

**ORAL ARGUMENT NOT YET SCHEDULED****IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATURAL RESOURCES DEFENSE  
COUNCIL,

Petitioner,

v.

MICHAEL S. REGAN, ADMINISTRATOR,  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY and U.S. ENVIRONMENTAL  
PROTECTION AGENCY,

Respondents.

AIR PERMITTING FORUM and AUTO  
INDUSTRY FORUM,

Intervenors.

Case No. 20-1150  
(consolidated with  
Case No. 20-1151)

**PETITIONERS' AND RESPONDENTS' JOINT MOTION TO  
HOLD CASE IN ABEYANCE**

Petitioners Natural Resources Defense Council (NRDC) and State  
and Municipal Petitioners<sup>1</sup> (Petitioners) and Respondents Michael S.

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<sup>1</sup> The government petitioners (“State and Municipal Petitioners”) are the States of New York, Connecticut, Illinois, Maine, Maryland, Minnesota, New Jersey, Oregon, Virginia, and Washington; the District of Columbia; and the City of New York.

Regan and the United States Environmental Protection Agency (EPA) (together, Respondents) in Case Nos. 20-1150 and 20-1151 jointly and respectfully move this Court to abey these consolidated cases while Respondents engage in a rulemaking process concerning issues related to the pending petitions and that may affect the resolution of this case. Specifically, Petitioners and Respondents seek abeyance through October 30, 2023, by which time (as described below) EPA expects to issue a notice of proposed rulemaking. If such a notice of proposed rulemaking has been issued within the timeframe described below, Petitioners and Respondents anticipate moving to extend the abeyance through October 30, 2024, by which time EPA expects to issue any final rule based on the proposal. If EPA has not issued the notice of proposed rulemaking or any final rule based on the proposal in the timeframes described below, the parties will submit motions to govern further proceedings at the appropriate times, as described below. Staying this case in this manner during this rulemaking process may obviate the need for further litigation and thereby conserve the parties' and the Court's resources. Intervenors have stated that they do not oppose this motion.

1. This case concerns EPA's 2020 revisions to certain aspects of refrigerant management regulations which the agency issued in 2016 pursuant to Section 608 of Title VI of the Clean Air Act ("Section 608"). Section 608 establishes a "[n]ational recycling and emission reduction program," which includes provisions addressing the use and emission of ozone-depleting substances, as well as provisions making it unlawful to "knowingly vent or otherwise knowingly release or dispose" ozone-depleting refrigerants and other substances used as substitutes for such refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance. 42 U.S.C. § 7671g(a), (c). In 1993, EPA promulgated regulations to implement Section 608. 58 Fed. Reg. 28,660, 28,713 (May 14, 1993) (promulgating 40 C.F.R. pt. 82, subpt. F (§§ 82.150-82.166)). In relevant part, these regulations require owners and operators of certain air-conditioning and refrigeration equipment using ozone-depleting refrigerants to repair leaks of those appliances. *Id.* at 28,716 (codified at 40 C.F.R. § 82.156(i) (1993)). These regulations were subsequently revised, and the current leak repair requirements

are codified at 40 C.F.R. § 82.157. 85 Fed. Reg. 14150, 14151 (March 11, 2020).<sup>2</sup>

2. On November 18, 2016, EPA issued a final rule entitled “Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act,” updating its refrigerant management regulations and extending the regulations, including the leak repair requirements, to substitutes for ozone-depleting substances. 81 Fed. Reg. 82,272 (the “2016 Rule”). These substitutes include hydrofluorocarbons (HFCs), a class of potent greenhouse gases.

3. On March 11, 2020, EPA issued a final rule entitled “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes.” 85 Fed. Reg. 14,150 (“2020 Rule”). The 2020 Rule rescinded the portion of the 2016 Rule’s regulations that had extended the leak repair requirements to air conditioning and refrigeration equipment using only substitutes for

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<sup>2</sup> For ease of reference, all of the requirements at 40 C.F.R. § 82.157, which include, among other requirements, provisions related to leak detection, appliance maintenance, and leak repair, are referred to as the “leak repair requirements” in this motion.

ozone-depleting substances, including HFCs. *See* 85 Fed. Reg. at 14,152. The 2020 Rule retained the leak repair requirements for air conditioning and refrigeration equipment using ozone-depleting refrigerants. *Id.*; *see* 40 C.F.R. § 82.157.

4. On May 11, 2020, Petitioners filed these petitions, seeking review of the 2020 Rule. After NRDC's and State and Municipal Petitioners' petitions were consolidated, Petitioners filed their opening brief on October 16, 2020, and EPA filed its answering brief on December 15, 2020. *See* Pet'rs' Opening Br., Doc. 1866890; Resp'ts' Ans. Br., Doc. 1875886.

5. The American Innovation and Manufacturing (AIM) Act of 2020 was enacted on December 27, 2020. Pub. L. No. 116-260 § 103 (2020), codified at 42 U.S.C. § 7675. Among other things, the AIM Act instructs EPA to issue regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves certain HFCs, which are referred to in the law as “[r]egulated substances,” *see* 42 U.S.C. § 7675(b)(11), (c)(1), (c)(3), and their substitutes. “For purposes of maximizing reclaiming and minimizing the release of a regulated

substance from equipment and ensuring the safety of technicians and consumers,” the AIM Act directs EPA to:

promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment (including requiring, where appropriate, that any such servicing, repair, disposal, or installation be performed by a trained technician meeting minimum standards, as determined by the Administrator) that involves (A) a regulated substance; (B) a substitute for a regulated substance; (C) the reclaiming of a regulated substance used as a refrigerant; or (D) the reclaiming of a substitute for a regulated substance used as a refrigerant.

42 U.S.C. § 7675(h)(1). The AIM Act also authorizes EPA to “coordinate those regulations with any other [EPA] regulations” involving “the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment,” or reclaiming. *Id.* § 7675(h)(3).

6. On January 15, 2021, to accord the parties additional time to confer about how the new statutory provision might affect the pending petitions for review, the Court granted a sixty-day extension of the remaining briefing deadlines. Order, Doc. 1880441.

7. On January 20, 2021, President Biden issued an “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” which directed review of certain agency actions taken between January 20, 2017, and January 20, 2021.

Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021). The 2020 Rule was promulgated during this period and is subject to review under the Executive Order. Since then, on March 18, May 28, August 12, October 22, and December 10, 2021, and on January 27, March 17, April 20, May 6, and June 6, 2022, EPA has requested, and Petitioners have not opposed, that the Court stay the case for defined periods while EPA reviews the 2020 Rule and determines whether to take any additional action with respect to the 2020 Rule. Doc. 1890493; Doc. 1900572; Doc. 1910014; Doc. 1919352; Doc. 1926243; Doc. 1932551; Doc. 1939433; Doc. 1943666; Doc. 1945805; Doc. 1949484. The Court has granted each of those requested stays. Order, Doc. 1890926 (Mar. 22, 2021); Order, Doc. 1900968 (June 2, 2021); Order, Doc. 1910127 (Aug. 13, 2021); Order, Doc. 1919574 (Oct. 25, 2021); Order, Doc. 1926581 (Dec. 13, 2021); Order, Doc. 1932798 (Jan. 28, 2022); Order, Doc. 1939665 (Mar. 18, 2022); Order, Doc. 1944024 (Apr. 22, 2022); Order, Doc. 1945998 (May 9, 2022); Order, Doc. 1949908 (June 9, 2022).

8. Based on its review of the 2020 Rule, EPA intends to engage in a rulemaking that would involve re-evaluating the application of leak repair requirements to appliances using HFCs and/or other substitute

refrigerants. EPA is considering various regulatory authorities for this rulemaking, including under Section 608 of the CAA and subsection (h) of the AIM Act. For example, EPA intends to consider whether to propose “regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment (including requiring, where appropriate, that any such servicing, repair, disposal, or installation be performed by a trained technician meeting minimum standards, as determined by the Administrator) that involves” HFCs or their substitutes, or the reclaiming of HFCs or their substitutes. 42 U.S.C. § 7675(h)(1). As part of this rulemaking, EPA intends to offer an opportunity for early engagement, and is considering options for that engagement such as publishing an Advanced Notice of Proposed Rulemaking that would solicit comments from the public concerning which such regulations (as described in the previous sentence) are appropriate, if any. EPA anticipates that this rulemaking would likely include proposed actions that, if finalized, could have the effect of narrowing or resolving issues raised in this litigation.



9. As a result, to avoid protracted litigation and conserve judicial resources, the Parties have agreed that it is appropriate for the Court to enter a time-limited abeyance of these consolidated petitions while EPA completes this rulemaking.

10. As indicated in the attached Declaration of Joseph Goffman (“Goffman Decl.”), EPA is planning to issue a notice of proposed rulemaking by summer (July – September) of 2023. Goffman Decl. ¶¶ 15-18. This range reflects an intent to strive for July 31, 2023, with the understanding that circumstances may delay the issuance of the notice of proposed rulemaking until September 30, 2023. *See id.* ¶¶ 17-18. EPA anticipates issuing any final rule within a year of the proposal and is accordingly currently targeting July 31, 2024, for any final rule based on the proposal, with the understanding that circumstances may delay the issuance of any final rule based on the proposal until September 30, 2024. *Id.* ¶ 18. EPA also recognizes that the timing of any final action could be influenced by factors that cannot yet be determined, such as, for example, the volume and nature of comments on the proposal. *Id.* ¶¶ 17-18.

11. As a result, the parties request that the Court issue an abeyance that will end on October 30, 2023 (one month after the latest date when EPA expects to issue the notice of proposed rulemaking), with Respondents to file status reports due 120 days after the Court's entry of this order and every 120 days thereafter. If EPA issues the notice of proposed rulemaking within the timeframe described above in Paragraph 10, Petitioners and Respondents anticipate moving to extend the abeyance through October 30, 2024, by which time EPA expects to issue any final rule based on the proposal. If EPA has not issued the notice of proposed rulemaking in the timeframe described above in Paragraph 10, the parties propose submitting motions to govern further proceedings by October 15, 2023, two weeks before the end of the abeyance.

## CONCLUSION

For the foregoing reasons, Petitioners and Respondents respectfully request that the Court issue an order: (1) abeying these petitions for review until October 30, 2023; (2) ordering Respondents to submit status reports every 120 days, starting 120 days after issuance of the abeyance order by the Court, describing their progress in

completing the rulemaking described above; and (3) ordering  
Petitioners and Respondents to submit motions to govern further  
proceedings no later than October 15, 2023 (two weeks in advance of the  
end of the requested abeyance), if EPA has not issued the notice of  
proposed rulemaking in the timeframe described above in Paragraph  
10.

Dated: June 29, 2022

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<sup>3</sup> Counsel for NRDC represents that all parties listed in the signature block consent to this filing.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 27(d), I hereby certify that the foregoing complies with the type-volume limitation because it contains 1831 words, according to the count of Microsoft Word.

/s/ Redding Cates  
Redding C. Cates

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NATURAL RESOURCES DEFENSE COUNCIL,

Petitioner,

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MICHAEL S. REGAN, ADMINISTRATOR, U.S.  
ENVIRONMENTAL PROTECTION AGENCY  
and U.S. ENVIRONMENTAL PROTECTION  
AGENCY,

Respondents.

AIR PERMITTING FORUM and AUTO  
INDUSTRY FORUM,

Intervenors.

Case No. 20-1150  
(consolidated with  
Case No. 20-1151)

**DECLARATION OF JOSEPH GOFFMAN**

I, Joseph Goffman, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief, and are based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

1. I am Principal Deputy Assistant Administrator for the United States Environmental Protection Agency Office of Air and Radiation (OAR), which is located at 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.
2. OAR is the EPA headquarters-based unit with primary responsibility for administration of the Clean Air Act (CAA) and of the American Innovation and Manufacturing Act of 2020 (AIM Act). As the Principal Deputy Assistant Administrator of OAR, I serve as the principal advisor to the Administrator of EPA on matters pertaining to air and radiation programs, and I am responsible for managing these programs, including program policy development and evaluation; development of emissions standards; program policy guidance and overview; and technical support and evaluation of regional air and radiation program activities.
3. As part of my duties as Principal Deputy Assistant Administrator of OAR, I oversee the development and implementation of actions, regulations, policy, and guidance under section 608 of the CAA, 42 U.S.C. § 7671g, and under the AIM Act, 42 U.S.C. § 7675.
4. This declaration is filed in support of EPA's motion for an abeyance in the cases consolidated under *Natural Resources Defense Council v. EPA*, No. 20-1150 (D.C. Cir.).



### Background on Section 608 of the CAA

5. Section 608 of the CAA establishes a “[n]ational recycling and emission reduction program,” which includes provisions addressing the use and emission of ozone-depleting substances, as well as provisions addressing the knowing release of ozone-depleting refrigerants and other substances used as substitutes for such refrigerants in the course of maintaining, servicing, repairing, or disposing of an appliance. 42 U.S.C. §§ 7671g(a) and 7671g(c).

6. EPA initially promulgated regulations to implement section 608 of the CAA in 1993. 58 Fed. Reg. 28,660, 28,713 (May 14, 1993). These regulations established the national refrigerant management program for ozone-depleting refrigerants recovered during the service, repair, and disposal of air-conditioning and refrigeration equipment. *Id.* This program encompassed a suite of requirements, such as requirements for refrigerant recovery equipment, reclaiming certification, and technician certification, and, to offer another example, requirements that persons servicing air-conditioning and refrigeration equipment containing ozone-depleting refrigerants observe certain practices to reduce emissions. *Id.* The refrigerant management regulations also included requirements for owners and operators of certain air-conditioning and refrigeration equipment using ozone-depleting refrigerants to repair leaks of those appliances; these requirements were originally codified at 40 C.F.R. § 82.156(i). EPA revised the

regulations under section 608 in subsequent rulemakings, and the current leak repair requirements are codified at 40 C.F.R. § 82.157. While the regulations at 40 C.F.R. § 82.157 include various provisions related to leak detection, appliance maintenance, and leak repair, these requirements are hereinafter collectively referred to as the “leak repair requirements” for ease of reference.

7. Those subsequent rulemakings include a final rule EPA issued in 2016, entitled “Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act.” 81 Fed. Reg. 82,272 (November 18, 2016) (“2016 Rule”). This rule revised EPA’s refrigerant management regulations and extended them, including the leak repair requirements, to substitutes for ozone-depleting substances. *See* 81 Fed. Reg. at 82,273, 82,313-82,314. These substitutes include hydrofluorocarbons (HFCs), a class of potent greenhouse gases.

8. In 2020, EPA issued another final rule that made revisions to these regulations, entitled “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes.” 85 Fed. Reg. 14,150 (March 11, 2020) (“2020 Rule”). In particular, the 2020 Rule rescinded the portion of the 2016 Rule’s regulations that had extended the leak repair requirements to air conditioning and refrigeration equipment using only substitutes for ozone-depleting substances, including HFCs. *See* 85 Fed. Reg. at 14,152. The 2020 Rule

retained the leak repair requirements for air conditioning and refrigeration equipment using ozone-depleting refrigerants. *Id.*

9. Petitions for review of the 2020 Rule were filed in this Court and consolidated under *Natural Resources Defense Council v. EPA*, No. 20-1150 (D.C. Cir.).

#### Background on Subsection (h) of the AIM Act

10. On December 27, 2020, Congress enacted the AIM Act. Pub. L. No. 116-260, Div. S, § 103, 134 Stat. 1182, 2255–71 (2020) (codified at 42 U.S.C. § 7675).

11. The AIM Act provided EPA newly enacted statutory authorities related to HFCs. Among other things, the AIM Act includes provisions in subsection (h) instructing EPA to issue regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves certain HFCs, which are referred to in the law as “regulated substances,” *see* 42 U.S.C. § 7675(b)(11), (c)(1), (c)(3), and their substitutes.

12. Subsection (h) of the AIM Act, entitled “Management of Regulated Substances,” states: “For purposes of maximizing reclaiming and minimizing the release of a regulated substance from equipment and ensuring the safety of technicians and consumers, the Administrator [of the EPA] shall promulgate regulations to control, where appropriate, any practice, process, or activity

regarding the servicing, repair, disposal, or installation of equipment . . . that involves (A) a regulated substance; (B) a substitute for a regulated substance; (C) the reclaiming of a regulated substance used as a refrigerant; or (D) the reclaiming of a substitute for a regulated substance used as a refrigerant.” 42 U.S.C. § 7675(h)(1); *see also id.* § 7675(b)(1). This subsection also authorizes EPA to “coordinate those regulations with any other [EPA] regulations” involving “the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment,” or reclaiming. *Id.* § 7675(h)(3).

#### EPA’s Review of the 2020 Rule

13. On January 20, 2021, President Biden issued an “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” (“Executive Order”), which directed review of certain agency actions taken from January 20, 2017, until January 20, 2021.<sup>1</sup> An accompanying fact sheet provided a non-exclusive list of agency actions that agency heads would review in accordance with that order, including the 2020 Rule.<sup>2</sup>

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>

<sup>2</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>

14. EPA has been reviewing the 2020 Rule, consistent with the direction in the Executive Order.

15. Based on its review of the 2020 Rule, EPA intends to engage in a rulemaking that would involve reevaluating the application of the leak repair requirements to appliances using HFCs and other substitute refrigerants. EPA anticipates that this rulemaking would likely involve proposed actions that, if finalized, could have the effect of narrowing or resolving issues raised in the cases consolidated under *Natural Resources Defense Council v. EPA*, No. 20-1150 (D.C. Cir.).

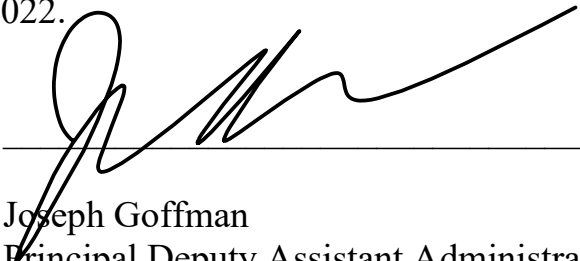
16. EPA is considering various regulatory authorities for this rulemaking, including section 608 of the CAA and subsection (h) of the AIM Act. For example, EPA intends to consider whether to propose “regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment [...] that involves” HFCs or their substitutes, or the reclaiming of HFCs or their substitutes. 42 U.S.C. § 7675(h)(1). As part of this rulemaking, EPA intends to offer an opportunity for early engagement, and is considering options for that engagement such as publishing an Advance Notice of Proposed Rulemaking that would solicit comments from the public concerning which such regulations (as described in the previous sentence) are appropriate, if any.

17. The Agency intends to proceed with this rulemaking expeditiously, while also recognizing the need to balance many competing demands on Agency resources.

18. In light of these considerations, the Agency anticipates issuing a proposed rule by summer (July – September) of 2023 and anticipates issuing any final rule within a year of the proposal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of March, 2022.



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Joseph Goffman  
Principal Deputy Assistant Administrator  
Office of Air and Radiation  
United States Environmental Protection Agency