) providing information on the Agency's plan to address the court's remand of the 2015 Rule through rulemaking; and (3) providing notice of a stakeholder meeting to help inform the Agency as it begins developing a proposed rule in response to the court's remand. As previously mentioned, EPA is issuing this guidance to dispel confusion and provide regulatory certainty in the near term for users in the refrigeration and air conditioning, foam blowing and aerosol end-uses affected by the HFC listing changes in the 2015 Rule. Specifically, until EPA completes a rulemaking addressing the remand, EPA will not apply the HFC listings in the 2015 Rule. While this guidance is intended to provide a clear statement of EPA's understanding of the

court's vacatur in *Mexichem,* it is not intended to represent a definitive or final statement by the Agency on the court's decision as a whole. In fact, EPA anticipates that its actions in response to the decision will be informed by input from stakeholders and the notice-and-comment rulemaking process that will address the court's remand.

A. Background

The SNAP program implements section 612 of the Clean Air Act. Several major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbon, and chlorobromomethane) or class II (HCFC) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes that it finds to be unacceptable for specific uses and to publish a corresponding list of acceptable substitutes for specific uses.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c).

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

In 1994, EPA published a rule setting forth the framework for administering the SNAP program (''1994 Framework Rule'') (59 FR 13044; March 18, 1994). Among other things, that rule established prohibitions on use of substitutes inconsistent with the SNAP listings, including a prohibition stating that ''[n]o person may use a substitute after the effective date of any rulemaking adding such substitute to the list of unacceptable substitutes.'' 40 CFR 82.174. The 1994 Framework Rule defined ''use'' broadly as ''any use of a substitute for a Class 1 or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses.'' 40 CFR 82.172. Thus, for example, use encompasses not only the manufacture of equipment with a substitute, such as the manufacture of a foam-blowing system; it also includes the use of that foam system to blow the foam into another product, such as foam cushions, or to blow the foam as insulation in a building. EPA issued its initial listing decisions as part of the 1994 Framework Rule and has continued to list substitutes. The lists of fully acceptable substitutes are not included in the CFR but instead are available at *https://www.epa.gov/snap/snap-substitutes-sector.* All other listing decisions (*i.e.,* unacceptable or with restrictions on use) are contained in tables provided in appendices to EPA's SNAP regulations (40 CFR part 82 subpart G). There are separate tables for each of the major industrial use sectors, including adhesives, coatings and inks; aerosols; cleaning solvents; fire suppression and explosion protection; foam blowing agents; refrigeration and air conditioning; and sterilants, as well as separate tables for each type of listing: acceptable with use conditions, acceptable subject to narrowed use limits or unacceptable.

The 1994 Framework Rule, as implemented by EPA, has applied to all users (*e.g.,* product manufacturers, intermediate users, end-users) within a regulated end-use without making distinctions between product manufacturers and other users or between those who were using ozone-depleting substances (ODS) at the time a substitute was listed as unacceptable and those who were not. The 2015 Rule, like all other actions EPA has taken implementing the 1994 Framework Rule over the last quarter-century, also made no such distinctions. It simply changed the listings for various previously listed substitutes.

B. How is EPA implementing the court's partial vacatur of the 2015 Rule in the near term, pending rulemaking?

In *Mexichem Fluor* v. *EPA,* the court ''vacate[d] the 2015 Rule to the extent it requires manufacturers to replace HFCs with a substitute substance.'' 866 F.3d at 464. For the reasons explained below, EPA will not apply the HFC use restrictions or unacceptability listings in the 2015 Rule for any purpose prior to completion of rulemaking. EPA's implementation of the court's vacatur pending rulemaking is intended to dispel confusion and provide regulatory certainty in the near term for users in the refrigeration and air conditioning, foam blowing and aerosol end-uses affected by the HFC listing changes in the 2015 Rule.

Two chemical suppliers, Arkema and Mexichem (Petitioners), challenged the portion of the 2015 Rule that removed the listings of certain HFCs as acceptable, or acceptable subject to use conditions in certain end-uses, and listed those HFCs as unacceptable, or acceptable subject to narrowed use limits, in the same end-uses. The Petitioners raised two central arguments. First, they claimed that EPA did not have the authority to require that users of HFCs switch to another alternative. Second, they challenged the various listing decisions as ''arbitrary and capricious.'' The court rejected the Petitioners' arbitrary and capricious challenges but ruled that EPA did not have authority to ''require manufacturers to replace HFCs with a substitute substance.'' Id. at 464. The court determined that the word ''replace'' as used in CAA section 612(c) applies only to the immediate replacement of an ODS, stating that ''manufacturers 'replace' an ozone-depleting substance when they transition to making the same product with a substitute substance. After that transition has occurred, the replacement has been effectuated, and the manufacturer no longer makes a product that uses an ozone-depleting substance.'' Id. at 459. Although the court's decision mainly discusses manufacturers, footnote 1 of the court's opinion indicates that ''[the court's] interpretation of Section 612 applies to any regulated parties that must replace ozone-depleting substances within the timelines specified by Title VI.'' [1] Id. at 457.

The language of the vacatur refers to ''manufacturers'' and to the replacement of HFCs. The opinion appears to use the term ''manufacturers'' in the sense of ''product manufacturers.'' *See* Id. at 460.[2] However, nothing in the

[1] Section 612(c) provides that ''the Administrator shall promulgate rules under this section providing that it shall be unlawful to replace any class I or class II substance with any substitute substance'' where the Administrator determines that a safer alternative is available.

[2] While ''product'' is not defined in the SNAP regulations, other portions of EPA's stratospheric protection regulations distinguish between

Continued

regulatory language promulgated as part of the challenged 2015 Rule draws a distinction between product manufacturers and other users of substitutes.[3] Nor does the 2015 Rule draw a distinction between persons using HFCs and those using an ODS. The regulatory text included in the 2015 Rule is comprised solely of tables listing EPA's decision on certain substitutes for specific end-uses. Similarly, the 1994 Framework Rule distinguishes neither between product manufacturers and other users nor between someone using an HFC and someone using an ODS. For each specified end-use, the 2015 Rule, as issued, in conjunction with the 1994 Framework Rule, would prohibit any user from using a substitute listed as unacceptable—or from using, without adhering to narrowed use limits, a substitute listed as acceptable subject to such limits—after the relevant date. Thus, the SNAP regulations as currently written do not provide the distinctions that would be necessary to accommodate the letter of the court's vacatur. The narrower language used by the court does not exist in either the 2015 Rule or the 1994 Framework Rule; nor do the distinctions discussed above emerge when those two rules are read together.

The regulatory tables, which are the only regulatory text promulgated in the 2015 Rule, are comprised of individual listing decisions. Each listing of a substitute is comprised of at least four columns of information. The first column lists the regulated end-use, such as ''Retail food refrigeration (supermarket systems) (new)'' or ''Rigid Polyurethane [Foam]: Appliance.'' The second column lists the substitute or substitutes to which the listing decision applies. The third column identifies the ''decision'' (''Unacceptable'' or ''Acceptable subject to narrowed use limits'') and also identifies the date on which the listing decision will apply. The final column provides ''Further information.'' Each listing of a substitute as acceptable subject to narrowed use limits contains an additional column identifying the ''Narrowed use limits.'' This column identifies the limited uses for which the substitute remains acceptable for use (*e.g.,* ''military or space- and aeronautics-related applications'' and the time period for which use remains acceptable (*e.g.,* ''Acceptable from January 1, 2017, until January 1, 2022''). Thus, for each listing decision there is no language that could be understood as being removed or struck out by the court so that some portion of the listing decision would remain in effect pending EPA's action on remand.

While EPA could, on remand, rewrite the individual listings to create sub-listings for different types of users—*e.g.,* separating out manufacturers, or separating out those still using ODS—such additions to the 2015 Rule would require notice-and-comment rulemaking. This situation contrasts with those where a court decision affects specific regulatory language, striking some of that language while leaving the remainder untouched. Here, there is simply no regulatory language that can be parsed in that manner. Nor is waiting to address the court's vacatur until the agency can complete notice-and-comment rulemaking a satisfactory solution. The court clearly intended to vacate the 2015 Rule to some ''extent.'' The mandate has issued; accordingly, the court's decision is now in effect.

In addition, EPA is aware that regulated entities are experiencing substantial confusion and uncertainty regarding the meaning of the vacatur in a variety of specific situations. Since the court mandate issued, EPA has received a significant number of inquiries from equipment manufacturers, refrigerant producers, and various other users. Some have asked general questions regarding the effect of the partial vacatur of the 2015 Rule, while others have asked more specific questions about compliance both for those end-uses for which the compliance dates have passed and for those for which there is a future compliance date. For those end-uses with future compliance dates, these users are seeking guidance to help them make plans for future operations; if these users of HFCs would not be able to continue such use, they may need to take steps well in advance of the compliance date, such as researching and developing revised foam formulations; retooling manufacturing facilities; testing updated equipment or products to be certified to industry standards; and achieving compliance with fire codes. Other stakeholders have expressed confusion in understanding how the partial vacatur affects particular types of equipment that might fall under multiple end-uses, such as a stand-alone commercial refrigerator with foam insulation. Deferring answers to stakeholder questions until the completion of rulemaking would ignore the practical realities faced by the business community.

In addition, attempting to draw the distinctions made by the court would present practical difficulties for implementation in advance of rulemaking. First, the SNAP regulations do not address what constitutes product manufacture. EPA went through a full notice-and-comment rulemaking to address that issue with respect to appliances for the purpose of regulations implementing the HCFC phaseout under section 605 of the Clean Air Act. *See, e.g.,* ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,'' 74 FR 66439–66441 (Dec. 15, 2009). In that rulemaking, EPA recognized that while some appliances are shipped fully assembled and charged, others are assembled or charged in the field. With respect to the latter, there was ambiguity as to the point of manufacture and the identity of the manufacturer. EPA provided a definition to resolve that ambiguity in the context of those regulations. Without a clear definition of product manufacture in the SNAP context, there may be considerable ambiguity about who is the ''manufacturer'' for certain products—for example, supermarket refrigeration systems—and resulting confusion about the impacts of the court's decision.

Moreover, in footnote 1 of the decision, the court indicates that the interpretation it adopts in the decision ''applies to *any regulated parties* that must replace ozone-depleting substances.'' This appears to extend the court's holding to apply to any user subject to the HFC listing changes, and not simply manufacturers. 866 F.3d at 457 (emphasis added). Implementing the vacatur more narrowly in the near term would not only raise practical implementation difficulties but likely would be inconsistent with the court's language in footnote 1.

Second, neither the 1994 Framework Rule nor the 2015 Rule addresses the date by which a manufacturer must have switched to an HFC in order to avoid being subject to the 2015 Rule listing decisions. Possible dates could include the effective date of the 2015 Rule; the applicability date of the specific listing change; or the date on which the court's mandate issued. This lack of clarity could result in confusion about whether or not the listings in the 2015 Rule apply to individual manufacturers. Even if there were a clear date that would govern, there are currently no requirements for manufacturers to document the date of

''products'' and ''substances.'' *See, e.g,* the definition of ''controlled substance'' at 40 CFR 82.3; the definitions of ''product containing'' and ''manufactured with a controlled substance'' at 40 CFR 82.106,

[3] Under the 1994 Framework Rule, EPA defined manufacturer as ''any person engaged in the direct manufacture of a substitute.'' 40 CFR 82.172. SNAP listing decisions, such as those at issue in the 2015 Rule, do not apply to manufacturers of the substitute but rather to the subsequent use of that substitute in a product or process or other use.

a change to an HFC; this lack of documentation would hinder the agency's ability to implement the rule as envisioned in the court's opinion, because it would not know whether or on what date manufacturers had made the switch.

Third, because neither the 1994 Framework Rule nor the 2015 Rule creates a distinction between users using ODS and those using substitutes, neither rule addresses more complex situations in which both types of substances may be in use. Specifically, many manufacturers own multiple facilities, have multiple production lines at a single facility, make multiple different products or product models, or make products that can operate with either an ODS or a substitute. For example, a manufacturer of supermarket refrigeration equipment currently produces new equipment designed to operate with HFC blends or other non-ODS refrigerants and may assist its customers with retrofitting or replacing parts of existing supermarket systems using HCFC–22 or HCFC blends. Future rulemaking could address the numerous questions raised by these more complex situations—*e.g.,* has a manufacturer switched to an HFC if one of multiple facilities is using an HFC or if one of multiple product lines is using an HFC? Alternatively, can the same manufacturer be considered to not yet have switched to HFCs if it still uses ODS in some of its facilities or product lines? Because the rules as written do not resolve these issues, there is no practical way to address these questions at this time.

EPA recognizes that the court vacated the 2015 Rule ''to the extent that'' it requires manufacturers to replace HFCs. Based on its expertise in administering the SNAP regulations, and its understanding of the 2015 Rule, EPA concludes that the vacatur cannot be implemented by treating specific language in the HFC listings as struck by the court. Rather, the *listing* of HFC's as unacceptable, or acceptable subject to use restrictions, *is* the means by which the 2015 Rule ''require[d] manufacturers to replace HFCs with a substitute substance.'' Vacating the 2015 Rule ''to the extent'' that it imposed that requirement *means* vacating the listings. To apply the court's holding otherwise would be to drastically rewrite the 2015 Rule, and EPA believes that it would not be appropriate to undertake such a rewrite without undergoing notice and comment rulemaking. As explained above, those entities that have historically been regulated under the SNAP program are uncertain about what the court's decision means and which actions remain subject to regulation and which do not; the agency cannot remain silent on the implications of the court's vacatur until such time as the agency can complete a notice-and-comment rulemaking because of the considerable confusion and need for certainty that currently exist. Each HFC listing, as a unit, ''requires manufacturers to replace HFCs with a substitute substance.'' EPA therefore will implement the vacatur as affecting each HFC listing change in its entirety pending rulemaking to address the remand. Thus, EPA will not apply the HFC use restrictions or unacceptability listings in the 2015 Rule for any purpose prior to completion of rulemaking. Although EPA will implement the court's vacatur by treating it as striking the HFC listing changes in the 2015 Rule in their entirety, EPA recognizes that the court rejected the arbitrary and capricious challenges to the HFC listing changes. On remand, EPA intends to consider the appropriate way to address HFC listings under the SNAP program in light of the court's opinion.

The 2015 Rule also contains HCFC listings that were not challenged by the Petitioners and that were not addressed by the court in *Mexichem.* Because those provisions were not challenged and were not addressed by the court, and because those listing decisions are severable from the HFC listings, we are choosing in the near term to continue upholding these provisions as remaining in effect. Each of the HCFC listings is a distinct unit, just as each of the HFC listings is a distinct unit. Indeed, the severability of the specific listings from each other contrasts with the *non*-severability of the particular effects of the rule on manufacturers singled out by the court in the narrower phrasing of its holding—another reason why EPA believes that footnote 1 of the opinion extends that holding to all users, in keeping with the structure of the regulations.

C. What are EPA's plans for a rulemaking to address the court's remand?

In *Mexichem Fluor* v. *EPA,* the court remanded the 2015 Rule to the Agency for further proceedings. While in this document EPA provides guidance on the effect of the vacatur on the 2015 Rule to address the immediate uncertainty, the larger implications of the court's opinion remanding the rule to the agency require further consideration. To address the court's remand, EPA will move forward with a notice-and-comment rulemaking and will seek input from interested stakeholders prior to developing a proposed rule.

The court's interpretation of CAA section 612 raises potentially complex and difficult implementation questions for the SNAP program. EPA may consider the following as it prepares to undertake notice-and-comment rulemaking:

- On remand, whether EPA should revisit specific provisions of the 1994 Framework Rule, such as those noted below, to establish distinctions between users still using ODS and those who have already replaced ODS:
  - The regulatory prohibitions (40 CFR 82.174) on use and introduction into interstate commerce
  - the notification requirements in the applicability section (40 CFR 82.176)
  - specific definitions, for example, the definitions of ''substitute'' and ''use'' (40 CFR 82.172). The current definition of ''substitute'' is ''. . . any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or II compound.'' The current definition of ''use'' is ''. . . any use of a substitute for a Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses.''
- Whether EPA should revisit its practice of listing substitutes as acceptable subject to use conditions. Such listings allow the substitutes to be used only if certain conditions are met to ensure risks to human health and the environment are not significantly greater than for other available substitutes. For example, EPA has established use conditions for certain refrigerants to address flammability concerns across the same refrigeration end-uses. If use conditions would only apply to users switching from an ODS, EPA may consider whether to continue to list substitutes as acceptable subject to use conditions, given that some users would not be required to abide by the use conditions.
- Whether EPA should distinguish between product manufacturers and other users, and if so, how EPA should address ambiguity about who is the manufacturer of certain products, such as those that are field-assembled or field-charged.
- Whether EPA should revisit the regulations' applicability to certain end users. Historically, the SNAP program has applied to all users within an end-use, whether a product manufacturer, a servicing technician, or an end user of

a substitute. For many end-uses, the end users have been able to rely on product manufacturers' compliance with the SNAP listings. EPA may consider how it should address the heavier burden that might fall on end users, who in some cases may be less familiar with EPA's regulations, in cases where product manufacturers may be making some products that an end user still using an ODS may not be able to purchase and use. EPA may also consider whether that heavier burden means that EPA should not apply the regulations to those end users.

• Whether EPA should clarify when the replacement of an ODS occurs: *e.g.,* on a facility-by-facility basis, or on a product-by-product basis. EPA may also consider whether to propose recordkeeping and reporting requirements to document when a user has transitioned to using a non-ODS.

This list of considerations is not intended to be exhaustive, but rather provides an indication of the areas of initial thinking. The court also mentioned other possible approaches to regulation that the Agency could consider on remand. These include whether EPA may be able to use ''retroactive disapproval'' to revise an earlier determination where faced with new developments or in light of reconsideration of the relevant facts. In addition, the court mentioned other authorities EPA could consider to regulate substitutes for class I and class II ODS, such as the Toxic Substances Control Act (TSCA) and a number of CAA authorities, including the National Ambient Air Quality Standards (NAAQS) program, the Hazardous Air Pollutants (HAP) program, the Prevention of Significant Deterioration (PSD) program, and emission standards for motor vehicles. EPA would be interested in any thoughts stakeholders may have on the viability and desirability of these approaches.

EPA appreciates there is interest from a wide variety of stakeholders in the development of a rule to address the court's decision on remand. Therefore, as an initial step, and as provided in more detail in the section below, EPA is providing notice of a stakeholder meeting. The purpose of sharing the Agency's preliminary considerations at this time is to provide a more specific roadmap to facilitate and focus the further input of our individual stakeholders. By laying out considerations raised by the court remand and its near-term plans, EPA seeks to work with stakeholders to continue to gather and exchange information that can assist the Agency as it begins to develop a proposed rule to address the court's remand of the 2015 Rule.

D. What are EPA's plans for a stakeholder meeting?

As indicated in the above **DATES** section, EPA will hold a stakeholder meeting on Friday, May 4, 2018, in Washington, DC from 9:30 a.m. to 12:30 p.m. to allow interested parties to provide input on what the Agency should consider as it begins developing a proposed rule in response to the court's remand of the 2015 Rule. Please follow the instructions provided to RSVP for this meeting as specified above in the **DATES** section of this document. Additional information concerning this stakeholder meeting will be available on the EPA website: *https://www.epa.gov/snap.*

Dated: April 13, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–08310 Filed 4–26–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

Control of Emissions From New and In-Use Highway Vehicles and Engines

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 82 to 86, revised as of July 1, 2017, on page 439, in § 86.000–7, the introductory text is reinstated to read as follows:

§ 86.000–7 Maintenance of records; submittal of information; right of entry.

Section 86.000–7 includes text that specifies requirements that differ from § 86.091–7 or § 86.094–7. Where a paragraph in § 86.091–7 or § 86.094–7 is identical and applicable to § 86.000–7, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.091–7.'' or ''[Reserved]. For guidance see § 86.094–7.''

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[FR Doc. 2018–09058 Filed 4–26–18; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R02–RCRA–2018–0034; FRL–9974–06—Region 2]

New York: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State regulations that will be subject to EPA's inspection and enforcement. This rule does not incorporate by reference the New York hazardous waste statutes. The rule codifies in the regulations the prior approval of New York's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations.

DATES: This regulation is effective June 26, 2018, unless EPA receives adverse written comment on this regulation by the close of business May 29, 2018. If EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of June 26, 2018 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–RCRA–2018–0034, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Email: azzam.nidal@epa.gov.*

• *Fax:* (212) 637–4437.

• *Mail:* Send written comments to Nidal Azzam, Base Program Management Section Chief, Hazardous Waste Programs Branch, Clean Air and Sustainability Division, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.

• *Hand Delivery or Courier:* Deliver your comments to Nidal Azzam, Base