

## DEPARTMENT OF ENERGY

## Office of Energy Efficiency and Renewable Energy

## 10 CFR Part 430

[Docket No. EE-RM-98-440]

RIN 1904-AA77

## Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Final rule; postponement of effective date and reconsideration.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), DOE temporarily delayed for 60 days (66 FR 8745, February 2, 2001) the effective date of the final rule entitled "Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps Energy Conservation Standards published in the **Federal Register** on January 22, 2001 (66 FR 7170). DOE today gives notice of further postponement of the effective date of the January 22, 2001, final rule pending the outcome of petitions by the Air-Conditioning and Refrigeration Institute (ARI) for reconsideration by DOE and for judicial review by the United States Court of Appeals for the Fourth Circuit.

**DATES:** The effective date of the rule amending 10 CFR Part 430 published at 66 FR 7170, January 22, 2001, is further postponed from April 23, 2001, pending the outcome of petitions for administrative reconsideration and judicial review and further **Federal Register** notice. This action is effective immediately upon publication.

**FOR FURTHER INFORMATION CONTACT:** Jill Holtzman, Office of General Counsel, (202) 586-3410, jill.holtzman@hq.doe.gov; Dr. Michael E. McCabe, Office of Energy Efficiency and Renewable Energy, (202) 586-0371, ME.McCabe@ee.doe.gov; or Eugene Margolis, Office of General Counsel, (202) 586-9526, eugene.margolis@hq.doe.gov

**SUPPLEMENTARY INFORMATION:** Pursuant to section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295), on January 22, 2001, DOE published a notice of final rulemaking, setting forth energy conservation standards for

central air conditioners and central air conditioning heat pumps that are not yet effective and will not be enforceable against manufacturers until January 23, 2006 (66 FR 7170). The existing standards require a Seasonal Energy Efficiency Rating (SEER) of 10 for split systems with a corresponding Heating System Performance Rating (HSPF) of 6.8 and a SEER of 9.7 for single package systems with a corresponding HSPF of 6.6 (42 U.S.C. 6295(d)(1)). The January 22, 2001, final rule would require a SEER of 13 for all systems with a corresponding HSPF of 7.7.

The **EFFECTIVE DATE** line of the January 22, 2001, notice of final rulemaking set forth February 21, 2001, as the effective date for the purpose of modifying Part 430 of Chapter II of title 10 of the Code of Federal Regulations. On February 2, 2001, pursuant to President Bush's Regulatory Review Plan, DOE published a final rule postponing the effective date from February 21, 2001, to April 23, 2001 (66 FR 8745).

Subsequently, ARI petitioned DOE for reconsideration of the January 22, 2001, final rule, and a group of environmental advocacy organizations have responded with a statement in opposition to reconsideration. In its petition, ARI acknowledges that the rulemaking record will support a 20 percent increase of the minimum required energy efficiency levels in the existing standards to a SEER of 12 with a corresponding HSPF of 7.3. However, ARI contends that DOE unfairly and erroneously raised the standard levels by 30 percent above the existing standards to a SEER of 13 with a corresponding HSPF of 7.7. On March 19, 2001, ARI also petitioned the United States Court of Appeals for the Fourth Circuit for judicial review of the final rule.

Under the informal rulemaking provisions of the Administrative Procedure Act (APA), an agency by rule may alter the "effective date" of a previously published final rule (5 U.S.C. 551(4), 551(5), 553). The judicial review provisions of the APA also provide for a change of "effective date" as follows: "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. . . ." (5 U.S.C. 705). Once the effective date passes, the standards set out in the January 22, 2001 final rule would become part of the Code of Federal Regulations as an effective final rule, and manufacturers would have to begin the process of coming into compliance by January 23, 2006. That process involves both planning and capital expenditures.

DOE is of the view that ARI has raised some substantial questions about the legal sustainability of the January 22, 2001, final rule. Consistent with Executive Order 12866 and consultations with the Office of Management and Budget, DOE intends within the next 60 days to issue a further notice of proposed rulemaking to revise the standard levels set out in the January 22, 2001, final rule and examine the extent to which current minimum required energy efficiency levels are to be increased in 2006. In that notice, DOE intends to propose a 12 SEER with a corresponding 7.4 HSPF. DOE will also invite public comment on its explanation of the statutory authority to make such a proposal upon reconsideration. During the pendency of ARI's petition for judicial review and the related petition for administrative reconsideration, justice requires that DOE postpone the effective date of the January 22, 2001, final rule, in order to avoid imposing on manufacturers an obligation to undertake planning and capital expenditures to come into compliance by January 23, 2006, with a rule DOE is reconsidering.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment procedures based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Seeking public comment and delaying the effect of today's action are impracticable, unnecessary, and contrary to the public interest for several reasons. Postponement of the imminent effective date of April 23, 2001, avoids confusion among manufacturers as to whether to begin the process of coming into compliance. It avoids expenditures by manufacturers in reliance on a rule with respect to which there is a significant likelihood of modification. It also facilitates reconsideration of a final rule that, if allowed to take effect, might well result in a court order remanding the rule under instructions for further action thereby producing delay in realizing the anticipated energy and cost savings.

Issued in Washington, DC on April 18, 2001.

**Eric J. Fygi,**

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