

Case No. \_\_\_\_\_

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

NATURAL RESOURCES DEFENSE COUNCIL, INC.; SIERRA CLUB;  
TEXAS RATEPAYERS' ORGANIZATION TO SAVE ENERGY; and  
CONSUMER FEDERATION OF AMERICA,

Petitioners,

v.

RICK PERRY, in his capacity as Secretary of the United States Department  
of Energy; and the UNITED STATES DEPARTMENT OF ENERGY,

Respondents.

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**PETITION FOR REVIEW  
of final rules of the U.S. Department of Energy**

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Dated: March 31, 2017

## PETITION FOR REVIEW

Pursuant to 42 U.S.C. § 6306 and Rule 15 of the Federal Rules of Appellate Procedure, the Natural Resources Defense Council, Sierra Club, Texas Ratepayers' Organization to Save Energy, and Consumer Federation of America hereby petition this Court to review and set aside two final rules of the United States Department of Energy delaying the effective date of a final rule amending the energy conservation standards for ceiling fans. The challenged rules were published in the Federal Register at 82 Fed. Reg. 8806 (Jan. 31, 2017), and 82 Fed. Reg. 14,427 (March 21, 2017).

A copy of the challenged final rules are attached as Exhibits A and B to this petition.

Dated: March 31, 2017

Respectfully submitted,

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# EXHIBIT A

82 Fed. Reg. 8806 (Jan. 31, 2017)

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](mailto:Ashley.Armstrong@ee.doe.gov).

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#### 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](mailto:Ashley.Armstrong@ee.doe.gov).

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**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 for “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](mailto:Steven.Simonson@hq.doe.gov).

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**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 penalty<sup>1</sup> as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by

<sup>1</sup> 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.

# EXHIBIT B

82 Fed. Reg. 14,427 (March 21, 2017)

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](mailto: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](mailto: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



## FEDERAL RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Petitioners Natural Resources Defense Council, Inc. (NRDC), Sierra Club, Texas Ratepayers' Organization to Save Energy (Texas ROSE), and Consumer Federation of America (CFA) are non-profit organizations with no parent corporation and no outstanding stock shares or other securities in the hands of the public. NRDC, Sierra Club, Texas ROSE, and CFA do not have any parent, subsidiary, or affiliate that has issued stock shares or other securities to the public. No publicly held corporation owns any stock in NRDC, Sierra Club, Texas ROSE, or CFA.

Dated: March 31, 2017

Respectfully submitted,

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*Counsel for Petitioner Texas ROSE*

## CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Petition for Review, the exhibits thereto, and Federal Rule 26.1 Corporate Disclosure Statement to be served by certified mail on respondents at the following addresses:

Secretary Rick Perry  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

U.S. Department of Energy  
Office of the General Counsel  
1000 Independence Avenue, SW  
Washington, DC 20585

I also certify that I caused the listed documents to be served by certified mail on counsel for respondents at the address below:

Jefferson Sessions III  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dated: March 31, 2017

/s/ Aaron Colangelo  
Aaron Colangelo