

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,

AIR-CONDITIONING, HEATING, &
REFRIGERATION INSTITUTE, et al.,

Intervenors.

Nos. 20-71068,
et al.

**UNOPPOSED MOTION TO
CONTINUE ABEYANCE FOR 180 DAYS**

The government respectfully moves to continue holding these petitions for review in abeyance for 180 days, through October 3, 2022, due to an ongoing rulemaking that can impact the issues in this case. Petitioners consent and intervenors do not oppose 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). On January 20, 2021,

President Biden issued Executive Order No. 13,990, which, as relevant here, directed DOE to “immediately review” the two rules challenged in the petitions for review in this Court. 86 Fed. Reg. 7,037, 7,038 (Jan. 25, 2021).

2. DOE thereafter requested that the Court place these proceedings in abeyance to allow time for the agency to conduct its review of the challenged rules. On March 18, 2021, this Court vacated the briefing schedule and placed these cases in abeyance.

3. While these petitions have been held in abeyance, DOE proposed changes to the challenged rules in two parts. On April 12, 2021, DOE published a Notice of Proposed Rulemaking proposing changes and requesting comments. *See* 86 Fed. Reg. 18901. On July 7, 2021, DOE published a second Notice of Proposed Rulemaking proposing additional changes to the challenged rules and requesting comments. *See* 86 Fed. Reg. 35668. On December 13, 2021, DOE published a final rule adopting changes proposed in April 2021. *See* 86 Fed. Reg. 70,892 (Dec. 13, 2021). The rulemaking that DOE proposed in July 2021 remains ongoing.

4. The government respectfully moves to continue the abeyance for 180 days, through October 3, 2022. As explained, DOE has now completed one of its rulemakings revising certain aspects of the challenged rules, but DOE will require more time to complete the rulemaking that it proposed in July 2021. That proposed rule may impact the issues in this case and has the potential to render the petitions for

review moot. Allowing the agency time to complete this remaining rulemaking would conserve resources of the Court and the parties.

5. Counsel for petitioners have indicated that petitioners consent to the relief requested in this motion. Counsel for intervenors have indicated that intervenors do not oppose this motion.

CONCLUSION

For the foregoing reasons, the federal government respectfully requests that this Court continue the abeyance for 180 days, through October 3, 2022, in light of the agency's ongoing rulemaking.

Respectfully submitted,

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MARCH 2022

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 416 words.

/s/ Joshua Dos Santos

JOSHUA DOS SANTOS

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2022, 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