



U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave. NW, Room 7527
Washington, DC 20530

Tel: 202-514-4214

VIA CM/ECF

September 7, 2021

Christopher G. Conway
Clerk, United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

RE: *Alliance for Water Efficiency v. DOE*, No. 21-1167 (7th Cir.)

Dear Mr. Conway:

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 petitioner's motion to stay the showerhead rule pending review. On April 7, 2021, the Court granted DOE's unopposed motion to hold the petition for review in abeyance until October 1, 2021. The Court also ordered DOE to file status reports with the Court at 60-day intervals. DOE provides its second status report here.

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). 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 give the agency sufficient time to comply with the Executive Order, this Court on April 7, 2021, granted the government’s unopposed motion to place the petition for review in abeyance until October 1, 2021, with status reports due at 60-day intervals.

Pursuant to the direction provided in the Executive Order, DOE is working diligently to reevaluate the final rule at issue in this petition. The agency expects that this process will be completed by the end of 2021. On July 22, 2021, DOE issued a notice of proposed rulemaking “propos[ing] to revise the current definition of ‘showerhead’ adopted in the December 16, 2020 final rule . . . by reinstating the prior definition of ‘showerhead.’” *See* 86 Fed. Reg. 38,594, 38,594 (July 22, 2021). DOE held a webinar on the proposed rule on August 31 and will accept comments on the proposed rule through September 20. *Id.* at 38,595. Accordingly, the Court should continue to hold this petition in abeyance until at least October 1. The parties have agreed to confer before that date and may request that the Court continue to hold the petition in abeyance.

Sincerely,

/s/ Kyle T. Edwards

Kyle T. Edwards

Counsel for Respondents