

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ALLIANCE FOR WATER EFFICIENCY,

Petitioner,

v.

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

Respondents.

No. 21-1167

**UNOPPOSED MOTION TO CONTINUE 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 petitioner's motion to stay the showerhead rule pending review. On April 7, 2021, the Court granted respondents' unopposed motion to hold the petition for review in abeyance until October 1, 2021. Respondents respectfully request that the Court continue to hold the petition in abeyance until February 1, 2022. 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>. 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.

2. 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 16, 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.

3. In view of these developments, and to ensure adequate time for the parties to consider the implications of the outcome of DOE’s process, respondents respectfully request that the Court continue to hold this petition in abeyance until at least February 1, 2022. The parties have agreed to confer before that date and may request that the Court continue to hold the petition in abeyance.

4. Petitioner has authorized us to state that this motion is unopposed.

Respectfully submitted,

MICHAEL S. RAAB

s/ Kyle T. Edwards

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SEPTEMBER 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 motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 550 words according to the count of Microsoft Word.

s/ Kyle T. Edwards

KYLE T. EDWARDS

CERTIFICATE OF SERVICE

I certify that on September 20, 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