ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF CALIFORNIA, STATE OF CONNECTICUT, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF NEW JERSEY, STATE OF NEW YORK, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF VERMONT, STATE OF WASHINGTON, and DISTRICT OF COLUMBIA, *Petitioners,* v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Respondent.*	Case Nos. 21-1018; 21-1021

MOTION OF AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC. FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and D.C. Circuit Rules 15(b) and 27, the Aerospace Industries Association of America, Inc.

("AIA") moves for leave to intervene as a party respondent in the above-captioned proceeding.[1] AIA has consulted with counsel for Petitioners State of California, State of Connecticut, State of Illinois, State of Maryland, Commonwealth of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of Oregon, Commonwealth of Pennsylvania, State of Vermont, State of Washington, District of Columbia, Sierra Club, Center for Biological Diversity, and Friends of the Earth (collectively, "Petitioners") and Respondent the United States Environmental Protection Agency ("EPA"), and is authorized to report that EPA does not oppose AIA's intervention. Petitioners reserve their position until they have an opportunity to review the motion to intervene.

In support of this motion, AIA states the following:

I. INTRODUCTION

1. Petitioners seek review of EPA's final rule, entitled "Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures," published at 86 Fed. Reg. 2,136 (Jan. 11, 2021) ("GHG Rule"). The GHG Rule creates a domestic standard by which the Federal Aviation

[1] Pursuant to this Court's Rule 15(b), this motion "will be deemed a motion to intervene in all cases before this [C]ourt involving the same agency action[s] or order[s], including later filed cases," and any order granting this motion will "ha[ve] the effect of granting intervention in all such cases."

Administration ("FAA") can then issue regulations and certificates that domestically-manufactured airplanes are in compliance with international standards.

2. Without such domestic standards, U.S. manufacturers could be forced to seek foreign certificates in order to market and operate their airplanes internationally, which would disadvantage U.S. manufacturers in the marketplace. *See* 86 Fed. Reg. at 2,138; Ex. A, Decl. of David Ciaran Hyde ("AIA Decl.") ¶ 13; Ex. B, Decl. of Eric George Upton ("Gulfstream Decl.) ¶¶ 6, 9, 11-12.

3. EPA designed the GHG Rule to ensure "the highest practicable degree of international uniformity in aviation regulations and standards." 86 Fed. Reg. at 2,138. Given the global nature of the aviation industry, if EPA were to impose different or stricter domestic standards, U.S. manufacturers would be forced to incur additional costs. AIA Decl. ¶¶ 9, 21; Gulfstream Decl. ¶¶ 12-14.

4. AIA's membership includes domestic aircraft and aircraft engines manufacturers. AIA Decl. ¶ 5; Gulfstream Decl. ¶¶ 1-3. Because either of the results described above would directly and negatively impact AIA's members, AIA moves to intervene to participate in support of EPA.

II. ARGUMENT

Background

A. Legal Framework

1. In 2017, the International Civil Aviation Organization ("ICAO") approved international airplane carbon dioxide emission standards ("ICAO CO_2 Standard"). The ICAO CO_2 Standard is not directly applicable to, or enforceable against, member states' airplane and engine manufacturers. 86 Fed. Reg. at 2,140. Instead, member states like the U.S. must adopt domestic standards at least equivalent to the ICAO CO_2 Standard and then apply them to subject airplane manufacturers. *Id*. Only once a member state has done so can its domestic regulators issue airworthiness certificates for airplanes. *Id*.

2. For the aviation industry, such certificates are vital because many aircraft are operated internationally and "[m]ember [s]tates may ban the use of any airplane within their airspace that does not meet ICAO standards." 86 Fed. Reg. at 2,144 (citing ICAO, 2006: Convention on International Civil Aviation, Article 33, Ninth Edition, Document 7300/9, http://www.icao.int/publications/Documents/7300_9ed.pdf (last accessed March 16, 2020)); AIA Decl. ¶ 13. There are currently 193 ICAO member states. *See* ICAO, Member States, https://www.icao.int/MemberStates/Member%20States.English.pdf.

3. The European Union Aviation Safety Agency in Europe, as well as agencies in other jurisdictions, have already implemented rules consistent with the

ICAO CO_2 Standard. 86 Fed. Reg. at 2,138; AIA Decl. ¶ 11. *See also* https://www.easa.europa.eu/newsroom-and-events/news/easa-welcomes-icaos-adoption-new-co2-emission-standards-aircraft.

4. If the U.S. does not have a domestic standard in place, or requires U.S. manufacturers to certify to a different standard than one that has been adopted internationally, U.S. manufacturers would face a significant marketplace competitive disadvantage. 86 Fed. Reg. at 2,138, 2,144-45; AIA Decl. ¶ 13; Gulfstream Decl. ¶¶ 11-13.

5. In order to implement the ICAO equivalent standards in the U.S., EPA initiates rulemakings under the Clean Air Act ("CAA"). 86 Fed. Reg. at 2,140. The CAA then requires the FAA to issue regulations to ensure compliance with EPA's standards when the FAA issues specific airworthiness certificates. *Id.* (citing 42 U.S.C. § 7572). The FAA then provides such certificates to domestic airplane manufacturers. *Id.* at 2,138.

6. EPA promulgated the GHG Rule, fulfilling its international obligations to align domestic standards with the ICAO CO_2 Standard. The GHG Rule will apply to both new type designs and in-production subject airplanes. 86 Fed. Reg. at 2,139, 2,146. The GHG Rule incorporates the same compliance schedule as the ICAO CO_2 Standard. *Id.* at 2,139. The GHG Rule maintains uniformity with the international standards, which is both in keeping with the U.S.'s international obligations, and

necessary to allow U.S. manufacturers to remain competitive in the global marketplace. *See id.* at 2,138; AIA Decl. ¶¶ 13-14; Gulfstream Decl. ¶¶ 11-13.

7. EPA's action in promulgating the GHG Rule allows the FAA to now promulgate rules under which the FAA may issue the certificates necessary for subject airplanes to operate in other ICAO member states. *See* 86 Fed. Reg. at 2,168; AIA Decl. ¶ 10.

8. In the U.S., "a newly produced airplane subject to this rule that does not meet the GHG standards would likely be denied an airworthiness certificate after January 1, 2028." 86 Fed. Reg. at 2,147. Having the GHG Rule in place now is critical for manufacturers, who need to know about the standards "at least 8 years in advance of any new type design entering [into] service" "[b]ecause of the investments and resources necessary to develop a new type design." *Id.*; *see also* AIA Decl. ¶¶ 14-15; Gulfstream Decl. ¶ 14.

B. AIA

9. AIA is the American aerospace and defense industry's premier trade association, advocating on behalf of over 300 companies for policies, regulations, and investments that keep our country strong and bolster the U.S.'s capacity to innovate and spur economic growth. AIA Decl. ¶ 4. AIA's members include the U.S.'s leading manufacturers and suppliers of aircraft and aircraft engines, helicopters, unmanned aerial systems, missiles, and space systems. Its membership

includes established domestic producers of civil aircraft that are subject to EPA's standards for GHG emissions for airplanes, and who rely on such standards for certain FAA certifications that are vital to their operations, including the fundamental ability to have the equipment they make operate in non-U.S. jurisdictions. AIA Decl. ¶ 5; Gulfstream Decl. ¶¶ 1-3.

10. Because of this reliance, the outcome of this litigation will directly affect AIA and AIA's domestic aircraft manufacturer members. AIA Decl. ¶¶ 5, 16, 19. These members will be competitively disadvantaged if Petitioners succeed in their challenge to the GHG Rule, and will suffer economic harm. AIA Decl. ¶¶ 14, 19-21; Gulfstream Decl. ¶¶ 10-14.

11. AIA's direct and substantial interest in this case cannot be adequately represented by any other party.

Standing

12. In the past, this Court has required "all would-be intervenors" to "demonstrate Article III standing." *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1232-33 (D.C. Cir. 2018). However, the Supreme Court recently held that where, as here, a government party and supporting intervenor seek the same relief (here, dismissal or denial of the petition for review), a court "err[s] by inquiring" into an intervenor's "independent Article III standing." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2379 n.6 (2020). AIA

will seek the same relief—upholding EPA's final action—as EPA, which indisputably has standing to defend its final action. As a result, AIA should not be required to show standing under the Supreme Court's recent decision.

13. Even assuming, however, that this Court would require AIA to show Article III standing to intervene as a respondent in this case, AIA satisfies both the requirements for associational standing and the underlying requirements of Article III standing: (1) injury-in-fact, (2) causation, and (3) redressability. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). As an association, AIA has standing to intervene on behalf of its members because: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

14. First, "at least some of [AIA's] members would have standing to [intervene] in their own right" as entities subject to the standards set by the GHG Rule, and impacted by the relief sought by Petitioners. *Fed'n for Am. Immigration Reform, Inc. v. Reno*, 93 F.3d 897, 899-900 (D.C. Cir. 1996) (Federation would have had standing to sue if some of its members would, citing *Hunt*, 432 U.S. 333). As relevant here, AIA's membership includes U.S. aircraft manufacturers which would be subject to EPA's GHG Rule, and are reliant on the Rule's standards to obtain

certificates from the FAA that they need for their products to be used internationally. AIA Decl. ¶ 5; Gulfstream Decl. ¶¶ 2-4, 7, 9.

15. With respect to injury-in-fact, this proceeding threatens AIA members with "concrete and particular[]" and "actual or imminent" injuries sufficient for Article III standing. *Lujan*, 504 U.S. at 560. There is "little question" that a party who "is himself an object of [the governmental] action (or forgone action) at issue" has standing. *Lujan*, 504 U.S. at 561-62; *cf. Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 175 (D.C. Cir. 2012) (standing more easily shown when agency action imposes "regulatory restrictions, costs, or other burdens" on a party). *See also Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 733 (D.C. Cir. 2003) (concrete injury exists when members benefit from current (challenged) regulatory regime); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (same). Here, AIA members benefit from the GHG Rule because it provides a domestic standard consistent with the ICAO CO_2 Standard, thus allowing the FAA to pass regulations under which AIA members may receive the certificates they need for their products to operate internationally. 86 Fed. Reg. at 2,168; AIA Decl. ¶¶ 13-14, 17-20; Gulfstream Decl. ¶¶ 7, 9. Because the withdrawal of the GHG Rule would put AIA members at a significant competitive disadvantage, their standing is "self-evident." *Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002) (citing *Lujan*, 504 U.S. at 561-62). Here, AIA is "not a mere outsider" asserting the views of its members;

instead, its members are subject to, and reliant on, the standards set by the GHG Rule. *See State Nat'l Bank of Big Spring v. Lew*, 795 F.3d 48, 53 (D.C. Cir. 2015).

16. In particular, "[e]conomic harm to a business clearly constitutes an injury-in-fact. And the amount is irrelevant. A dollar of economic harm is still an injury-in-fact for standing purposes." *See Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017) (citing and quoting *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'")). The record clearly demonstrates that AIA members would suffer such harms. *Cf. Sierra Club*, 292 F.3d at 899-900 ("In many if not most cases the petitioner's standing to seek review of administrative action is self-evident; no evidence outside the administrative record is necessary for the court to be sure of it.").

17. Here, AIA members would suffer much more than the nominal economic harm necessary to show an injury: If the GHG Rule is withdrawn and the U.S. does not have domestic rules to implement the ICAO CO_2 Standard (like the GHG Rule) in place in a timely fashion, it could jeopardize tens of billions of dollars of U.S. aircraft sales, including AIA member sales. AIA Decl. ¶ 14; Gulfstream Decl. ¶¶ 11-12. For Gulfstream Aerospace Corporation, within the Aerospace Group of AIA member General Dynamics Corporation, the loss of even a single aircraft sale would represent a financial loss between $20-75 Million, and

incremental design and certification costs resulting from designing multiple products to different international standards could be in the tens of millions of dollars, if not much more, for each new aircraft program. *Id.* ¶ 12. Gulfstream estimates that just the costs of increased paperwork, meetings, telephone conferences and coordination that would be required if the GHG Rule is rescinded to be approximately $50,000 per year, or more, plus an estimated $1,000,000, or more, for each new aircraft model certified. *Id.* ¶ 13.

18. When airlines or other operators decide what aircraft to purchase, a key consideration is whether an aircraft will be allowed to operate in an airline or operator's jurisdiction, which will require certification that the aircraft complies with the ICAO CO_2 Standard in the nearly 200 foreign member state jurisdictions. AIA Decl. ¶ 13. Without relevant domestic regulations in place from EPA, such as the GHG Rule, the FAA is unable to issue a certificate that an aircraft meets the ICAO CO_2 Standard, thus putting U.S. manufacturers at a serious competitive disadvantage to manufacturers based elsewhere. *Id.*

19. EPA itself noted this concern in the preamble to the GHG Rule, explaining that if the U.S. does not have a domestic standard in place consistent with the ICAO CO_2 Standard, or if it requires U.S. manufacturers to certify to a different standard than one that has been adopted internationally, U.S. manufacturers would face a significant marketplace competitive disadvantage. 86 Fed. Reg. at 2,138,

2,144-45; AIA Decl. ¶ 13; Gulfstream Decl. ¶ 12. This is particularly true because other ICAO member states have already implemented such standards. AIA Decl. ¶ 11.

20. The competitive disadvantage will manifest itself in multiple ways. First, having the GHG Rule in place *now* is crucial for AIA members, due to the long lead time needed to develop new or derivative design types before putting them into service. 86 Fed. Reg. at 2,147; AIA Decl. ¶¶ 14-15; Gulfstream Decl. ¶ 14. Further delays in finalizing a standard will either prevent or make timely compliance with any later-promulgated standard much more expensive, due to shortened timelines to design and test airplanes to the late-emerging standards. AIA Decl. ¶¶ 15, 20; Gulfstream Decl. ¶ 14. Second, without a domestic standard consistent with the ICAO CO_2 Standard in place, AIA members would "have to certify to the ICAO standards at higher costs because they will have to move their entire certification program(s) to a non-U.S. certification authority." 86 Fed. Reg. at 2,168. Many of these foreign authorities charge fees for certificates, whereas the FAA does not. *Id.* & n.157.

21. Third, if Petitioners succeed in overturning the GHG Rule, or requiring different or stricter regulation of GHG from airplane engines, AIA members would incur significant additional costs to meet those standards, compared to their foreign competitors, and therefore be further injured. AIA Decl. ¶ 21. For example, if

Petitioners succeed, and EPA promulgates a standard that does not provide harmonization with the ICAO CO_2 Standard, manufacturers would be driven to either produce alternate versions of a product, thus significantly increasing costs, or offer products compliant with multiple standards, which may be uncompetitive when compared to products produced elsewhere. *Id.*; Gulfstream Decl. ¶ 12. In addition, manufacturers certifying to multiple standards would incur additional costs to pay for both initial certification as well as the costs of showing compliance to the ICAO CO_2 Standard. AIA Decl. ¶ 21.

22. AIA also readily satisfies the causation and redressability requirements for Article III standing. Because AIA members are "object[s] of the [agency] action (or forgone action) at issue," there can be "little question" that the relief Petitioners seek in this case (i.e., vacating the GHG Rule) will "cause[] [them] injury." *Sierra Club*, 292 F.3d at 900 (quoting *Lujan*, 504 U.S. at 561-62). There also can be "little question" that a judgment dismissing or denying the petition for review "will redress" that injury—or, more aptly, prevent that injury from occurring in the first place by leaving in place the standard necessary for them to obtain certificates from the FAA. *Id.* (quoting *Lujan*, 504 U.S. at 561-62).

23. This Court routinely recognizes that proposed intervenors have standing in circumstances such as these. *See Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 317 (D.C. Cir. 2015) ("Our cases

have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."); *see also*, *e.g.*, *Fund for Animals*, 322 F.3d at 732-34; *Military Toxics Project*, 146 F.3d at 954. As discussed above, the GHG Rule benefits AIA members by providing the domestic standard necessary for the FAA to issue certificates vital to their operations and "an unfavorable decision" in this case "would remove [that] benefit." *Crossroads*, 788 F.3d at 317.

24. Second, the interests that AIA seeks to protect are germane to its organizational purposes. AIA Decl. ¶ 22. AIA is an aerospace trade group that advocates on behalf of over 300 companies for policies, regulations, and investments that keep our country strong, bolster our capacity to innovate and spur economic growth. *Id* ¶ 4. This includes advocacy before both lawmakers and EPA to support the U.S. aviation industry, including its manufacturer members. *Id.* ¶¶ 6-7. In addition to commenting on this particular rulemaking, AIA also participates in the activities of the ICAO Committee on Aviation Environmental Protection through the International Coordinating Council of Aerospace Industries Associations ("ICCAIA"), which has responsibility for advising on international standards related to the environmental performance of aircraft, including the ICAO CO_2 Standard upon which the EPA's GHG rule is based. *Id.* ¶¶ 7-8; *see also* AIA Comment on Proposed Rulemaking, Docket No. EPA-HQ-OAR-2018-0276 (Oct. 19, 2020).

Hence, participating in litigation that could negatively impact AIA's mission and members, and potentially result in additional regulatory requirements, clearly is germane to the AIA's purpose. AIA Decl. ¶¶ 19-22.

25. Finally, neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit because they do not require individualized proof and both are thus properly resolved in a group context. *See Hunt*, 432 U.S. at 333.

Intervention As Of Right

26. Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, a motion to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." This rule "simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991). "[I]n the intervention area the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

27. Because Rule 15(d) does not provide standards governing intervention, "appellate courts have turned to the rules governing intervention in the district courts

under Fed. R. Civ. P. 24." *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004); *see also Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) ("[T]he [Supreme] Court [has] recognized that 'the policies underlying intervention [in district court] may be applicable in appellate courts.'" (quoting *Int'l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965))). Under this rule, a motion to intervene as of right turns on four factors:

> (1) the timeliness of the motion; (2) whether the applicant "claims an interest relating to the property or transaction which is the subject of the action," . . . ; (3) whether "the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest," . . . ; and (4) whether "the applicant's interest is adequately represented by existing parties."

Mova Pharm. Corp. v. Shalala, 140 F.3d 1060, 1074 (D.C. Cir. 1998) (quoting Fed. R. Civ. P. 24(a)); *Fund for Animals*, 322 F.3d at 731; *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233-34 (D.C. Cir. 2003). Under this standard, AIA has a right to intervene here.

28. First, this motion is timely because it has been filed within 30 days of the filing of the petition for review, and in advance of the February 22, 2021 deadline that this Court established for procedural motions. *See* Fed. R. App. P. 15(d); Order, *California v. EPA*, No. 21-2021 (D.C. Cir. Jan. 28, 2021).

29. AIA satisfies the second and third as-of-right intervention factors for the same reasons it has Article III standing. *See Mova Pharm.*, 140 F.3d at 1076 (noting that satisfying constitutional standing requirements demonstrates the

existence of a legally protected interest for purposes of Rule 24(a)); *accord Fund for Animals*, 322 F.3d at 735. This action directly implicates AIA and its members' interest in maintaining the domestic standard necessary for them to receive FAA certificates, and Petitioners' effort to compel EPA to rescind and revise such standards threatens to "impair or impede" that interest. Fed. R. Civ. P. 24(a)(2). As AIA represents members that are directly and indirectly affected by the GHG Rule and any revisions to it, AIA falls within the class of parties that this Court and others have routinely allowed to intervene in cases reviewing final agency action. *See, e.g.*, *Military Toxics Project*, 146 F.3d at 954.

30. With respect to the fourth factor, AIA's interest is not adequately represented by existing parties. A prospective intervenor's burden of showing inadequate representation "is not onerous," as it "need only show that representation of [its] interest 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *see also WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1200 (10th Cir. 2010) ("[T]he inadequate representation element of Rule 24(a)(2) also presents a minimal burden." (emphasis omitted)). It is well-settled that a government agency charged with serving the public interest cannot adequately represent the more narrow interests of private companies. *See Dimond*, 792 F.2d at 192-93 ("A government

entity . . . is charged by law with representing the public interest of its citizens. . . . [It] would be shirking its duty were it to advance [a] narrower [private] interest at the expense of its representation of the general public interest."); *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 911-12 (D.C. Cir. 1977); *see also Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir. 1977) ("[This is a] familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible."). For these reasons, this Court "look[s] skeptically on government entities serving as adequate advocates for private parties." *Crossroads*, 788 F.3d at 321.

31. AIA's interests in this matter are distinct from EPA's regulatory interests. EPA's overarching interests are the proper administration and implementation of its substantive authorities under the CAA, within the procedural requirements of the CAA, the Administrative Procedure Act and other applicable laws. AIA's interests, on the other hand, relate to advancing the interests of its members and advocating for domestic standards that provide consistency and international harmonization. *See* AIA Decl. ¶¶ 4, 9, 22. AIA's interests are also distinct from other potential intervenors in this case. AIA was founded in 1919, and is the premier American aerospace and defense industry trade association, advocating on behalf of over 300 companies. Its broad membership and long history

of advocacy and involvement in environmental issues impacting the aviation industry provide it with a unique perspective. *See id*. ¶¶ 4, 6-8. If AIA is not permitted to intervene in this case, it will have no other adequate means of representing its interests against the claims raised by Petitioners.

32. AIA's participation will also be helpful to the Court. Among other reasons, AIA is in a better position than EPA to discuss the harm to its member entities that would arise from the Court setting aside the GHG Rule. Consistent with Circuit Rule 28(d)(4), AIA will endeavor to coordinate with EPA to avoid duplicative briefing and to ensure that its participation will be of assistance to the Court.

Permissive Intervention

33. In the alternative, AIA should be granted permissive intervention. Under Federal Rule of Civil Procedure 24(b), a court may permit intervention by a party that (1) files a "timely motion," and (2) "has a claim or defense that shares with the main action a common question of law or fact." First, as explained above, this intervention motion is timely. Second, if allowed to intervene, AIA will address the issues of law and fact that Petitioners present on the merits and defend the legality of the GHG Rule; and, as also discussed above, its participation will be helpful to the Court. Therefore, even if AIA is not entitled to intervene as of right, permissive intervention is appropriate here.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, this Court should grant AIA leave to intervene as a respondent in support of EPA.

Date: February 16, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the word limit of Fed. R. App. P. 27(d)(2) because it contains 4,300 words, excluding the parts exempted by Fed. R. App. P. 32(f) and 27(d)(2).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Date: February 16, 2021

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CORPORATE DISCLOSURE STATEMENT
OF AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Movant-Intervenor Aerospace Industries Association of America, Inc. ("AIA") makes the following disclosure: AIA is a State of New York non-profit corporation

organized and existing as a tax-exempt organization chartered under Internal Revenue Code Section 501(c)(6), and, as such, has no parent corporation or publicly held corporation owning 10 percent or more of AIA's stock.

Date: February 16, 2021

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that on February 16, 2021, I electronically filed the foregoing *Motion of Aerospace Industries Association of America, Inc. for Leave to Intervene* and *Corporate Disclosure Statement of Aerospace Industries Association of America, Inc.* with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

Date: February 16, 2021

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