

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF CALIFORNIA, et al.,

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, et al.,

Respondents.

Nos. 20-71068,
et al.

**CONSENT MOTION TO HOLD PETITIONS FOR REVIEW IN
ABEYANCE FOR 150 DAYS**

The government respectfully moves to hold the consolidated petitions for review in abeyance for 150 days due to the agency’s review of the challenged rules pursuant to Executive Order No. 13,990. Petitioners consent to this motion.

1. The consolidated petitions for review concern two rules issued by the U.S. Department of Energy (DOE) delineating the agency’s procedures for adopting new or revised energy conservation standards for appliances. *See* 85 Fed. Reg. 8,626 (February 14, 2020); 85 Fed. Reg. 50,937 (August 19, 2020).

2. 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. 86 Fed. Reg. 7,037 (Jan. 25, 2021). As relevant here, the order lists specific “agency actions” as to which agency heads “as appropriate and consistent with applicable law, shall consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within the time frame specified.” *Id.* Among the listed agency actions are the two rules challenged in the petitions for review before this Court. *See id.* at 7,038. As to both, the order directs DOE to “propose[]” “major revisions ... by March 2021 and any remaining revisions ... by June 2021.” *Id.*

3. DOE is in the process of complying with Executive Order 13,990 to review the challenged rules. On February 19, 2021, the agency included the challenged rules in its list of rules that it is reviewing pursuant to Executive Order 13,990. *See DOE, Review of Actions of the Prior Administration* (Feb. 2021), <https://go.usa.gov/xsDCW>.

4. To allow the agency sufficient time to complete its review and to conserve judicial resources, the government respectfully moves to place these consolidated petitions for review in abeyance for 150 days, with status reports due at 60-day intervals.

4. Counsel for petitioners have authorized us to state that petitioners consent to this motion.

CONCLUSION

For the foregoing reasons, the federal government respectfully requests that this Court hold the consolidated petitions for review in abeyance for 150 days in light of the agency's review of the challenged rules.

Respectfully submitted,

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FEBRUARY 2021

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 379 words.

/s/ Joshua Dos Santos

JOSHUA DOS SANTOS

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2021, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

/s/ Joshua Dos Santos
JOSHUA DOS SANTOS