

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ALLIANCE FOR WATER EFFICIENCY, U.S.
PUBLIC INTEREST RESEARCH GROUP, and
ENVIRONMENT AMERICA,

Petitioners,

v.

UNITED STATES DEPARTMENT OF ENERGY
and JENNIFER M. GRANHOLM, Secretary,
United States Department of Energy,

Respondents.

No. 21-1167

**UNOPPOSED MOTION TO HOLD
PETITION FOR REVIEW IN ABEYANCE**

This petition for review challenges a final rule issued by the U.S. Department of Energy (DOE) concerning showerheads. *See* 85 Fed. Reg. 81,341 (Dec. 16, 2020). On March 18, 2021, this Court denied petitioners' motion to stay the showerhead rule pending review. Respondents United States Department of Energy and Secretary of Energy Jennifer M. Granholm respectfully move to place this petition into abeyance until October 1, 2021. This motion is unopposed.

1. On January 20, 2021, President Biden issued Executive Order 13,990 on "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which sets out various public health and environmental policy

objectives. Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021). The Executive Order directs all agencies “to immediately review” all agency actions taken in the past four years “that are or may be inconsistent with, or present obstacles to,” the policy objectives, and “consistent with applicable law, consider suspending, revising, or rescinding” those actions. *Id.* at 7037, § 2(a). The Executive Order required agencies to submit to the Office of Management and Budget (OMB) by February 19, 2021, a “preliminary list of any actions being considered pursuant” to that directive “that would be completed by December 31, 2021, and that would be subject to OMB review.” *Id.* at 7038, § 2(b).

On February 19, DOE publicly released the list of the Office of Energy Efficiency and Renewable Energy actions that it is considering pursuant to Executive Order 13,990. The showerhead rule appears on that list. *See* Memorandum from Kelly Speakes-Backman, Acting Assistant Secretary for Energy Efficiency and Renewable Energy (Feb. 19, 2021), <https://go.usa.gov/xsmKj> (listing rules to be included in DOE’s OMB list).

2. As this list confirms, DOE is in the process of complying with Executive Order 13,990 by considering whether to suspend, revise, or rescind the challenged regulation. To allow the agency sufficient time to complete its review, the government respectfully moves to place this petition into abeyance until October 1, 2021. If the Court desires, the government will provide status reports at 60-day intervals. The parties have agreed to confer before October 1 and, based on the

agency's progress at that point, may respectfully request that the Court continue to hold the case in abeyance.

3. Petitioners have authorized us to state that this motion is unopposed.

Respectfully submitted,

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s/ Kyle T. Edwards

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APRIL 2021

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font. I further certify that this response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 396 words according to the count of Microsoft Word.

s/ Kyle T. Edwards

KYLE T. EDWARDS

CERTIFICATE OF SERVICE

I certify that on April 5, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Kyle T. Edwards

KYLE T. EDWARDS