[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE-2016-BT-TP-0029]

RIN 1904-AD71

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Administrative stay.

SUMMARY: The Department of Energy (DOE) is postponing the effective date of certain provisions of a final rule, published in the Federal Register on January 5, 2017, that amends the test procedure and specific certification, compliance, and enforcement provisions for central air conditioners and heat pumps. Specifically, DOE postpones the effective date of two provisions of a recently issued rule that require outdoor unit models to be tested under the outdoor unit with no match if they meet either of the two following conditions: the outdoor unit is approved for use with a refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/− 18 percent of the 95 °F saturation absolute pressure for HCFC-22; or the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing under the rule and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F.

DATES: Effective July 3, 2017, certain provisions of 10 CFR 429.16(a)(3)(i) are stayed.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave., SW, Washington, DC 20585-0121. Phone: (202) 586-9496. Email: Peter.Cochran@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Background: On January 5, 2017, DOE published a final rule (January 2017 final rule) amending the test procedure and certification, compliance, and enforcement provisions for central air conditioners and heat pumps (CAC/HP). 82 FR 1426. Among other changes, the January 2017 final rule added a paragraph at 10 CFR 429.16(a)(3)(i) that requires, among other things: (1) if any of the refrigerants approved for use with an outdoor unit model is HCFC-22 or has a 95 °F midpoint saturation absolute pressure that is +/− 18 percent of the 95 °F saturation absolute pressure for HCFC-22, or if there are no refrigerants designated as approved for use, a manufacturer to determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW,OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match; and (2) if a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture or if the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1 (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report), a manufacturer to determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW,OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

The original effective date of the January 2017 final rule was February 6, 2017. Subsequently, DOE delayed the effective date of the January 2017 final rule until March 21, 2017 (82 FR 8985), and then further delayed the effective date until July 5, 2017 (82 FR 14425; 82 FR 15457).

On March 3, 2017, Johnson Controls, Inc. (JCI) filed a petition for review of the January 2017 final rule in the United States Court of Appeals for the Seventh Circuit. JCI manufactures outdoor units with an approved refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/– 18 percent of the 95 °F saturation absolute pressure for HCFC-22. These same models are also shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1, and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. Thus, under either of the two provisions that would be added at 10 CFR 429.16(a)(3)(i) by the January 2017 final rule, these models would need to be tested as outdoor units with no match under appendix M or M1.

On May 31, 2017, JCI requested that DOE grant it an administrative stay pending judicial review of two elements of the January 2017 final rule challenged in the Seventh Circuit case: the requirements that a manufacturer determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW,OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match, when testing outdoor unit models that are either: (1) approved for a refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/– 18 percent of the 95 °F saturation absolute pressure for HCFC-22; or (2) shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or Appendix M1, and the factory charge is not equal to or greater

than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. On June 6, 2017, JCI requested that DOE hold its stay request in abeyance, noting that DOE's June 2, 2017, grant of an 180-day extension of the date by which JCI must comply with the two provisions specified above obviated the need for an immediate grant of an administrative stay.

Administrative Stay and Effective Date

Under the Administrative Procedure Act (5 U.S.C. 705), "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." The result of the issuance of a stay is to leave in place the status quo.

DOE has determined that, during the pendency of the lawsuit brought by JCI, it is in the interests of justice to postpone the effective date of the provisions of the January 2017 final rule that require a manufacturer to determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW,OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match, when testing outdoor unit models that are either: (1) approved for a refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/− 18 percent of the 95 °F saturation absolute pressure for HCFC-22; or (2) shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1, and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. DOE has determined to postpone the effective date of these provisions based on JCI's submissions to DOE that raise concerns about significant potential impacts on JCI, and further to ensure all manufacturers of central air conditioners and heat pumps have the same relief granted to JCI.

The effective date for the remainder of the January 2017 final rule remains July 5, 2017.

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