

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, STATE OF CALIFORNIA,
STATE OF CONNECTICUT, STATE OF ILLINOIS,
STATE OF MAINE, STATE OF MASSACHUSETTS,
STATE OF OREGON, PENNSYLVANIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
STATE OF VERMONT, STATE OF WASHINGTON,
and CITY OF NEW YORK,

Docket No.

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY and JAMES R. PERRY,
Secretary, U.S. Department of Energy,

Respondents.

PETITION FOR REVIEW

Pursuant to Section 336(b)(1) of the Energy Policy and Conservation Act, 42 U.S.C. § 6306(b)(1), Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702, and Rule 15 of the Federal Rules of Appellate Procedure, the State of New York, State of California, State of Connecticut, State of Illinois, State of Maine, Commonwealth of Massachusetts, State of Oregon, Pennsylvania Department of Environmental Protection, State of Vermont, State of Washington, and the City of New York, hereby petition this Court for review of final actions taken by Respondents at 82 Fed. Reg. 8806 *et seq.* (January 31, 2017), entitled “Energy Conservation Program: Energy Conservation Standards for Ceiling Fans,” and at 82 Fed. Reg. 14427 *et seq.*

(March 21, 2017), entitled “Energy Conservation Program: Energy Conservation Standards for Ceiling Fans” (copies thereof attached hereto).

Dated: March 31, 2017

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Petitioner State of New York

By: /s/ Timothy Hoffman
Timothy Hoffman, Assistant Attorney General
Lisa Kwong, Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
Tel: (716) 853-8465
(518) 776-2422
Email: Timothy.Hoffman@ag.ny.gov
Lisa.Kwong@ag.ny.gov

XAVIER BECERRA
Attorney General of the
State of California
Attorney for Petitioner State of California

By: /s/ Jamie Jefferson
Jamie Jefferson, Deputy Attorney General
Somerset Perry, Deputy Attorney General
Office of the Attorney General
California Department of Justice
1515 Clay St., 20th Floor
Oakland, California 94612
Tel: (510) 879-0280
Email: Jamie.Jefferson@doj.ca.gov

GEORGE JEPSEN
Attorney General of the
State of Connecticut
Attorney for Petitioner State of Connecticut

By: /s/ Robert Snook
Matthew Levine, Assistant Attorney General
Robert Snook, Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, Connecticut 06141-0120
Tel: (860) 808-5250
Email: Robert.Snook@ct.gov

LISA MADIGAN
Attorney General of the
State of Illinois
Attorney for Petitioner State of Illinois

By: /s/ James P. Gignac
James P. Gignac, Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
Tel: (312) 814-0660
Email: jgignac@atg.state.il.us

JANET T. MILLS
Attorney General of the
State of Maine
Attorney for Petitioner State of Maine

By: /s/ Katherine Tierney
Katherine Tierney, Assistant Attorney General
Office of the Attorney General
State House Station 6
Augusta, ME 04333-0006
Tel: (207) 626-8800
Email: katherine.tierney@maine.gov

MAURA HEALEY
Attorney General of the
Commonwealth of Massachusetts
Attorney for Petitioner Commonwealth of
Massachusetts

By: /s/ I. Andrew Goldberg
I. Andrew Goldberg, Assistant Attorney General
Environmental Protection Division
Joseph Dorfler, Assistant Attorney General
Energy and Telecommunications Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
Tel: (617) 963-2429
(617) 963-2086
Email: andy.goldberg@state.ma.us
joseph.dorfler@state.ma.us

ELLEN F. ROSENBLUM
Attorney General of the
State of Oregon
Attorney for Petitioner State of Oregon

By: /s/ Benjamin Gutman
Benjamin Gutman, Solicitor General
Office of the Attorney General
Oregon Department of Justice
1162 Court Street, N.E.
Salem, Oregon 97301-4096
Tel: (503) 378-4402
Email: benjamin.gutman@doj.state.or.us

ALEXANDRA C. CHIARUTTINI
Chief Counsel
Attorney for Petitioner Pennsylvania Department of
Environmental Protection
PA Bar No. 80428

By: /s/ Robert A. Reiley
Robert A. Reiley
PA Bar No. 61319
Department of Environmental Protection
Office of Chief Counsel
400 Market Street, 16th Floor

P.O. Box 8464
Harrisburg, PA 17105-8464
Tel: (717) 787-4449
Email: rreiley@pa.gov

THOMAS J. DONOVAN, JR.
Attorney General
Office of the Attorney General
Attorney for Petitioner State of Vermont

By: /s/ Laura B. Murphy
Laura B. Murphy
Assistant Attorney General
Environmental Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel: (802) 828-1059
Email: laura.murphy@vermont.gov

BOB FERGUSON
Attorney General of Washington
Attorney for Petitioner State of Washington

By: /s/ Thomas J. Young
By: Thomas J. Young
Assistant Attorney General
Washington State Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
Tel: (360) 586-4608
Email: TomY@atg.wa.gov

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Petitioner City of New York

By: /s/ Susan E. Amron
Susan E. Amron, Chief,
Environmental Law Division
Sarah Kogel-Smucker, Senior Counsel
New York City Law Department
100 Church Street, Room 6-146

New York, New York 10007

Tel: (212) 356-2070

(212) 356-2315

Email: samron@law.nyc.gov

skogel@law.nyc.gov

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC, 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Michael Kido, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-8145. Email: Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

On January 20, 2017, the Assistant to the President and Chief of Staff (“Chief of Staff”) issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President’s plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (“DOE”) hereby temporarily postpones the effective date of its final rule amending the test procedure for walk-in coolers and walk-in freezers (collectively, “walk-ins”) published in the **Federal Register** on December 28, 2016. See 81 FR 95758. The December 28 rule clarifies certain specific aspects related to the testing of walk-in refrigeration systems, updates certain related certification and enforcement provisions, and establishes labeling requirements to assist in determining compliance with relevant walk-in standards. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff’s memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary

and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given that the memorandum was issued on January 20, 2017, and the previous effective date of the rule at issue was January 27, 2017. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 24, 2017.

John T. Lucas,
Acting General Counsel.

[FR Doc. 2017-01956 Filed 1-26-17; 4:15 pm]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2012-BT-STD-0045]

RIN 1904-AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of a recently published final rule amending the energy conservation standards for ceiling fans.

DATES: The effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 82 FR 6826 on January 19, 2017, is delayed to March 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-7796. Email: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On January 20, 2017, the Assistant to the

President and Chief of Staff (“Chief of Staff”) issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President’s plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (“DOE”) hereby temporarily postpones the effective date of its final rule amending the energy conservation standards for ceiling fans published in the **Federal Register** on January 19, 2017. See 82 FR 6826. The January 19 rule establishes amended standards for ceiling fans that are expressed for each product class as the minimum allowable efficiency in terms of cubic feet per minute per watt (“CFM/W”), as a function of ceiling fan diameter. (The previous energy conservation standards applicable to ceiling fans were design standards prescribed in the Energy Policy and Conservation Act of 1975, as amended.) Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff’s memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 24, 2017.

John T. Lucas,
Acting General Counsel.

[FR Doc. 2017-01958 Filed 1-30-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. EA-RM-16-PRDNA]

RIN 1992-AA52

Procedural Rules for DOE Nuclear Activities

AGENCY: Office of Enterprise Assessments, Office of Enforcement, Office of Nuclear Safety Enforcement, Department of Energy.

ACTION: Final rule; stay of regulations.

SUMMARY: This document stays DOE regulations for the assessment of civil penalties against certain contractors and subcontractors for violations of the prohibition against an employee who reports violations of law, mismanagement, waste, abuse or dangerous/unsafe workplace conditions, among other protected activities, concerning nuclear safety.

DATES: Effective January 31, 2017, 10 CFR 820.2 (the definition of "DOE Nuclear Safety Requirements"), 820.14, 820.20(a) and (b), and appendix A to part 820, section XIII, are stayed until March 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Steven Simonson, U.S. Department of Energy, Office of Enterprise Assessments/Germantown Building, 1000 Independence Ave. SW., Washington, DC 20585-1290. Phone: (301) 903-2816. Email: Steven.Simonson@hq.doe.gov.

K.C. Michaels, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-3430. Email: Kenneth.Michaels@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On January 20, 2017, the Assistant to the President and Chief of Staff ("Chief of Staff") issued a memorandum, published in the *Federal Register* on January 24, 2017 (82 FR 8346), outlining the President's plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy ("DOE") hereby temporarily stays regulations in its final rule amending its procedural rules for DOE nuclear

activities published in the *Federal Register* on December 27, 2016. See 81 FR 94910. In the December 27 rule, DOE clarified that the Department may assess civil penalties against certain contractors and subcontractors for violations of the prohibition against retaliating against an employee who reports violations of law, mismanagement, waste, abuse, or dangerous/unsafe workplace conditions, among other protected activities, concerning nuclear safety (referred to as "whistleblowers"). Specifically, DOE clarified the definition of "DOE Nuclear Safety Requirements" and clarified that the prohibition against whistleblower retaliation is a DOE Nuclear Safety Requirement to the extent that it concerns nuclear safety. Consistent with the memorandum, DOE is temporarily staying regulations in the final rule by an additional 60 days starting from January 20, 2017. The temporary 60-day stay is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the *Federal Register*, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily staying this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum.

As a result, seeking public comment on this stay is unnecessary and contrary to the public interest. It is also impracticable given that the memorandum was issued on January 20, 2017 and the previous effective date of the rule at issue was January 26, 2017. For these same reasons, DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 24, 2017.

John T. Lucas,
Acting General Counsel.

[FR Doc. 2017-01959 Filed 1-30-17; 8:45 am]

BILLING CODE 6450-01-P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052-AD21

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).

DATES: This regulation is effective on January 31, 2017.

FOR FURTHER INFORMATION CONTACT:

Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4124, TTY (703) 883-4056, or Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4082, TTY (703) 883-4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation through a final rulemaking to retain the deterrent effect of such penalties.

II. Background

A. Introduction

Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty¹ as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by

¹ Note: While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term "civil monetary penalties" for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term "civil money penalties." Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

consideration during the original postponement of the effective date of the regulation establishing test procedures for compressors. Therefore, DOE hereby further temporarily postpones the effective date of that test procedure regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until July 3 2017, the date on which the statute requires compliance.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the *Federal Register*, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary and the statutory compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017-05479 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2012-BT-STD-0045]

RIN 1904-AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further delays the effective date of a recently published final rule amending the energy conservation standards for ceiling fans.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR part 430 published in the *Federal Register* at 82 FR 6826 on January 19, 2017, delayed until March 21, 2017 at 82 FR 8806 on January 19, 2017, is further delayed until September 30, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC, 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-7796. Email: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On January 31, 2017, the United States Department of Energy ("DOE") temporarily postponed the effective date of its final rule amending the energy conservation standards for ceiling fans published in the *Federal Register* on January 19, 2017. See 82 FR 8806. The January 31 rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and consideration during the original postponement of the effective date of the regulation establishing energy conservation standards for ceiling fans. Therefore, DOE hereby further temporarily postpones the effective date of that energy conservation standards regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until September 30, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without

opportunity for public comment, effective immediately upon publication in the *Federal Register*, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary. The January 21, 2020, compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017-05477 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 435

[Docket No. EERE-2016-BT-STD-0003]

RIN 1904-AD56

Energy Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings' Baseline Standards Update

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further temporarily postpones the effective date of a recently published final rule amending the baseline Federal building standards.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR part 435 published in the *Federal Register* at 82 FR 2857 on January 10, 2017, delayed until March 21, 2017 at 82 FR 9343 on February 6, 2017, is further delayed until September 30, 2017. The incorporation by reference of the publication listed in this rule is