

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

HEARTH, PATIO & BARBECUE
ASSOCIATION, *et al.*

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

Nos. 15-1056 & 15-1140

JOINT UNOPPOSED MOTION TO EXTEND BRIEFING DEADLINES

Pursuant to Fed. R. App. P. 27 and Circuit Rules 27 and 28, Petitioners Hearth, Patio & Barbecue Association (“HPBA”) (in No. 15-1056) and Pellet Fuels Institute (“PFI”) (in No. 15-1140) respectfully submit this motion to extend the deadline for the opening brief by 60 days until August 25, 2017 and to extend all subsequent briefing deadlines as detailed in the Request below. Petitioners have conferred with the other parties in these consolidated petitions. The Respondent in both cases, U.S. Environmental Protection Agency (“EPA”), does not oppose the requested extension. Likewise, the Intervenors-for Respondent, American Lung Association, Clean Air Council, and Environment and Human Health, Inc., do not oppose the requested extension.

In support of this motion, HPBA and PFI state as follows:

1. Pending before this Court are consolidated challenges to EPA's final rule entitled "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces," on March 16, 2015 at 80 Fed. Reg. 13,672 ("Rule"). HPBA timely petitioned this Court to review the Rule in Case No. 15-1056 on March 16, 2015. Within the 60-day review period under Clean Air Act, Section 307, 42 U.S.C. § 7607, petitions were also filed by Tulikivi U.S., Inc. (in Case No. 15-1137), PFI (in Case No. 15-1140), and Richard S. Burns & Company, Inc. (in Case No. 15-1142). This Court consolidated the four petitions, but Tulikivi's and Richard S. Burns & Company's cases were voluntarily dismissed on December 29, 2016.

2. Shortly after the Court consolidated the four petitioners that were originally filed in this case, HPBA, PFI, and the other petitioners engaged in separate discussions with EPA, which took place over the course of approximately one year. During that time, the parties discussed various aspects of the Rule and whether the issues raised by the petitioners might warrant further action by EPA that would resolve some of the issues in the consolidated case.

3. In August 2016, the parties ceased discussions, and the parties submitted a joint briefing proposal in late 2016. This Court entered the following briefing schedule for this case on January 6, 2017:

Petitioners' Initial Brief(s)

March 27, 2017

Respondent's Brief	June 14, 2017
Respondent-Intervenor's Brief	July 6, 2017
Petitioners' Reply Brief(s)	July 27, 2017
Deferred Joint Appendix	August 3, 2017
Final Briefs	August 10, 2017

4. On March 15, 2017, HPBA and PFI filed a joint, unopposed motion to extend the briefing deadlines in this case to allow the incoming administration time to review the challenged rule and to determine whether to engage in any further discussions with HPBA and PFI concerning the issues that are likely to be raised in this case. This Court granted that motion on March 16, 2017, thereby extending the deadline for the opening brief until June 26, 2017 and extending all subsequent briefing deadlines by 104 days.

REQUEST FOR EXTENSION

5. HPBA and PFI respectfully request that this Court extend all briefing deadlines in this case by 60 days. The proposed deadlines are as follows:

Petitioners' Initial Brief(s)	August 25, 2017
Respondent's Brief	November 21, 2017
Respondent-Intervenor's Brief	December 12, 2017
Petitioners' Reply Brief(s)	January 2, 2017
Deferred Joint Appendix	January 9, 2017

Final Briefs

January 16, 2017

6. This Court has authority to grant Petitioners' unopposed extension request. This motion is timely, because it is filed more than seven days before the relevant due date (June 26, 2017) in accordance with Circuit Rule 28(e)(2).

Additionally, an extension in this case is appropriate under Federal Rule 26(b), because there is "good cause" to support Petitioners' Request. The requested extension comports with the "power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

7. Petitioners engaged in discussions with the prior administration for approximately one year in an attempt to resolve the issues that are likely to be raised in this litigation. To accommodate those discussions, this Court granted multiple abeyance and extension requests between April 2015 and December 2016. Not long after the administration change on January 20, 2017, Petitioners began attempting to discuss with DOJ and EPA whether the agencies are willing to engage in further discussions concerning the Rule.

8. HPBA and PFI are now in ongoing discussions with EPA concerning the issues that Petitioners are likely to raise in this case. It is possible that EPA may take action in response to one or more of the issues raised by Petitioners that would have a bearing on this litigation.

9. Petitioners thus request this 60-day extension of time to pursue further discussions with EPA.

10. Should the parties ultimately achieve an alternative resolution of the consolidated petitions, there would no longer be any need to brief the issues before this Court. Such resolution would promote judicial efficiency and conserve resources.

11. No prejudice would result from Petitioners' requested extension. No merits briefs have been filed yet, and the Court has not scheduled oral argument. While it is true that HPBA previously sought to deconsolidate its petition and proceed with briefing expeditiously, the renewed opportunity, in light of the administration change, to seek alternative resolution of its challenges to the Rule may provide for more immediate relief to HPBA's members.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their unopposed motion to extend all briefing deadlines and enter an order (1) extending the deadline for the opening brief by 60 days to August 25, 2017, and (2) extending all subsequent deadlines in this case in accordance with the request outlined above.

DATED: June 9, 2017

Respectfully submitted,

/s/ David Y. Chung

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d)(1)(D) and Circuit Rules 27(a)(1) and 27(a)(1)(2), I hereby certify that the foregoing Joint Unopposed Motion To Extend Briefing Deadlines contains 939 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit of 5,200 words set by Rule 27(d)(2)(A) and the Court.

Dated: June 9, 2017

/s/ David Y. Chung
David Y. Chung

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, copies of the foregoing Joint Unopposed Motion to Extend Briefing Deadlines have been served via this Court's CM/ECF system upon all registered counsel.

/s/ David Y. Chung

David Y. Chung