



**U.S. Department of Justice**  
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May 24, 2021

VIA CM/ECF

Catherine O'Hagan Wolfe, Clerk  
United States Court of Appeals  
for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

RE: *State of New York v. U.S. Department of Energy*, No. 21-602

Dear Ms. Wolfe:

The petition for review in this case challenges two related Department of Energy (DOE) actions regarding energy conservation standards for residential furnaces and commercial water heaters. *See* 86 Fed. Reg. 3873 (Jan. 15, 2021); 86 Fed. Reg. 4776 (Jan. 15, 2021).

On January 20, 2021, President Biden issued Executive Order No. 13,990, directing the heads of all agencies, including DOE, to “immediately review all existing regulations . . . issued . . . between January 20, 2017, and January 20, 2021, that . . . may be inconsistent with, or present obstacles to,” the Executive Order’s stated environmental objectives. Exec. Order No. 13,990 § 2(a), 86 Fed. Reg. 7037 (Jan. 25, 2021). The Order states that the heads of agencies “shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.” *Id.* The Order further provides that within “30 days of the date of this order,” agency heads “shall submit to the Director of the Office of Management and Budget (OMB) a preliminary list of any actions being considered pursuant to . . . [the] order that would be completed by December 31, 2021,” and “[w]ithin 90 days of the date of this order,” agency heads “shall submit to the Director of OMB an updated list of any actions being considered . . . that would be completed by December 31, 2025.” *Id.* § 2(b).

On February 19, 2021, DOE published a preliminary list of actions of the Office of Energy Efficiency and Renewable Energy that are “being considered pursuant to section 2(a) of Executive Order 13990.” Memorandum from Kelly Speakes-Backman, Acting Assistant Sec. for Energy Efficiency & Renewable Energy, U.S. Dep’t of Energy (Feb. 19, 2021), [https://www.energy.gov/sites/prod/files/2021/02/f82/eere\\_eo13990\\_memo\\_1.pdf](https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf). The list includes the two actions that the petition for review challenges. *Id.*

To give DOE sufficient time to comply with the Executive Order, this Court granted the federal government’s unopposed motion to place the petition for review in abeyance, with status reports due at 60-day intervals. *See Order, New York v. DOE*, No. 21-602 (Mar. 24, 2021). The federal government submits this status report pursuant to the Court’s order. Consistent with the Executive Order, DOE has initiated a reevaluation of the agency actions at issue in this case. DOE expects that this process will be completed by the end of 2021. Accordingly, the Court should continue to hold the petition in abeyance, with the next status report due in 60 days.

Sincerely,

s/ Sarah Carroll

SARAH CARROLL

U.S. Department of Justice

Counsel for Respondents

cc (via CM/ECF): Counsel of Record