

ORAL ARGUMENT NOT YET SCHEDULED

No. 21-1251 and consolidated cases

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

HEATING, AIR-CONDITIONING, & REFRIGERATION
DISTRIBUTORS INTERNATIONAL, *et al.*,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petition for Review of Final Action by the
United States Environmental Protection Agency

**BRIEF OF AMICUS CURIAE
NATURAL RESOURCES DEFENSE COUNCIL
IN SUPPORT OF RESPONDENTS**

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Dated: June 9, 2022

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED
CASES**

All parties, rulings under review, and related cases are set forth in the initial opening briefs for Petitioners and the initial brief for Respondents, with the exception of *Amicus Curiae* Natural Resources Defense Council in support of Respondents.

RULE 26.1 DISCLOSURE

Natural Resources Defense Council (“NRDC”), a corporation organized and existing under the laws of the State of New York, is a national non-profit organization dedicated to improving the quality of the human environment and protecting the nation’s endangered natural resources. NRDC does not have any parent corporations and no publicly held corporation has a ten percent or greater ownership in it.

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GLOSSARY

AIM Act American Innovation and Manufacturing Act of 2020

EPA Environmental Protection Agency

NRDC Natural Resources Defense Council

RULE 29 STATEMENTS

Identity and Interest of *Amicus Curiae*

Amicus Curiae Natural Resources Defense Council (“NRDC”) is a non-profit organization that works to protect public health and the environment. Since its founding in 1970, NRDC has worked to ensure enforcement of the Clean Air Act and other federal and state laws to address major environmental challenges, including climate change.

NRDC has a significant interest in reducing greenhouse gas pollution, including short-lived but potent climate pollutants like hydrofluorocarbons, in order to protect the health, welfare, economic, and aesthetic interests of its members. *See Nat. Res. Def. Council v. Wheeler*, [955 F.3d 68, 77–78](#) (D.C. Cir. 2020).

NRDC has particular interest and expertise in federal efforts to reduce emissions of hydrofluorocarbons. NRDC has participated extensively in regulatory and legal proceedings regarding the Environmental Protection Agency’s regulation of hydrofluorocarbons under Title VI of the Clean Air Act, *see id.*, as well as in recent regulatory proceedings to implement the hydrofluorocarbon phasedown mandated by the newly-enacted American Innovation in Manufacturing

Act of 2020, *see* U.S. EPA, Response to Comments, EPA-HQ-OAR-2021-0044-0027-3. NRDC is committed to the timely, transparent, and ambitious implementation of the hydrofluorocarbon phasedown, which is at issue in this case.

**Statement Regarding Separate Briefing, Authorship, and
Financial Contributions**

No party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief. No person other than amicus curiae contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

Amicus NRDC agrees with Respondent Environmental Protection Agency's ("EPA's") explication of the agency's authority and rationale for prohibiting use of disposable cylinders as part of the Framework Rule to establish an allowance and trading program to implement a phasedown of hydrofluorocarbons. [86 Fed. Reg. 55,116](#) (Oct. 5, 2021). The disposable cylinder prohibition supports enforcement of the caps on allowable HFC production and consumption under the American Innovation and Manufacturing Act of 2020 ("AIM Act"). Pub. L. No. 116-260, Div. S, § 103, [134 Stat. 1182, 2255-71](#) (2020) (codified at [42 U.S.C. § 7675](#)).

The rulemaking record contains strong evidence that smuggling of regulated substances (both hydrofluorocarbons and the ozone-depleting substances that preceded them) has been and remains a major problem, and that such smuggling usually takes place through illegal importation of those substances in disposable cylinders. Thus, the prohibition on disposable cylinders, and the other requirements EPA has established for tracking the movement of regulated substances,

directly serve EPA's obligation to "ensure" that the AIM Act's production and consumption limits are met. [42 U.S.C. § 7675\(e\)\(2\)\(B\)](#).

As *amicus*, NRDC wishes to add only one further point concerning the ancillary environmental protection that comes from not wasting the "heel"—the amount of hydrofluorocarbons that remains in in disposable tanks and escapes into the atmosphere when those tanks are crushed for scrap metal recycling or disposed of in landfills.

Disposable cylinders are designed with a one-way valve, such that once used they cannot be refilled and must be discarded. In contrast, refillable cylinders can be refilled multiple times and if properly maintained can be used for up to 20 years. The refillable cylinder is not a rare or unfamiliar technology—indeed, an estimated 42 million American households fuel their outdoor gas grills with refillable propane cylinders, bringing the empty cylinders to be exchanged or refilled at hardware stores or gas stations rather than simply tossing them in the trash.¹

¹ Eric Kuhle & Michael Sloan, ICF, *Impact of the U.S. Consumer Propane Industry on U.S. and State Economies in 2018* 1 (Apr. 2020), <http://propane.com/wp-content/uploads/2020/07/2018-Propane-Industry-Impact-on-US-and-State-Economies.pdf>.

As EPA explained in the rulemaking, an “empty” disposable cylinder still contains a residual amount of hydrofluorocarbon that remains in the tank when there is no longer enough internal pressure to deliver it. In the final Framework rule, EPA estimated that the disposable cylinder ban would prevent release of hydrofluorocarbons equivalent to 29 million metric tons of carbon dioxide by 2050. 86 Fed. Reg. at 55,174. That’s roughly equal to taking more than six million cars off the road for one year.² And the assumptions used to derive that estimate are conservative—EPA assumed that heels are released from 75 percent of disposable cylinders and that the average residual heel is four percent of the full cylinder, 86 Fed. Reg. at 55,174, but both figures may underestimate the emissions associated with disposable cylinders.³

Disposable cylinders may also release unnecessary amounts of hydrofluorocarbons into the atmosphere through their pressure relief safety mechanisms. A pressure relief valve is needed in case a cylinder

² U.S. EPA, *Greenhouse Gas Equivalencies Calculator*, <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

³ U.S. EPA, *Refillable and Non-refillable Cylinders: Analysis of Use, Emissions, Disposal, and Distribution of Refrigerants* 10-15 (Apr. 2021), EPA-HQ-OAR-2021-0044-0046.

is overfilled or gets too hot and its internal pressure increases dangerously. Refillable cylinders use a resealable safety valve that releases no more than 20 percent of the refrigerant to decrease the internal pressure. In contrast, disposable cylinders have a one-time-use relief valve designed to release the cylinder's *entire* contents (except for the heel) under those circumstances. [86 Fed. Reg. at 55,174.](#)

Disposable cylinders also create more solid waste, since they are used only once and then discarded, whereas refillable cylinders are returned to the supplier and can be maintained and repaired for many years. Requiring use of refillable cylinders may also help shift public perception about the value of conserving refrigerant gases. For example, Australia's disposable cylinder ban has improved refrigerant management by encouraging return and reclaim of the refrigerant remaining in cylinders, and thereby "supports the ethos that refrigerants are not a commodity but a specialized . . . and environmentally damaging good."⁴

⁴ Navigant Consulting, Inc., *AHRI Project 8018 Final Report: Review of Refrigerant Management Programs* 6 (Jan. 2016), https://www.ahrinet.org/App_Content/ahri/files/RESEARCH/Technical%20Results/AHRI_8018_Final_Report.pdf.

So in addition to undermining enforcement of the production and consumption caps, allowing continued use of disposable cylinders wastes a large quantity of a limited refrigerant resource that should be conserved for productive use in air conditioners and other equipment, not released into the air to worsen climate change.

The AIM Act seeks not merely to meet the schedule of production and consumption limits elaborated mandated by [42 U.S.C. § 7675\(e\)](#). In order to minimize hydrofluorocarbons' total contribution to climate change, the AIM Act also expressly authorizes EPA to accelerate that schedule, if statutory criteria are met relating to the remaining demand for hydrofluorocarbons, the supply available from recycling and reusing (reclaiming) old hydrofluorocarbons, and the availability of alternatives. *Id.* § 7675(f). Avoiding the unnecessary waste and emission of the hydrofluorocarbon heel in disposable cylinders directly serves this purpose.

CONCLUSION

For the foregoing reasons and the reasons set forth in Respondent EPA's brief, *Amicus* NRDC urges this Court to deny the petitions for review of EPA's Framework Rule.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the type-volume requirements of Circuit Rule 32(e)(3) and Federal Rule of Appellate Procedure 29(a)(5) because this brief contains 1,118 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(e)(1). I further certify that this brief complies with the typeface and style requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook, a proportionately spaced font.

Dated: June 9, 2022

/s/ Melissa J. Lynch

CERTIFICATE OF SERVICE

I certify that, on June 9, 2022, I electronically filed the foregoing brief using the appellate CM/ECF system, which served a copy of the document on all counsel of record in the case.

Dated: June 9, 2022

/s/ Melissa J. Lynch