

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ALLIANCE FOR WATER
EFFICIENCY,

Petitioner,

v.

UNITED STATES DEPARTMENT OF
ENERGY, *et al.*,

Respondents.

No. 21-1167

UNOPPOSED MOTION TO EXTEND THE ABEYANCE

The above-captioned case is a petition for review of a final rule, issued by the U.S. Department of Energy (DOE), concerning water conservation standards for showerheads. *See* 85 Fed. Reg. 81,341 (Dec. 16, 2020) (the “2020 Showerheads Rule”). On September 23, 2021, the Court granted a motion by petitioner (the Alliance for Water Efficiency, “AWE”) to hold the petition in abeyance until February 1, 2022, and order respondents (collectively “DOE”) to file a status report by January 21, 2022. AWE respectfully moves the Court to extend the period of abeyance until February 22, 2022. This motion is unopposed.

1. On February 19, 2021, DOE released a list of prior actions by its Office of Energy Efficiency and Renewable Energy that it would be reviewing to assess whether they are inconsistent with President Biden's public health and environmental policy objectives. The 2020 Showerheads Rule was on that list, and DOE indicated that it would complete that review by the end of calendar year 2021.

2. The parties previously asked the Court to hold the petition in abeyance to give the parties to consider the implications of whatever action DOE might take as a result of its review.

3. On July 16, 2021, DOE issued a notice of proposed rulemaking regarding the 2020 Showerheads Rule. 86 Fed. Reg. 38,594, 38,594 (July 22, 2021). After a comment period that ended on September 20, 2021, DOE published a final rule based on that proposal. 86 Fed. Reg. 71,797 (Dec. 20, 2021). The final rule revises the regulations regarding water conservation for showerheads by removing certain definitions, and it retains one definition that was originally established in the 2020 Showerheads Rule. AWE is submitting a copy of the final rule as an attachment to this motion.

4. DOE's publication was on December 20, 2021. The parties have begun discussions regarding the implications and consequences of the final

rule for this action. Given the publication of the final rule at the end of December, AWE anticipates that its consideration of the impact of the rule will need additional time beyond the remaining period of the abeyance.

5. AWE respectfully requests that the Court extend the period of abeyance, currently set to end on February 1, 2022, to end on February 28, 2022. The parties intend to confer further during the coming months to agree on a proposal regarding further proceedings.

6. AWE has conferred with DOE about this motion, and DOE does not oppose it.

Respectfully submitted,

/s/ Keith Bradley _____
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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 Vollkorn, a proportionally spaced font. I further certify that this response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 409 words according to the count of Microsoft Word.

/s/ Keith Bradley _____

Keith Bradley

CERTIFICATE OF SERVICE

I certify that on December 29, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second 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/ Keith Bradley _____

Keith Bradley