No. _____

In the
Supreme Court of the United States

RMS OF GEORGIA, LLC, d/b/a Choice Refrigerants,

Petitioner,

v.

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

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In the American Innovation and Manufacturing Act of 2020, Congress authorized EPA to reorder a multibillion-dollar market—and prohibit some private parties from continuing to participate in it at all—while providing virtually no limits on EPA's discretion to refashion that market as it sees fit. Indeed, other than instructing how to handle a handful of "essential uses" of the substances it addresses, the Act provides no guidance whatsoever as to how EPA should allocate the "allowances" that are now indispensable for companies that produce or consume those substances.

In the decision below, the D.C. Circuit did not deny that an abject failure to constrain the sweeping power granted EPA would be an impermissible delegation of legislative power even under this Court's lax "intelligible principle" test. But rather than condemn that Article I violation, the court committed an Article III violation by reading into the Act the guidance Congress did not supply: It purported to divine from snippets of legislative history an implicit intent to incorporate limits laid out in an entirely different statutory provision that the Act nowhere cross-references or incorporates. The court's felt need to write into the Act "intelligible principles" that even EPA failed to perceive is proof positive that Congress gave away what the Constitution vests in Congress alone: the power to legislate.

The question presented is:

Whether Congress violated the Vesting Clause of Article I by giving an executive agency unbounded discretion to choose which private parties are entitled to participate in a multibillion-dollar market.

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant below) is RMS of Georgia, LLC, d/b/a Choice Refrigerants.

Respondents are the Environmental Protection Agency and Lee Zeldin, Administrator of the Environmental Protection Agency, in his official capacity (defendants and appellants below); Air-Conditioning, Heating, and Refrigeration Institute (intervenor-defendant and appellant below); and Alliance for Responsible Atmospheric Policy (intervenor-defendant and appellant below).

The court of appeals consolidated this case for purposes of briefing and disposition with *iGas Holdings, Inc., et al. v. EPA*, No. 23-1261 (D.C. Cir.). Petitioner does not seek review of that judgment.

CORPORATE DISCLOSURE STATEMENT

Petitioner RMS of Georgia, LLC, d/b/a Choice Refrigerants, states that it is a limited liability company which is not owned in whole or in part by a parent corporation or a publicly traded company and which does not issue stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

- *iGas Holdings, Inc., et al. v. EPA et al.*, No. 23-1261 (D.C. Cir.) (judgment entered August 01, 2025; rehearing denied September 30, 2025); and
- *RMS of Georgia, LLC v. EPA et al.*, No. 23-1263 (D.C. Cir.) (judgment entered August 01, 2025; rehearing denied September 30, 2025).

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PETITION FOR WRIT OF CERTIORARI

Many have observed that the present state of this Court's nondelegation doctrine is neither particularly demanding nor particularly satisfying. If, as all seem to agree, Congress cannot delegate its legislative authority to the other branches, then there needs to be some meaningful and judicially administrable limit on delegation. The Court has struggled to formulate such a test, but it has always recognized at least one irreducible minimum of a constitutional delegation: Congress must supply *some* "intelligible principle" to guide the exercise of the power it conveys. *Mistretta v. United States*, 488 U.S. 361, 372 (1989). This case presents the rare statute that fails to clear even that low bar, giving an administrative agency exactly zero direction. The D.C. Circuit avoided that conclusion only by fashioning "intelligible principles" itself. Far from fixing the nondelegation violation, that committed another one, as the third branch is no more entitled than the second branch to exercise the first branch's legislative power. Neither this statute nor the decision below can stand.

The American Innovation and Manufacturing Act of 2020 ("AIM Act") requires an 85% reduction in production and consumption of hydrofluorocarbons ("HFCs") by 2036. To that end, the Act mandates that, going forward, businesses in the refrigeration and air conditioning sector may produce or consume HFCs only pursuant to the "allowances" it creates. Congress tasked the Environmental Protection Agency ("EPA") with establishing a cap-and-trade program to accomplish that phasedown, and it told EPA how to set the number of allowances for each phase. It also

instructed EPA that, for the first five years, it may allocate special allowances for a small number of "essential uses," and must allocate them for certain enumerated applications—a subset that accounts for roughly 2% of allowances. But Congress provided no guidance as to how EPA should go about allocating the remaining 98%. That is not an exaggeration. The statute does not say one word about how EPA should exercise its sweeping power to allocate those allowances.

If that divestment of core legislative power does not violate the intelligible-principle test, then it is difficult to fathom what would. To be sure, this Court has held that even very broad delegations may pass muster if they are accompanied by *some* guidance on how to exercise the power divested. But the AIM Act does not even instruct EPA to allocate allowances as "reasonably necessary or appropriate," or "fairly and equitably," or in the "public interest." It offers literally nothing to guide EPA in deciding how to allocate allowances that are a matter of life and death for many companies in the multibillion-dollar industry the Act regulates. Apparently unwilling or unable to make those hard choices itself—and face the electoral consequences that would follow from picking winners and losers in a major market—Congress did what the Constitution forbids: It transferred its legislative power elsewhere, thereby ensuring that unelected and unaccountable bureaucrats—not Members of Congress who must stand for reelection—would take the blame.

EPA tried to defend the AIM Act and its utterly unconstrained discretion by arguing that Congress did

not need to make those hard choices itself. But the D.C. Circuit refused to endorse such an absolute abdication. And rightly so, as a law that passes the buck so completely that even the implementing agency cannot identify constraining guardrails is a blatant Article I violation. Yet rather than admit that Congress plainly transgressed even the minimal limits this Court's nondelegation cases impose, the D.C. Circuit tried to cure the problem by supplying the intelligible principle Congress omitted. Relying on a few snippets of legislative history, the court concluded that Congress must have "intended" for EPA to allocate allowances in accordance with a methodology set out in a provision in an entirely different statutory regime, which the AIM Act does not mention, let alone cross-reference or incorporate (a particularly glaring omission, since the Act *does* expressly incorporate *other* aspects of the Clean Air Act).

Far from fixing the Article I violation, the D.C. Circuit's solution just added an Article III violation to the mix. After all, Congress may no more grant its Article I power to the judiciary than it may grant it to the executive. Nor may the judiciary arrogate such power unto itself. When Congress fails to supply the guidance the Constitution demands, the courts' job is to tell Congress to do its job, not to do Congress' job for it. The point of the nondelegation doctrine is to ensure that *Congress*—not unelected and unaccountable bureaucrats, or unelected and unaccountable judges—makes the hard choices. Two separation-of-powers wrongs do not make a constitutional right.

Nearly 50 years ago, "Justice Rehnquist opined that major national policy decisions must be made by

Congress and the President in the legislative process, not delegated by Congress to the Executive Branch." *Paul v. United States*, 589 U.S. 1087, 1087 (2019) (Kavanaugh, J., respecting the denial of certiorari); *see Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 685-86 (1980) (Rehnquist, J., concurring in the judgment). Multiple Justices have written since to underscore the need for "further consideration" of the rules governing delegations of power to decide important questions of national policy. *Paul*, 589 U.S. at 1088 (Kavanaugh, J.); *see, e.g.*, *Gundy v. United States*, 588 U.S. 128, 148-49 (2019) (Alito, J., concurring in the judgment); *id.* at 149 (Gorsuch, J., dissenting); *see also Learning Res., Inc. v. Trump*, --- U.S. ----, 2026 WL 477534, at *32-34 (U.S. Feb. 20, 2026) (Gorsuch, J., concurring).

This case provides an excellent opportunity to undertake that consideration. This is the rare statute that flunks even the "intelligible principle" test. If that much is not clear, then it is time for a new test. Either way, Congress' abject failure to supply meaningful guardrails cannot stand, and neither can the D.C. Circuit's effort to supply the guardrails that Congress did not. Indeed, if anything, the latter decision just makes the present state of affairs worse, as it strongly signals that a nondelegation challenge is more likely to embolden policymaking by the even-less-accountable judicial branch than to spur courts to force Congress to actually do its job. This Court should grant certiorari and make clear once and for all that, if Congress wants to reshape critical segments of the economy, then it must make the hard choices itself.

OPINIONS BELOW

The D.C. Circuit's opinion, 146 F.4th 1126, is reproduced at App.1-27.

JURISDICTION

The D.C. Circuit entered judgment on August 1, 2025, App.1-27, and denied a timely rehearing petition on September 30, 2025, App.28-29. The Chief Justice extended the time to file a petition to February 27, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

1. Petitioner Choice Refrigerants ("Choice") is a small business based in Alpharetta, Georgia, that produces refrigerants, including a patented blend of HFCs. HFCs are synthetic cooling agents with broad applications. They are primarily used in refrigeration and air conditioning, but they also feature in foam products, aerosols, and solvents. 86 Fed. Reg. 27,150, 27,155 (May 19, 2021). HFC refrigerants are found in every home, commercial building, hospital, school, government office, warehouse, and manufacturing plant in America, and industries using or producing fluorocarbons contributed over $158 billion to the economy and provided employment to over 700,000 individuals. *See* S. 2754, 116th Cong. §2(a)(1) (2019). The domestic HFC refrigerant market was valued at $2.55 billion annually in 2024—and that was after the AIM Act had already taken a sizable chunk of it. *See*

Trending Reports Insights, *United States Hydrofluorocarbons Refrigerant Market Size, Sector Trends & Growth Challenges*, LinkedIn (May 22, 2025), https://perma.cc/H2KS-93GY. Choice is deeply invested in this market, having invented several proprietary environmentally preferable HFC blend products for which it holds patents. But thanks to a boundless divestment of power from Congress, Choice's ability to continue operating now depends entirely on the whims of EPA.

In December 2020, Congress passed the AIM Act, which mandates the domestic phasedown of HFCs via a cap-and-trade program. To that end, the Act includes an enumerated list of HFCs, which it defines as "regulated substances." 42 U.S.C. §7675(c). It then directs a phasedown to take place in several stages, which it tasks EPA with administering. *Id.* §7675(b)(1). First, EPA must calculate a "production baseline." *Id.* §7675(e)(1). The Act then caps HFC production and consumption according to the following schedule: 90% of the baseline for 2020 to 2023; 60% of the baseline for 2024 to 2028; 30% of the baseline for 2029 to 2033; 20% of the baseline for 2034 to 2035; and, finally, 15% of the baseline by 2036. *Id.* §7675(e)(2)(C). To facilitate those caps, the Act creates a supply of "allowances," *i.e.*, "limited authorization[s] for the production or consumption of" HFCs. *Id.* §7675(b)(2). And the Act declares production or consumption of HFCs unlawful going forward, unless the market participant holds a sufficient number of those allowances. *Id.* §7675(e)(2)(A)-(D).

The single most important question under a cap-and-trade program is how to allocate allowances. Yet the AIM Act has precious little to say on that score. The Act instructs that EPA "may" allocate allowances for certain "essential uses" for up to five years if the agency makes two statutorily enumerated findings. *Id*. §7675(e)(4)(B)(i). And, for the first five years, it requires EPA to allocate allowances as needed for the continued production of a short list of specialized products. *Id*. §7675(e)(4)(B)(iv). But the Act does not provide *any* guidance as to how EPA should go about allocating vital allowances among the many companies whose uses or products do not fit into either of those narrow categories. It simply commands that EPA "shall issue a final rule … phasing down the production of [HFCs] in the United States through an allowance allocation and trading program in accordance with this section," without supplying any tools for EPA to use in determining who should be able to keep—or perhaps even start—producing or consuming HFCs or to what extent. *Id.* §7675(e)(3)(A).

2. Armed with boundless discretion to craft the AIM Act's cap-and-trade program as it sees fit, and recognizing that Congress provided no guidance, EPA published a proposed rule seeking input on how best to create a framework for issuing allowances for the 2022-23 phase. *See* 86 Fed. Reg. at 27,150, 27,166. In doing so, the agency openly touted its "considerable" and "significant discretion in how to establish an allowance allocation." *Id.* at 27,166, 27,178.

Indeed, EPA did not identify any statutory factors that guided its analysis. The agency pointed to nothing in the statute (because there is nothing in the

statute) that constrained its ability to consider or weigh policies as varied as what would "benefit the environment …; provide an incentive or disincentive to companies that develop and introduce low-GWP[1] and non-HFC substances; support the effective functioning of the HFC production and import market; and/or create or remove barriers to *new* entrants to the market, including for socially and economically disadvantaged individuals." *Id.* at 27,203 (emphasis added). And EPA proposed options as varied as allocating allowances based on a period of past use to be determined at its sole discretion; charging "a fee for every allowance provided"; prioritizing applications for *new* market entry from "minority- and woman-owned small businesses" that may have faced "challenges entering the HFC import market due to systemic racism, market-access barriers, or other challenges"; or simply auctioning off some or all allowances—including auctioning allowances off for the express purposes of having winning bidders "retire" (*i.e.*, not use) them. *Id.* at 27,177, 27,203.

EPA ultimately settled on an ad hoc allocation scheme under which it would first allocate allowances for the statutorily mandated specialized uses—which EPA calculated as constituting just 2% of total HFC allowances. *See* 87 Fed. Reg. 61,314, 61,316-17 (Oct. 11, 2022) (identifying some 5,426,319 application-specific allowances as compared to 273,498,315 total consumption allowances). Instead of allocating the remaining allowances to existing market participants in accordance with their market share (as the D.C. Circuit wrongly suggested the agency had done), EPA

[1] "GWP" stands for "global warming potential."

then set aside a dedicated pool of allowances exclusively for *new* market entrants, and assigned the remaining "general pool" to existing companies based on their HFC import activity as reported under the Greenhouse Gas Reporting Program. 86 Fed. Reg. 55,116, 55,147 (Oct. 5, 2021). EPA also reserved the right to unilaterally "retire, revoke, or withhold" allowances from any company that it deems to have unlawfully produced or imported HFCs—without ever initiating enforcement action. *Id.* at 55,169-70.

EPA did not claim that this ad hoc allocation scheme stems from congressional directives (because Congress provided none). Nor does EPA's scheme resemble an ordinary understanding of a market-share allocation (which, as EPA itself freely admitted, is not something the Act anywhere mandates). Most obviously, EPA's decision to set aside a designated pool of valuable allowances to new market entrants is the opposite of market-share-based allocation; so too is its decision to wield allowances as administrative penalties. But its decision to allocate the remaining allowances based on data from the Greenhouse Gas Reporting Program—a nearly two-decade-old climate change program that does not reflect the commercial market realities of HFC consumption—does not reflect market share either. That greenhouse gas data was never intended to provide a breakdown of market share; it captures only companies that administratively reported HFC imports, not necessarily all companies that actually consumed HFCs. *See Comments of Choice Refrigerants* 2, 5-7 (July 6, 2021) ("*July 6 Comments*"), https://perma.cc/9G9C-N6JZ. Indeed, the program allowed importers to use designated agents to file the

HFC import data on their behalf. *See* 40 C.F.R. §98.6. Moreover, the Greenhouse Gas Reporting Program does not distinguish between legal and illegal HFC uses. *See supra*, *July 6 Comments*, at 7. So, under EPA's allocation scheme, intellectual-property thieves who use imported HFCs to pirate patented versions of other companies' products would receive allowances to continue their illegal activity.

Choice raised those and other concerns in comments to EPA. Choice also questioned whether EPA has the statutory authority to regulate HFC blends in the first place. *Id.* at 2 n.3, 15-16. EPA ignored Choice's concerns, so Choice sued, raising both statutory arguments and a nondelegation challenge. The D.C. Circuit rejected the former on the merits and declined to reach the latter because Choice had not raised its constitutional challenge in its comments on EPA's initial rulemaking for the 2022-23 phase. *See Heating, Air Conditioning & Refrigeration Distribs. Int'l v. EPA*, 71 F.4th 59, 65 (D.C. Cir. 2023).

3. Because EPA's first rule covered only the 2022-23 phase of the AIM Act, the agency initiated a subsequent rulemaking for years 2024 to 2028. *See* 87 Fed. Reg. 66,372 (Nov. 3, 2022). After again weighing the pros and cons of various approaches, EPA proposed an ad hoc scheme "similar" to the previous rule (though, this time, without any additional set-aside allowances for new market entrants). *Id.* at 66,377-80.

Having seen the results of EPA's first foray into unbridled policymaking, Choice again submitted comments explaining that EPA's proposed scheme would reorder the refrigerants market in a manner

that does not reflect Choice's actual market share. *Comments of Choice Refrigerants* (Dec. 19, 2022), https://perma.cc/PW74-7GLQ. And to the extent the AIM Act permits that result, Choice now explained, the Constitution does not, as Congress may not simply vest in an administrative agency the power "to hand out rights to produce and import (*i.e.*, consume) HFC refrigerants," without any guidance whatsoever on how to do so. *Id.* at 15.

In responding to that constitutional concern, EPA did not purport to identify any principle—intelligible or otherwise—set forth in the AIM Act to guide it in deciding how to allocate allowances. To the contrary, EPA acknowledged that it is free to allocate the vast majority of allowances however it sees fit, so long as its decisions are "reasonable and reasonably explained"—*i.e.*, so long as it complies with the Administrative Procedure Act. *See* EPA, *Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years: Response to Comments* 91-92 (June 2023) ("*Response to Comments*"), https://perma.cc/25HG-P67E. EPA said that poses no constitutional problem, as the "Supreme Court has over and over upheld even very broad delegations," and at least the AIM Act says *how many* allowances it gives the agency sweeping authority to allocate in total for each year. *Id.* at 90.

EPA proceeded to finalize a rule for the 2024-28 period. *See* 88 Fed. Reg. 46,836 (July 20, 2023). When the agency ultimately announced its allowance allocations, Choice's concerns about its market share were vindicated. Choice had historically used a commercial distributor to serve as its HFC import

agent. That distributor was responsible for reporting HFC imports to EPA, even though those HFCs were shipped directly to—and were only ever used by—Choice. But because EPA allocated allowances based on its own made-up reporting scheme grounded in the Greenhouse Gas Reporting Program, it gave Choice's rightfully earned HFCs to that distributor. EPA also awarded allowances to a Chinese-backed company that used imported HFCs to copy Choice's patented products. As a result, Choice received about 30% fewer allowances than it would have under a genuine market-share approach. *See* 88 Fed. Reg. 72,060, 72,062 (Oct. 19, 2023).

4. Choice filed a petition for review, arguing that EPA's actions amount to an unconstitutional exercise of legislative power by an executive branch agency. The D.C. Circuit denied the petition.[2]

The court began by trying to ratchet down even further the already-low bar this Court's nondelegation cases set: Invoking the proposition that "'[t]he guidance needed is greater … when an agency action will affect the entire national economy than when it addresses a narrow, technical issue,'" App.13 (quoting *FCC v. Consumers' Rsch.*, 620 U.S. 656, 673 (2025)), the court posited that little guidance is needed here because the AIM Act is focused on "a particular subject matter … in a particular industry," App.19. The court then concluded that Congress supplied all the guidance EPA needs—not in the AIM Act itself, but in

[2] Choice's case was consolidated with a petition brought by iGas Holdings and others against EPA. That petition, which was also denied, raised non-constitutional challenges to EPA's framework that are not presented here.

a *different* statute that it "intended" EPA to use as a "model," namely, Title VI of the Clean Air Act, which (per the court) established a market-share-based phaseout program for a different set of chemicals. App.15.

The court did not identify anything in the text of the AIM Act instructing EPA to model its cap-and-trade program after the program laid out in Title VI of the Clean Air Act. Nor could it, as the AIM Act does not contain any language incorporating the provision of Title VI that directs EPA to allocate allowances based on the "quantity of [the] substance produced by [the] person [concerned] during the baseline year." 42 U.S.C. §7671d(b). That omission is particularly notable, as the AIM Act *does* expressly incorporate *other* provisions of the Clean Air Act. *See, e.g.*, *id.* §7675(k)(1)(C). But with no such express incorporation to go on vis-à-vis Title VI, the D.C. Circuit instead posited that the "legislative history demonstrates that the AIM Act was 'modeled on'" that separate regime, citing a few statements during a subcommittee hearing referencing it. App.17.

The court also purported to find evidence of that implicit intention in the fact that "both statutes … used 'baseline' years to set caps and [reduction] schedules for the regulated refrigerants," and that both statutes instruct "EPA to allocate allowances to accomplish the refrigerant [reductions] 'in accordance with' each controlling Act." App.17. And it counterintuitively deemed that conclusion *reinforced* by the fact that the AIM Act incorporates provisions of the Clean Air Act *other than* Title VI. App.17 (citing 42 U.S.C. §7675(k)(1)(C)).

Based just on the supposed "strong similarity" between the two statutes, the court deemed it "evident that Congress expected the EPA to implement the HFC cap-and-trade program in a manner that tracked the successful predecessor programs" under Title VI of the Clean Air Act. App.17. More puzzling still, the court deemed that inference sufficient to sustain EPA's actions even though EPA openly acknowledged all throughout its rulemakings that it did not consider itself bound by—and indeed had not followed—the market-share approach set forth in Title VI. *See, e.g.*, 86 Fed. Reg. at 27,176 (acknowledging that allowing new market entrants deviated from Title VI practice); *id.* at 27,203 (citing differences between the AIM Act's HFC phase*down* and Title VI's ozone-depleting substances phase*out* to justify reserving the right to shift HFC allocation methodologies over time); *id.* at 55,123 (noting that EPA could "build on" Title VI experience, but also that the AIM Act requirements "diverge from the text and framework of title VI"); *id.* at 55,142-43 (rejecting use of the "company-specific" baselines set forth in Title VI).

REASONS FOR GRANTING THE PETITION

The defining feature of our Constitution is its careful delineation of three separate branches of government. The Constitution explicitly vests in each branch specific powers, in accordance with each branch's level of political accountability, and in ultimate service of preserving the liberty and self-government that the Constitution protects above all. But that design works only so long as those powers remain vested in one branch alone, which is why this Court has always stressed that one branch may not

grant its powers to another. To be sure, when it comes to Congress' delegations of core legislative power, the Court has struggled to articulate judicially enforceable limits. But it has never wavered from the bedrock principles that the Article I power to legislate cannot be divested to either the Article II or III branches. And it has consistently required Congress to articulate at least *some* principle to constrain the exercise of the discretion it confers.

Congress failed to clear even that low bar in the AIM Act. The Act empowers EPA to allocate HFC allowances in the refrigerants market, but it provides no guidance, standard, or limit on how to do so. None. It instead leaves EPA free to choose which companies may participate in a multibillion-dollar industry, and which may not, based entirely on the agency's policy preferences, whether grounded in preserving orderly markets, advancing social justice, achieving environmental ends, or bare revenue raising. There is no theory of constitutional delegation under which such an abject abdication of core legislative power could pass muster. Indeed, the D.C. Circuit made no effort to offer one. It instead embraced the "Mr. Fix-it Mentality," *Hamdi v. Rumsfeld*, 542 U.S. 507, 576 (2004) (Scalia, J., dissenting), and tried to remedy the nondelegation problem by supplying intelligible principles of its own. Far from curing the separation-of-powers problem with unconstitutional delegations of core Article I power to the Article II branch, the prospect of federal courts rewriting statutes to supply the guidance Congress failed to provide just adds an Article III transgression to the list.

That said, the D.C. Circuit's decision powerfully illustrates the lengths to which courts will go to avoid admitting that a statute violates this Court's nondelegation doctrine. Perhaps that is understandable when this Court has avoided identifying a statute that goes too far for nearly a century. But that is all the more reason for the Court to take the opportunity to do so here, as allowing a statute like this to survive nondelegation scrutiny sends lower courts the unmistakable message that "intelligible principles" analysis is lax in theory but non-existent in fact. Indeed, if this statute satisfies the intelligible-principle test, then it is well past time to come up with a new test. And leaving the decision below in place just makes matters worse, as it stands as a caution to think twice about pressing nondelegation challenges at all, lest the even-less-accountable judicial branch just craft "intelligible principles" derived from its own policy preferences.

In short, the AIM Act could not survive any test that enforces the Constitution's command that Congress may not abdicate its Article I duty to decide the hard questions itself. The Court should grant certiorari and say so.

I. The AIM Act Stretches Congress' Power To Delegate Far Beyond Its Breaking Point.

A. The AIM Act Supplies No Principle at All to Constrain a Power So Vast as to Permit Reordering an Entire Industry.

While this Court's nondelegation cases may not demand much, they do demand something—namely, an "intelligible principle" to guide the exercise of the powers Congress conveys. *Mistretta*, 488 U.S. at 372.

In *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), for instance, the Court struck down a law that authorized the President to approve "codes of fair competition" for slaughterhouses and other industries because it imposed "few restrictions" and "set[] up no standards" aside from "general aims." *Id.* at 521-22, 541-42. And in *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), the Court struck down a law empowering the President to bar the transport of petroleum products because Congress "ha[d] declared no policy, ha[d] established no standard, ha[d] laid down no rule." *Id.* at 430. The defining feature of the laws in those cases is that they "failed to articulate any policy or standard that would serve to confine the discretion of the authorities to whom Congress had delegated power." *Mistretta*, 488 U.S. at 373 n.7.

The AIM Act is the rare statute that fails to clear even that low bar. To be sure, the law embodies Congress' policy decision to phase down HFCs, and it lays out how quickly that should occur. But when it comes to the difficult policy question of who should get to continue producing and importing HFCs over that 15-year period and beyond, Congress said next to nothing. It authorized EPA to provide up to five years of allowances for "essential uses" if it makes certain findings. 42 U.S.C. §7675(e)(4)(B)(i). And it required EPA to provide up to five years of allowances for a very small group of application-specific uses. *Id.* §7675(e)(4)(B)(iv). But as to the remaining *98% of allowances*, Congress said nothing. Literally. There is not one word in the AIM Act addressing the all-important question of how to decide who should get them.

Indeed, by EPA's own telling, it is free to allocate allowances under the AIM Act however it sees fit, so long as its decisions are "reasonable and reasonably explained"—*i.e.*, consistent with the APA. *Response to Comments*, *supra*, at 91-92. EPA could allocate allowances only to existing companies in the refrigerant industry, or only to new entrants; it could allocate them to large companies, or to small companies, or to companies with no foreign ties; it could allocate allowances only to companies that comply with its preferences on sensitive issues far outside the agency's purview, like how best to address racism or sexism; it could allocate them to those that can afford to pay EPA—or pay EPA most—for them. In fact, EPA expressly considered methodologies along many of those varied lines, and more. *See* 87 Fed. Reg. at 66,380. And nothing stopped it from exploring that vast universe of policy choices, because the statute "provide[s] literally no guidance for the exercise of discretion," *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 474 (2001), as to how to dole out the overwhelming majority of allowances, identifying no "boundaries [EPA] cannot cross," *Consumers' Rsch.*, 606 U.S. at 680.[3]

If this Court's nondelegation cases truly tolerated that sorry state of affairs, then the nondelegation doctrine would be a dead letter. While Congress

[3] Indeed, notwithstanding that the AIM Act nowhere mentions greenhouse gases or climate change, EPA repurposed the statute as its signature "climate crisis" program, *see* 89 Fed. Reg. 82,682, 82,790 n.115 (Oct. 11, 2024)—even though the only legislative purpose with any textual basis is the one expressed in the statute's title: to promote "American Innovation and Manufacturing." 42 U.S.C. §7675(a).

undoubtedly can "confer substantial discretion on executive agencies to implement and enforce the laws," *Gundy*, 588 U.S. at 135 (plurality op.), it must identify at least *some* "principle to which the … body authorized … is directed to conform," *Mistretta*, 488 U.S. at 372. At absolute minimum, Congress must "provide[] sufficient standards to enable both 'the courts and the public [to] ascertain whether the agency' has followed the law." *Consumers' Rsch.*, 606 U.S. at 673 (quoting *Opp Cotton Mills, Inc. v. Adm'r of Wage & Hour Div.*, 312 U.S. 126, 144 (1941)); *accord Yakus v. United States*, 321 U.S. 414, 426 (1944) (where "there is an absence of standards for the guidance of the Administrator's action, … it would be impossible in a proper proceeding" for a court "to ascertain whether the will of Congress has been obeyed"). The AIM Act fails even that most basic test.

EPA's efforts to resist that conclusion below just confirm the constitutional transgression. The agency did not and could not deny that Congress gave it no instructions whatsoever as to how to allocate 98% of the allowances that will dictate which companies may continue to produce or import HFCs, or to what extent. EPA instead argued that it is enough that Congress made the decision to phase down HFCs through a cap-and-trade framework, and provided instructions as to certain "essential uses" and specific applications. *See* 42 U.S.C. §7675(e)(4)(B)(i), (iv). Beyond that, exactly whose production would be capped and to what extent are just technical details that EPA claims Congress was free to leave to an agency that is "not elected by the people and [is] not accountable to the people for [its] policy decisions." *Consumers' Rsch.*, 606 U.S. at

708 (Kavanaugh, J., concurring). That argument is wrong in both premise and conclusion.

At the outset, how to allocate the allowances the AIM Act establishes is no minor technical detail. Whether and to what extent private parties will be permitted to continue producing or consuming HFCs is a question of life or death for many in the refrigerant industry, with the power to impact the livelihoods of thousands of people and destroy commercial values of many billions of dollars. *See Frost v. Corp. Comm'n of Okla.*, 278 U.S. 515, 534 (1929) ("the general right to engage in a lawful business" is "part of the liberty of the citizen"). Yet by EPA's own telling, the paltry guidance Congress supplied covers only 2% of allowances—and only for the first five years of the phasedown, at that—leaving the agency with unfettered discretion as to the remaining 98%. *See* 87 Fed. Reg. at 61,316-17. That is no small matter. The multibillion-dollar refrigerants industry permeates many areas of the economy; HFCs are used in homes, commercial buildings, industrial operations, cars, and more. 86 Fed. Reg. at 27,155. The AIM Act thus gives EPA boundless discretion to "restructure" an industry, *see West Virginia v. EPA*, 597 U.S. 697, 724 (2022); *id.* at 744 (Gorsuch, J., concurring), that "affect[s] the entire national economy," *Consumers' Rsch.*, 606 U.S. at 673.

That Congress directed the agency to accomplish that task does not make up for the fact that it failed to instruct the agency how to do so. The constitutional inquiry is specific to each delegated task; courts thus must examine a statute "to figure out what task it delegates *and* what instructions it provides" for that

task. *Gundy*, 588 U.S. at 136 (plurality op.) (emphasis added). So it is not enough for Congress to decide how quickly HFCs must be phased down; it must also provide at least *some* guidance as to how the allowances that remain available must be allocated. After all, determining who will be shut out of a multibillion-dollar market is precisely the sort of "hard choice[] … which must be made by the elected representatives of the people." *Indus. Union*, 448 U.S. at 687 (Rehnquist, J., concurring). Indeed, because the power granted here is "such a significant power," Congress had to "supply more significant limits on [EPA's] discretion." *Consumers' Rsch.*, 606 U.S. at 723 (Gorsuch, J., dissenting); *see also Learning Res.*, 2026 WL 477534, at *41 (Thomas, J., dissenting) ("The Constitution's separation of powers forbids Congress from delegating core legislative power to the President.").

Instead, Congress provided nothing, leaving EPA free to choose among competing policy preferences as varied as preserving market share, furthering racial justice, advancing greenhouse gas priorities, or simply exploiting its allocation power to raise money. If the nondelegation doctrine means anything, it means that Congress cannot do that.

B. The D.C. Circuit's Effort to Salvage the AIM Act Compounded the Separation-of-Powers Violation.

To its credit, the D.C. Circuit did not embrace EPA's argument that the nondelegation doctrine is so toothless as to permit Congress to simply tell the agency to allocate allowances, without providing any constraints on how to do so. It instead tried to supply

that direction itself, insisting that Congress must have meant to incorporate an "intelligible principle" from an entirely different statutory provision that the AIM Act never mentions. Far from solving the constitutional problem, the Article III court's effort to do Congress' Article I work for it, just created another separation-of-powers violation.

According to the D.C. Circuit, the AIM Act *does* impose "ascertainable and meaningful guideposts" because it requires EPA to allocate allowances to market participants according to their "historical market share." App.16. Market-share allocation may well be "[a] natural way to allocate the allowances," App.16, and a statute that did require an agency to follow that course would almost certainly pass muster under this Court's intelligible-principle precedents. But the AIM Act is not such a statute; the text says nothing whatsoever about allocating allowances based on historical market share (or anything else). The D.C. Circuit simply grafted a historical-market-share requirement onto the statute in a transparent effort to avoid the nondelegation problem that was staring it in the face.

The court of appeals did not invent the idea of market-share allocation out of whole cloth; Congress *did* craft a market-share allocation regime in Title VI of the Clean Air Act, which (like the AIM Act) also grants EPA authority to allocate allowances. But that is where the similarities between the two statutes end. Whereas the AIM Act establishes a gradual cap-and-trade phasedown of HFCs, Title VI mandates a total phase*out* for certain substances. *See* 42 U.S.C. §7671c(a). And, more to the point, Title VI provides

actual directions on how allowances are to be allocated at each step of the phaseout: EPA must allocate them based on the "quantity of [the] substance produced by [the] person during the baseline year." *Id.* §7671d(b). Title VI thus plainly requires EPA to employ a market-share approach (which likely explains why no one ever challenged that program on nondelegation grounds). The AIM Act just as plainly does not: It contains no language comparable to the language in Title VI, and it does not even mention that provision, let alone expressly cross-reference or incorporate it.

That should have sufficed to foreclose any argument that the AIM Act directs EPA to employ a market-share approach (and it likely explains why EPA never argued that it does). After all, courts should not "read into statutes words that aren't there," *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020), especially when those words appear in other statutes, as "differences in language like this convey differences in meaning," *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). But the argument is even worse than it appears at first blush, as Congress expressly incorporated *other* aspects of the Clean Air Act into the AIM Act. *See* 42 U.S.C. §7675(k)(1)(C). This Court "do[es] not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and [its] reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest." *Jama v. ICE*, 543 U.S. 335, 341 (2005).

Notwithstanding all that, the D.C. Circuit decided to read Title VI's market-share-allocation provision

into the AIM Act anyway, claiming that Congress must have "intended for the EPA to model its cap-and-trade program on" that distinct statutory regime wholesale. App.15. The sum total of evidence from which the court purported to divine that implicit intent was: (1) a few statements during a subcommittee hearing noting that the AIM Act "builds upon [Congress'] previous experience" in Title VI, which "proved an able vehicle to foster an orderly, market-based phasedown"; (2) both statutes "used 'baseline' years to set caps and [reduction] schedules"; (3) both statutes direct "EPA to allocate allowances to accomplish the [phasedown] 'in accordance with' each controlling Act"; and (4) the AIM Act expressly incorporates *other* aspects of the Clean Air Act. App.17.

As for the first, it should go without saying that "legislative history is not the law": Once Congress enacts a statute, courts "do not inquire what the legislature meant; … only what the statute means." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). As for the second, the fact that both statutes use the same approach to determine the *number* of allowances does not solve the problem that only Title VI (not the AIM Act) directs the agency how to allocate them. As for the third, Congress did not instruct "EPA to allocate allowances … 'in accordance with' each controlling Act." App.17. It instructed EPA to "issue a final rule … phasing down the production of regulated substances in the United States through an allowance allocation and trading program in accordance with this section." 42 U.S.C. §7675(e)(3). And *contra* App.17-18, nowhere in "this section" did Congress provide any instruction as to how to allocate the vast

majority of allowances. Finally, the notion that Congress' express incorporation of *some* aspects of the Clean Air Act evinces its implicit intention to incorporate Title VI jot and tittle turns bedrock rules of statutory construction on their head.

At bottom, the D.C. Circuit "graft[ed] something on the statute that is not there." *Smietanka v. First Tr. & Sav. Bank*, 257 U.S. 602, 606 (1922). Indeed, it grafted onto the statute something that not even EPA perceived was there and that does not accord with how EPA actually exercised its (unbounded) discretion. *See* pp.8-10, 14, *supra*. Far from solving the constitutional problem, that exacerbated it. "[A]lthough this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of … judicially rewriting it." *CFTC v. Schor*, 478 U.S. 833, 841 (1986) (quoting *Aptheker v. Sec'y of State*, 378 U.S. 500, 515 (1964)). After all, constitutional avoidance "does not give a court the prerogative to ignore the legislative will in order to avoid constitutional adjudication." *Id.* When "the legislative will" transgresses constitutional bounds, the judiciary's job is to enforce them.

That rule applies with especial force when it comes to statutes that run afoul of the nondelegation doctrine, as the whole point of that doctrine is to ensure that *Congress* makes the "hard choices … which must be made by the elected representatives of the people." *Indus. Union*, 448 U.S. at 687 (Rehnquist, J., concurring). When courts step in and make the hard choices that Congress did not, all they do is layer an Article III transgression on top of the Article I

transgression. *See Whitman*, 531 U.S. at 473 ("[T]he prescription of the standard that Congress had omitted—would *itself* be an exercise of the forbidden legislative authority."). Two separation-of-powers wrongs do not make a constitutional right.

II. This Case Provides An Excellent Vehicle To Explore And/Or Revisit The Contours Of The Nondelegation Doctrine.

A. The AIM Act Cannot Plausibly Survive Any Viable Version of the Intelligible-Principle Test.

As the foregoing should suffice to make clear, there can be no serious doubt that the AIM Act unconstitutionally grants EPA unfettered discretion to determine the private rights—and even continued existence—of businesses in a critical industry that pervades multiple sectors of the national economy. That unbounded delegation fails to clear even the low bar of the intelligible-principle test. Indeed, if the abject lack of direction in the AIM Act does not violate that test, then it is hard to see what ever could.

The need for this Court to step in and say so is particularly acute. Many have questioned whether the intelligible-principle test is up to the task of preserving the Constitution's separation of powers and enforcing Article I's Vesting Clause, as it "has historically not packed much punch in constricting Congress's authority to delegate." *Consumers' Rsch.*, 606 U.S. at 705 (Kavanaugh, J., concurring). The original formulation comes from *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928), but "it's undeniable that the 'intelligible principle' remark eventually began to take on a life of its own." *Gundy*,

588 U.S. at 163 (Gorsuch, J., dissenting). What began as a requirement that Congress set an actual "policy," "plan," and "standard" to which an agency was "directed to conform," *J.W. Hampton*, 276 U.S. at 405, 409, has so transformed that "even the vaguest, most incoherent set of mutually incompatible goals can satisfy the [modern] 'intelligible principle' test." Ronald A. Cass, *Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State*, 40 Harv. J.L. & Pub. Pol'y 147, 167-68 (2017); *see also* Philip Hamburger, *Nondelegation Blues*, 91 Geo. Wash. L. Rev. 1083, 1091 (2023) ("[T]he nondelegation doctrine serves as little more than an open gate for the delegation of legislative power—even if the sign above the gate declares the opposite."); David Schoenbrod, *The Delegation Doctrine: Could the Court Give It Substance?,* 83 Mich. L. Rev. 1223, 1226 (1985) (lamenting that, while the "delegation doctrine is ritualistically invoked," it "fails to check agency discretion or to ensure electoral accountability").

In short, "today," the "nondelegation doctrine" is "recognize[d]" "almost always in the breach." David J. Barron & Elena Kagan, Chevron*'s Nondelegation Doctrine*, 2001 Sup. Ct. Rev. 201, 201 (2001). Indeed, the Tenth Circuit has gone so far as to posit that, "[i]f there is anything clear or obvious about the nondelegation doctrine, it is that, viewed through its lens, virtually any statute will be deemed valid." *United States v. Rickett*, 535 F.App'x 668, 675 (10th Cir. 2013).

This case supplies an excellent vehicle for the Court to ensure that the intelligible-principle test does not wither on the vine. There is no dispute that

Congress did in fact grant to EPA the power to allocate allowances. That delegation does not implicate any tricky issues about overlapping Article I and Article II powers, such as "the national security and foreign policy realms." *Consumers' Rsch.*, 606 U.S. at 706 (Kavanaugh, J., concurring); *cf. Learning Res.*, 2026 WL 477534, at *41-44 (Thomas, J., dissenting). And unlike in some recent petitions asking the Court to wrestle over whether a particular statutory principle is sufficiently intelligible, *see, e.g.*, *Allstates Refractory Contractors, LLC v. Su*, 144 S.Ct. 2490 (2024), the AIM Act does not direct EPA to allocate allowances according to any principle—not even (for instance) as the agency deems "reasonably necessary or appropriate," "fair and equitable," or in the "public interest." The question presented here is more fundamental: Can Congress decline to provide any guiding principle whatsoever? The bare minimum of the intelligible-principle test must answer that question in the negative.

That the D.C. Circuit concluded otherwise only by supplying the intelligible principle Congress did not underscores the need for this Court's review. The intelligible-principle test is already sufficiently daunting for challengers to deter many from pressing nondelegation claims. There will be even less incentive if parties must do so at the risk that an Article III court will simply read into the statute an intelligible principle that even the agency did not perceive, let alone embrace. That makes it imperative for this Court to step in and make clear that when Congress fails to supply the constraints the Constitution demands, the courts' job is to tell Congress to do its job, not to do Congress' job for it.

B. If the AIM Act Does Not Violate the Intelligible-Principle Test, Then the Time Has Come to Reconsider It.

If even the AIM Act does not flout the intelligible-principle test, then the Court should admit that test is "effectively a dead letter," Gary Lawson, *Delegation and Original Meaning*, 88 Va. L. Rev. 327, 329 (2002), and reform it, rather than leave lower courts floundering to try to apply it. Many have implored this Court to revisit, or at least add more contours to, the test. *See, e.g.*, *Mayfield v. U.S. Dep't of Lab.*, 117 F.4th 611, 620 n.7 (5th Cir. 2024) ("The current formulation of the nondelegation doctrine has been called into serious question."); *Tiger Lily, LLC v. HUD*, 5 F.4th 666, 674 (6th Cir. 2021) (Thapar, J., concurring) ("[T]he Supreme Court should consider breathing new life into the doctrine."); *Consumers' Rsch., Cause Based Com., Inc. v. FCC*, 88 F.4th 917, 932 (11th Cir. 2023) (Newsom, J., concurring) ("I'm not at all 'convinced that the intelligible principle doctrine serves to prevent all cessions of legislative power.'"). And at least five members of this Court have "urged the Court to reconsider its approach" entirely. *Consumers' Rsch.*, 606 U.S. at 720 (Gorsuch, J., dissenting); *see also, e.g.*, *Paul*, 589 U.S. at 1087 (Kavanaugh, J., respecting the denial of certiorari); p.4, *supra*.

As those Justices and others have explained, the intelligible-principle test "has no basis in the original meaning of the Constitution, in history, or even in the decision from which it was plucked." *Gundy*, 588 U.S. at 164 (Gorsuch, J., dissenting); *see also Whitman*, 531 U.S. at 487 (Thomas, J., concurring) ("[T]he

Constitution does not speak of 'intelligible principles.'"). A wealth of scholarship exploring the original meaning of Article I's Vesting Clause has emerged over the past five years. Some argue that it supports a broad power to delegate, *see, e.g.*, Julian Davis Mortenson & Nicholas Bagley, *Delegation at the Founding*, 121 Colum. L. Rev. 277, 279-80 (2021); others argue that it supports only a narrow one, *see, e.g.*, Ilan Wurman, *Nondelegation at the Founding*, 130 Yale L.J. 1490, 1554-56 (2021); Philip Hamburger, *Delegating or Divesting?*, 115 Nw. U.L. Rev. Online 88 (2020). But no one suggests that history reveals any meaningful support for the intelligible-principle test. And there is serious doubt that the "intelligible principle doctrine serves to prevent all cessions of legislative power." *Whitman*, 531 U.S. at 487 (Thomas, J., concurring).

That is not a tolerable state of affairs. The very first clause of the very first section of the very first article of the Constitution declares that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I, §1. By vesting core legislative power in one branch, the Constitution precludes its transfer to another branch. This Court has recognized as much from the start. Two centuries ago, Chief Justice Marshall opined that Congress may not "delegate … powers which are strictly and exclusively legislative." *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 20 (1825). Nearly one century later, this Court underscored that "it is a breach of the national fundamental law if Congress gives up its legislative power and transfers it to the President." *J.W. Hampton*, 276 U.S. at 406. In the intervening years, this Court reiterated that

"Congress generally cannot delegate its legislative power to another Branch." *Mistretta*, 488 U.S. at 371-72. And just this past Term, this Court again proclaimed that legislative power "belongs to the legislative branch, and to no other." *Consumers' Rsch.*, 606 U.S. at 672; *accord, e.g.*, *Learning Res.*, 2026 WL 477534, at *42 (Thomas, J., dissenting) ("The Legislative Vesting Clause grants Congress alone the federal legislative power.… It follows that those federal legislative powers cannot be exercised by anyone else, including the President.").

That fundamental principle is not just necessary to protect the legislative branch from intrusion by another branch of government. "[T]he structural principles secured by the separation of powers protect the individual as well." *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 55 (2015) (quoting *Bond v. United States*, 564 U.S. 211, 222 (2011)). The Constitution makes lawmaking difficult by design. "The framers believed that the power to make new laws regulating private conduct was a grave one that could, if not properly checked, pose a serious threat to individual liberty." *West Virginia*, 597 U.S. at 738 (Gorsuch, J., concurring). A leviathan that must manage an obstacle course before it can strike a blow against liberty is less of a threat to the people than one that can maneuver unimpeded.

The Framers designed "Congress [to be] the [branch] most responsive to the will of the people … for a reason: Congress wields the formidable power of 'prescrib[ing] the rules by which the duties and rights of every citizen are to be regulated.' If legislators misused this power, the people could respond, and

respond swiftly." *Tiger Lily*, 5 F.4th at 674 (Thapar, J., concurring) (quoting The Federalist No. 78, at 465 (Hamilton) (Clinton Rossiter ed., 1961)). But "Congress has an incentive to insulate itself from the consequences of hard choices" by "transfer[ring] … hard choices from Congress to" an administrative agency, whose work takes place behind closed doors and whose actions obfuscate rather than clarify lines of accountability. *Id.* The nondelegation principle thus guards against not only interbranch incursions, but a "government by bureaucracy supplanting government by the people." Antonin Scalia, *A Note on the Benzene Case*, 4 AEI J. on Gov't & Soc'y 25, 27 (1980). In short, "the purpose of the nondelegation doctrine is not to serve Congress, but to preserve liberty." *Texas v. Rettig*, 993 F.3d 408, 409 (5th Cir. 2021) (Ho, J., dissenting from denial of rehearing en banc).

If the Court is not willing to breathe even the smallest resuscitating breath into the intelligible-principle test, then it should take this opportunity to inter the test for good and craft a better one. To be sure, drawing the line between permissible and impermissible delegations may be difficult. "But the inherent difficulty of line-drawing is no excuse for not enforcing the Constitution." *Ass'n of Am. R.R.*, 575 U.S. at 61 (Alito, J. concurring). And all agree on "the constitutional rule that Congress may not divest itself of its legislative power by transferring that power to an executive agency." *Gundy*, 588 U.S. at 167 (Gorsuch, J., dissenting).

Furthermore, the Court has ample material to work with in determining how best to enforce that

rule. Members of this Court have already laid out "important guiding principles" for establishing a delegation doctrine more firmly grounded in the Constitution and our Nation's historical traditions. *Id.* at 157-58 (Gorsuch, J., dissenting). And recent scholarship has supplemented and built on those principles. *See, e.g.*, Wurman, *supra* at 1554; Hamburger, *supra* at 1088-89; Ronald A. Cass, *Fixing Deference: Delegation, Discretion, and Deference Under Separate Powers*, 17 NYU J.L. & Liberty 1, 43 (2023); Br. of Professor Chad Squitieri, *FCC v. Consumers' Rsch.*, No. 24-354 (U.S. Feb. 18, 2025); *The Administrative State Before the Supreme Court: Perspectives on the Nondelegation Doctrine*, Am. Enter. Inst. (Peter J. Wallison & John Yoo eds., 2022). As currently constituted, the intelligible-principle test "has allowed the legislative branch to avoid hard choices." Schoenbrod, *supra*, at 1225. This Court should not compound that problem by refusing to do the hard work of supplying more meaningful guardrails.

* * *

Shortly after the Constitution was written, James Madison cautioned that, "[i]f nothing more were required, in exercising a legislative trust, than a general conveyance of authority, without laying down any precise rules, by which the authority conveyed, should be carried into effect; it would follow, that the whole power of legislation might be transferred by the legislature from itself, and proclamations might become substitutes for laws." James Madison, *The Report of 1800*, National Archives (Jan. 7, 1800). The Court should grant certiorari and ensure that the

courts remain a true bulwark against congressional devolution of our constitutional order.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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February 27, 2026

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1261

IGAS HOLDINGS, INC., et al.,
Petitioners,
v.
ENVIRONMENTAL PROTECTION AGENCY,
Respondent,
AIR-CONDITIONING, HEATING, AND REFRIGERATION INSTITUTE AND ALLIANCE FOR RESPONSIBLE ATMOSPHERIC POLICY,
Intervenors.

Argued: Oct. 8, 2024
Decided: Aug. 1, 2025

Before: Pillard, Pan, and Garcia, *Circuit Judges*.

OPINION

PAN, *Circuit Judge*: Hydrofluorocarbons (HFCs) are synthetic cooling agents used in a variety of applications, including refrigeration and air conditioning. Despite their utility, HFCs are extremely potent greenhouse gases that increase global warming. To address that problem, Congress

passed the American Innovation and Manufacturing (AIM) Act of 2020. The AIM Act requires an 85 percent reduction in U.S. production and consumption of HFCs by 2036. Congress specified that the HFC phasedown would be accomplished with a cap-and-trade program, and it tasked the Environmental Protection Agency (EPA) with administering that program.

In 2021, the EPA issued a rule to implement the cap-and-trade program for the years 2022 and 2023 (the Framework Rule). The program required the EPA to calculate and allocate "allowances" that authorized industry members to produce and consume HFCs. The EPA allocated the allowances to market participants according to their historic market share, and determined the market share of each participant based on its production-and-consumption activities in the years 2011 to 2019. Subsequently, the EPA issued a new rule to set the allocation methodology for the years 2024 through 2028 (the 2024 Rule). In the new rule, the EPA again allocated allowances to market participants according to their historic market share, and again used data from the years 2011 to 2019 to calculate that market share.

We now consider two challenges to the 2024 Rule. Petitioner RMS of Georgia, LLC (which goes by its trade name, "Choice") argues that Congress violated the nondelegation doctrine when it granted the EPA authority to allocate use allowances, and that the EPA unconstitutionally exercised legislative power when it promulgated the 2024 Rule. Petitioner IGas Holdings, Inc. (IGas) argues that the EPA's exclusion of 2020

data from its market-share calculations was arbitrary and capricious. We deny both petitions for review.

I.

The 2024 Rule is not the first of its kind. Congress has employed cap-and-trade programs to phase out industrial use of other hazardous refrigerants, including chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). Those predecessor programs are the model for the one at issue in this case.

Both CFCs and HCFCs are ozone-depleting substances. In 1986, the United States agreed to regulate such substances when it ratified the 1985 Vienna Convention for the Protection of the Ozone Layer. The subsequent 1987 Montreal Protocol, ratified by the United States in 1988, set specific targets for the global elimination of CFCs and HCFCs. To make good on those treaty obligations, Congress enacted Title VI of the Clean Air Act, 42 U.S.C. § 7671 *et seq.*, which effectuated a phaseout of CFC- and HCFC-emissions in the United States. Title VI created a cap-and-trade program that (1) set limits (caps) on the total level of emissions for CFCs and HCFCs, (2) authorized the EPA to issue emissions allowances to market participants (not to exceed the overall cap), (3) allowed companies to sell (trade) their unused allowances, and (4) made it unlawful for anyone to emit the regulated substances without having a corresponding allowance. *See id.* §§ 7671c(a)-(c), 7671d(a)-(c), 7671f. Today, CFCs have been eliminated, and new production and importation of most HCFCs were phased out as of 2020 (although

some HCFCs are still used in existing air conditioners and refrigeration equipment).

HFCs have proven to be an effective replacement for the phased-out refrigerants. With the increased global use of air-conditioning and refrigeration, the demand for HFCs also has surged. Although HFCs do not deplete the ozone layer, they present their own problem: HFCs are potent greenhouse gases with a relative climatic impact "that can be hundreds to thousands of times that of carbon dioxide." J.A. 341. Thus, in 2016, signatories of the Montreal Protocol passed the Kigali Amendment, which mandates reductions in the production and consumption of HFCs. Although the United States did not ratify the Amendment until 2022, Congress passed the AIM Act to address HFCs in 2020.

The AIM Act, 42 U.S.C. § 7675, mandates an 85 percent phasedown of HFC production and consumption by 2036. To accomplish that goal, the Act employs a cap-and-trade program like those that were used to phase out CFCs and HCFCs. Subsection (e) of the AIM Act creates a program that schedules the HFC phasedown and authorizes the allocation of production-and-consumption allowances that are capped and traded. Subsection (e)(1) sets production-and-consumption baselines according to specific formulas,[1] while subsection (e)(2) sets a timeline for

[1] The statute directs the EPA to set the baselines as the average annual quantity of all regulated substances produced or consumed from 2011 to 2013, plus the sum of 15 percent of the production or consumption level of HCFCs in 1989 and 0.42 percent of the production or consumption level of CFCs in 1989. *See* 42 U.S.C. § 7576(e)(1)(B)-(D).

gradually reducing HFC use as a "capped" percentage of the baseline. Subsection (e)(3) directs the EPA to allocate the allowances, which then can be traded. The program accomplishes the targeted reductions in HFC production and consumption by lowering the number of available allowances each year.

Specifically, under subsection (e)(2)(C), HFC production and consumption is capped at 90 percent of the baseline for the years 2020 to 2023; at 60 percent of the baseline for the years 2024 to 2028; at 30 percent of the baseline for the years 2029 to 2033; at 20 percent of the baseline for the years 2034 to 2035; and, finally, at 15 percent of the baseline by the year 2036. *See* 42 U.S.C. § 7675(e)(2)(C).

For each year, the EPA must "ensure that the annual quantity of all regulated substances produced or consumed in the United States does not exceed" the targets in subsection (e)(2)(C). 42 U.S.C. § 7675(e)(2)(B). To accomplish that task, the EPA "shall use" the listed targets "to determine the quantity of allowances" for each year. *Id.* § 7675(e)(2)(D)(i). The AIM Act describes an "allowance" as "a limited authorization for the production or consumption of a regulated substance." *Id.* § 7675(e)(2)(D)(ii)(I)(bb). Under subsection (e)(2), "no person shall" produce or consume "a quantity of a regulated substance without a corresponding quantity of [production-and-consumption] allowances." *Id.* § 7675(e)(2)(A).

Subsection (e)(3) of the Act gives the EPA authority to "issue a final rule" that accomplishes the following:

> (A) phasing down the production of regulated substances in the United States through an allowance allocation and trading program in accordance with this section; and
>
> (B) phasing down the consumption of regulated substances in the United States through an allowance allocation and trading program in accordance with the schedule under paragraph (2)(C) . . . .

42 U.S.C. § 7675(e)(3).

Finally, Congress provided for certain exceptions and also mandated that the EPA initially "allocate the full quantity of allowances necessary" for a small class of "essential uses." 42 U.S.C. § 7675(e)(4)(B)(iv).

A.

In 2021, the EPA promulgated its Framework Rule, which implements subsection (e) of the AIM Act for the years 2022 and 2023. *See* Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the [AIM] Act (*Framework Rule*), 86 Fed. Reg. 55116 (Oct. 5, 2021). As directed by the statute, the Framework Rule calculated HFC production-and-consumption baselines under subsection (e)(1) and then determined the quantity of allowances that would be available in 2022 and 2023 under subsection (e)(2)—*i.e.*, the quantity that would achieve 90 percent of the baseline level of production and consumption.

The Framework Rule also established an allocation plan for the 2022-2023 allowances. First, the EPA decided that allowances would be issued to entities that had historical production-and-

consumption data and that were still active in 2020, with case-by-case exceptions for companies with pandemic-related disruptions in 2020. Next, the EPA allocated the available allowances to those entities according to their historical market share. To calculate an entity's market share, the EPA looked to that entity's three highest years of production or consumption activity between the years 2011 and 2019. It then averaged the data from those three high years and divided that number by the sum of all entities' high-three averages. Finally, the EPA multiplied that number by the total number of allowances in the pool (which was 90 percent of the baseline amount). The EPA said it would reconsider this methodology before the next step of the phasedown, in 2024.

B.

Subsequently, the EPA proposed an allocation methodology for HFC allowances for the years 2024 through 2028, the period for which subsection (e)(2) capped production and consumption at 60 percent of the baseline. After calculating the quantity of allowances available, the EPA proposed "to continue using historic production and consumption data from 2011 to 2019" to allocate allowances by market share, in part to "minimize disruption to the market in 2024," and in part because the "EPA ha[d] conducted multiple rounds of outreach and review" on that dataset. Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years (*Proposed Rule*), 87 Fed. Reg. 66372, 66377-78 (Nov. 3, 2022).

The EPA noted, however, that it was "considering whether to include more recent data" to reflect the current state of the HFC production and import market. *Proposed Rule*, 87 Fed. Reg. at 66378. The EPA therefore "request[ed] comment on whether to expand the range of years to use to develop each allowance holder's high three-year average to include 2020 and 2021." *Id.* But the agency previewed its concerns about using the more recent data, stating: "[T]he Agency recognizes that production and importation of HFCs in 2020 and 2021 were likely influenced by external factors such as the COVID-19 pandemic, and supply chain disruptions. In addition, EPA is concerned that data from 2020 and 2021 could be distorted due to an entity's awareness that the AIM Act may be, or had been, passed," leading to stockpiling. *Id.* The EPA further worried that "[e]xpanding the range of years could also significantly change each entity's market share, which could disrupt the market and negatively affect ongoing adjustments to the HFC Allocation Program that have taken place in 2022 and 2023." *Id.* Finally, the EPA said it was "unaware of any environmental benefit associated with changing the years used to determine allowance allocations." *Id.*

Petitioners Choice and IGas each submitted comments on the proposed rule. Choice is a small business that reclaims HFCs and invents HFC blends. Its comments argued that subsection (e) of the AIM Act unconstitutionally delegated legislative power to the EPA. IGas is a participant in refrigerant aftermarkets for existing HFC-containing equipment. IGas's comments urged the EPA to include data from the years 2020 and 2021 in its allocation methodology

because, in its view, the EPA's focus on years 2011 to 2019 ignored the aftermarket's growth in more recent years and favored companies that were not involved in the aftermarket.

In its final 2024 Rule setting the allocation methodology for the years 2024 to 2028, the EPA continued to rely on market-share data from 2011 to 2019 and thus excluded data from 2020 and 2021. *See* Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years (*2024 Rule*), 88 Fed. Reg. 46836, 46842 (July 20, 2023). The EPA explained that the data from 2020 and 2021 were not representative of the typical market due to the pandemic, had not been as thoroughly vetted as the 2011 to 2019 dataset, and could cause market disruptions by drastically changing entities' market share from what had been implemented under the Framework Rule.

C.

Choice and IGas timely petitioned for review of the 2024 Rule, and their appeals were consolidated. Two trade associations whose members are regulated HFC importers and producers—the Air-Conditioning, Heating, and Refrigeration Institute, and the Alliance for Responsible Atmospheric Policy—intervened as respondents.[2]

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[2] Article III standing is a prerequisite to intervention, even as a respondent. *See Deutsche Bank Nat'l Tr. Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013). *But see Inst'l Shareholder Servs. v. SEC*, -- F.4th --, 2025 WL 1802786, at *4 n.3 (D.C. Cir. July 1, 2025) (recognizing tension with cases holding that "intervenors that seek the same relief sought by at least one existing party need not" show standing (citing *Little Sisters of the Poor Saints*

II.

Petitioner Choice argues that the AIM Act unconstitutionally delegates legislative power to the EPA by granting the agency "unconstrained authority" to allocate HFC allowances. Choice Br. 1. Choice asks us to vacate the EPA's 2024 Rule because it is "contrary to constitutional right, power, privilege, or immunity." 42 U.S.C. § 7607(d)(9)(B) (made applicable to the AIM Act through 42 U.S.C. § 7675(k)(1)(C)).

A.

Amicus National Resources Defense Council (NRDC) argues that Choice lacks standing to challenge the EPA's 2024 Rule. We disagree. Choice imports HFCs that are regulated by the EPA under the AIM Act, and Choice receives allowances for that import activity. Choice therefore "has standing to challenge an allegedly illegal statute or rule under which it is regulated." *State Nat'l Bank of Big Spring v. Lew*, 795 F.3d 48, 53 (D.C. Cir. 2015).

NRDC contends, however, that Choice has not established standing because it has not alleged that its injury will be redressed by the court striking down the only section of the AIM Act that Choice challenges: subsection (e)(3), which provides for the allocation of

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Peter & Paul Home v. Pennsylvania, 591 U.S. 657, 674 n.6 (2020))). Although no party contests the Intervenors' standing, "we have an independent obligation to assure ourselves that standing exists." *Pub. Emps. for Env't Resp. v. EPA*, 77 F.4th 899, 912 (D.C. Cir. 2023) (cleaned up). Because the Intervenors are both trade associations whose members are regulated HFC importers and producers, they have associational standing. *See Fund Democracy, LLC v. SEC*, 278 F.3d 21, 25 (D.C. Cir. 2002).

allowances. According to NRDC, if subsection (e)(3) is vacated and the EPA thereby loses its authority to allocate allowances, then no entity could produce or consume HFCs at all because subsection (e)(2) prohibits the production and consumption of HFCs without a corresponding allowance. NRDC reasons that the resulting inability to import HFCs would exacerbate, not redress, Choice's injury of having its "market activity limited" and its "market share . . . reduced." Choice Br. 15, 18.

We disagree with NRDC's assumption that subsection (e)(2) would remain operative if we invalidated subsection (e)(3). An unconstitutional provision is "presumed severable" from the statute only "if what remains after severance is fully operative as a law." *INS v. Chadha*, 462 U.S. 919, 934 (1983) (cleaned up). Any presumption of severability is overcome where "it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not." *Buckley v. Valeo*, 424 U.S. 1, 108 (1976) (cleaned up); *see also Regan v. Time, Inc.*, 468 U.S. 641, 653 (1984) ("Whether an unconstitutional provision is severable from the remainder of the statute in which it appears is largely a question of legislative intent[.]").

In our view, the interrelated subparts of subsection (e) are not severable. Subsection (e)(2) prohibits HFC production and consumption without a corresponding allowance. That provision cannot be "fully operative as a law" without subsection (e)(3)'s mechanism for allocating allowances. *Chadha*, 462 U.S. at 934 (cleaned up). Congress plainly would not have enacted the remainder of subsection (e) if there

were no way to allocate HFC allowances because the entire cap-and-trade program depends on the availability of allowances.

Accordingly, we are satisfied that Choice has standing to challenge the constitutionality of subsection (e)(3).

B.

Turning to the merits, we hold that the AIM Act does not unconstitutionally delegate legislative power because it sufficiently constrains the EPA's discretion to allocate HFC allowances.

1.

The Constitution vests "[a]ll legislative Powers herein granted . . . in a Congress of the United States." U.S. Const. art. I, § 1. "This text permits no delegation of those powers[.]" *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). That does not mean, however, that Congress may not seek "assistance from another branch." *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406 (1928). "[I]n particular, [Congress] may confer substantial discretion on executive agencies to implement and enforce the laws." *Gundy v. United States*, 588 U.S. 128, 135 (2019) (plurality opinion). The Constitution is not offended when Congress "vest[s] discretion in" agencies "to make public regulations interpreting a statute and directing the details of its execution," so long as that discretion is "within defined limits." *J.W. Hampton*, 276 U.S. at 406; *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 46 (1825) (Marshall, C.J.) ("[T]he maker of the law may commit something to the discretion of the other departments[.]"); *Am. Trucking*, 531 U.S. at 475 ("A certain degree of discretion . . .

inheres in most executive . . . action." (cleaned up)); *cf. Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024) ("In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion.").

"Once it is conceded, as it must be," that some discretion—and "even some judgments involving policy considerations"—"must be left to the officers executing the law," the remaining debate is "not over a point of principle but over a question of degree." *Mistretta v. United States*, 488 U.S. 361, 415 (1989) (Scalia, J., dissenting). The Court has said that "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred." *Am. Trucking*, 531 U.S. at 475. "The guidance needed is greater . . . when an agency action will affect the entire national economy than when it addresses a narrow, technical issue[.]" *FCC v. Consumers' Rsch.*, No. 24-354, slip op. at 11 (June 27, 2025) (cleaned up). Still, "even in sweeping regulatory schemes," the nondelegation doctrine has "never demanded . . . that statutes provide a determinate criterion." *Am. Trucking*, 531 U.S. at 475 (cleaned up).

The nondelegation analysis boils down to this: When "confer[ring] decisionmaking authority upon agencies," Congress "must lay down by legislative act an intelligible principle to which the person or body authorized to act is directed to conform." *Am. Trucking*, 531 U.S. at 472 (cleaned up). When setting forth an "intelligible principle," Congress is not required to "prescribe detailed rules" but rather to "clearly delineate[] the general policy, the public agency which is to apply it, and the boundaries of this

delegated authority." *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946). If a federal law contains such an intelligible principle to guide an agency's actions, then there is no nondelegation problem: The law permissibly grants discretion to an agency rather than unconstitutionally transfers legislative power. *See Consumers' Rsch.*, slip op. at 6 (Kavanaugh, J., concurring) ("[W]hen implementing legislation that contains an intelligible principle, the President is exercising executive power.").

Consistent with the foregoing principles, the Supreme Court has invalidated only two federal laws for violating the nondelegation doctrine, both times in 1935, and "in each case because Congress had failed to articulate *any* policy or standard to confine discretion." *Gundy*, 588 U.S. at 146 (cleaned up) (emphasis in original); *see also A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). Since then, the Court has "over and over upheld even very broad delegations." *Gundy*, 588 U.S. at 146. To name a few: The Court has upheld laws authorizing agencies to regulate broadcast licensing as "public interest, convenience, or necessity" requires, *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 225-26 (1943); set "just and reasonable" rates for natural gas, *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 600 (1944); and set air-quality standards that are "requisite to protect the public health," *Am. Trucking*, 531 U.S. at 472-76. In so doing, the Court has affirmed and reaffirmed that the governing standards for a permissible delegation are "not demanding." *Gundy*, 588 U.S. at 146.

2.

Against that backdrop, the AIM Act easily passes muster. Congress enacted a detailed program for capping and trading HFC allowances, in which the EPA has discretion to decide how to allocate the allowances. Congress provided ample direction to guide the EPA's exercise of discretion: The Act's text, structure, and history demonstrate that Congress intended for the EPA to model its cap-and-trade program on similar programs established under the Clean Air Act, and those programs allocated allowances to market participants according to their market share. "Given that statutory meaning," Choice's "constitutional claim must fail"—subsection (e)(3)'s "delegation falls well within permissible bounds." *Gundy*, 588 U.S. at 136.

The question of whether Congress has supplied an intelligible principle to guide the agency's use of discretion begins with statutory interpretation. We must "construe the challenged statute to figure out what task it delegates and what instructions it provides." *Gundy*, 588 U.S. at 136. "Only after a court has determined a challenged statute's meaning can it decide whether the law sufficiently guides executive discretion to accord with Article I." *Id.* The established rules of statutory interpretation "hold[] good for delegations, just as for other statutory provisions." *Id.* at 141. And so, when reviewing a statute for an intelligible principle, "we do not confine ourselves to the isolated phrase in question, but utilize all the tools of statutory construction, including the statutory context and, when appropriate, the factual background of the statute to determine whether the

statute provides the bounded discretion that the Constitution requires." *Owens v. Republic of Sudan*, 531 F.3d 884, 890 (D.C. Cir. 2008); *see Consumers' Rsch.*, slip op. at 22 (noting that previous nondelegation cases "did not examine . . . statutory phrases in isolation but instead looked to the broader statutory contexts, which informed their interpretation and supplied the content necessary to satisfy the intelligible-principle test").

We thus review the AIM Act's "text, considered alongside its context, purpose, and history." *Gundy*, 588 U.S. at 136. We agree with the EPA that the statute guided the agency "to allocate . . . allowances among persons that have produced or imported hydrofluorocarbons." EPA Br. 27-29. The statutory text commands the EPA to allocate allowances "in accordance with" the Act, 42 U.S.C. § 7675(e)(3); and the Act focuses on reducing HFC "production and consumption." *See id.* § 7675(e)(3)(A)-(B) (directing the EPA to "issue a final rule" "phasing down the production . . . [and] consumption" of HFCs); *see also id.* § 7675(e)(2)(C) (setting schedule for reducing baseline levels of "production and consumption" of HFCs). To accomplish the statute's goal of phasing down HFCs, the EPA must require the existing players in the HFC market to lower their HFC "production and consumption" to a degree that is commensurate with the capped number of allowances issued by the agency. A natural way to allocate the allowances to achieve that purpose is to rely on the market participants' historical market share.

Moreover, precedent supports that approach: The AIM Act follows the lead of two predecessor cap-and-

trade programs that virtually eliminated the emissions of CFCs and HCFCs. Indeed, legislative history demonstrates that the AIM Act was "modeled on" Title VI of the Clean Air Act. *See Promoting American Innovation and Jobs: Legislation to Phase Down Hydrofluorocarbons: Hearing on H.R. 5544 Before the Subcomm. on Env't & Climate Change of the H. Comm. on Energy & Com.*, 116th Cong. 2, 7 (2020) (statements of Rep. Paul Tonko, Chairman, H. Subcomm. on Env't & Climate Change, and Rep. Frank Pallone, Jr., Chairman, H. Comm. on Energy & Com.) (Title VI "proved an able vehicle to foster an orderly, market-based phasedown of HFCs' predecessors," and the AIM Act "builds upon [Congress's] previous experience in phasing out CFCs and their replacement chemicals, HCFCs."). Thus, in both statutes, Congress used "baseline" years to set caps and phaseout schedules for the regulated refrigerants. *Compare* 42 U.S.C. §§ 7671(2)(A)-(C), 7671c(a), 7671d(b), *with id.* § 7675(e)(1). Congress also directed the EPA to allocate allowances to accomplish the refrigerant phaseouts "in accordance with" each controlling Act. *Compare* 42 U.S.C. §§ 7671c(c), 7671d(c), *with id.* § 7675(e)(3). Congress even expressly incorporated certain provisions of Title VI into the AIM Act, such as the penalty, recordkeeping-and-monitoring, citizen-suit, and judicial-review provisions. *See id.* § 7675(k)(1)(C).

Based on the strong similarity between the programs created by the AIM Act and Title VI, it is evident that Congress expected the EPA to implement the HFC cap-and-trade program in a manner that tracked the successful predecessor programs for CFCs and HCFCs—and those predecessor programs

allocated allowances according to market share. *Compare* Protection of Stratospheric Ozone, 57 Fed. Reg. 33754, 33754 (July 30, 1992) ("[The EPA] [a]pportions baseline allowances to produce or import ozone depleting substances to companies that produced or imported certain ozone depleting substances in the baseline years[.]"), *with 2024 Rule*, 88 Fed. Reg. at 46837 ("The Agency is basing these general pool allocations on entities' market shares derived from the average of the three highest years of production and consumption, respectively, of regulated substances between 2011 and 2019."). That interpretation of the AIM Act is consistent with "the familiar principle that Congress legislates with a full understanding of existing law." *Am. Fed'n of Gov't Emps. v. FLRA*, 46 F.3d 73, 78 (D.C. Cir. 1995). Congress intended that the EPA would implement the AIM Act by allocating allowances in an orderly, market-based fashion, as it did when implementing cap-and-trade programs under Title VI. *See Am. Power & Light Co.*, 329 U.S. at 104 (concluding that the relevant delegation "derive[d] much meaningful content from the purpose of the Act, its factual background and the statutory context").[3]

[3] We also note that, to the extent the AIM Act is susceptible to more than one plausible construction, we should read the statute to avoid granting discretion that is so broad that it could create a nondelegation problem. *See Consumers' Rsch.*, slip op. at 30 ("Statutes (including regulatory statutes) should be read, if possible, to comport with the Constitution, not to contradict it."); *Gundy*, 588 U.S. at 136 (rejecting the petitioner's preferred reading of the statute, under which the Court "would face a nondelegation question").

"Now that we have determined what [the statute] means, we can consider whether it violates the Constitution." *Gundy*, 588 U.S. at 145. The foregoing analysis reveals that our interpretation of the statute all but answers the constitutional question of whether Congress provided an intelligible principle to guide the agency's discretion. *See id.* at 136 ("[I]ndeed, once a court interprets the statute, it may find that the constitutional question all but answers itself.").

Here, the AIM Act directs the EPA's regulatory authority "to a particular subject matter . . . in a particular industry"—*i.e.*, the allocation of a capped number of allowances for the production and consumption of HFCs. *Sanchez v. Off. of State Superintendent of Educ.*, 45 F.4th 388, 401-02 (D.C. Cir. 2022). "Within that narrow sphere," Congress "can delegate considerable discretion." *Id.* at 402. Indeed, how to allocate allowances in a cap-and-trade program is the sort of "technical issue" for which little guidance is necessary. *Consumers' Rsch.*, slip op. at 11; *see Am. Trucking*, 531 U.S. at 475 ("[T]he degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred."). By modeling the AIM Act on Title VI, Congress "imposed ascertainable and meaningful guideposts for" the EPA "to follow when carrying out its delegated function of" allocating HFC allowances: The guideposts are found in Title VI and its implementing regulations, which allocated allowances according to the historical market share of industry participants. *Consumers' Rsch.*, slip op. at 19. The AIM Act's allocation provisions, read in context, are constitutionally sufficient and do not violate the nondelegation doctrine. *See Gundy*, 588 U.S. at 135-

36; *see also Sanchez*, 45 F.4th at 401-02 (concluding that the "implication of the Act, read as a whole," clearly guided the Mayor's discretion).

The AIM Act plainly does not give the EPA the sort of unbounded discretion that renders a statute unconstitutional. Subsection (e)(3) is very different from the only two precedents, from over ninety years ago, that applied the nondelegation doctrine to strike down a law. *See Panama Refining Co.*, 293 U.S. 388; *A.L.A. Schechter Poultry Corp.*, 295 U.S. 495. The Supreme Court overturned statutes "in each case because Congress had failed to articulate *any* policy or standard to confine discretion." *Gundy*, 588 U.S. at 146 (cleaned up) (emphasis in original). By contrast, as discussed, the history and context of the AIM Act show that Congress provided ample direction to confine the EPA's discretion in implementing the statute's allowance-allocation program.

3.

We are unpersuaded by Choice's counterarguments. Choice complains that the AIM Act's language directing the EPA to distribute allowances "in accordance with this section," 42 U.S.C. § 7675(e)(3), is not as specific as the direction provided in other sections of the Act. But the Constitution does not require the degree of specificity demanded by Choice. *See Am. Trucking*, 531 U.S. at 475 (noting that the nondelegation doctrine has "never demanded . . . that statutes provide a determinate criterion" (cleaned up)).

Choice further disputes Title VI's relevance to the AIM Act and says that Title VI cannot provide limiting principles here because Congress "expressly

incorporated certain procedural provisions of the Clean Air Act" while "declin[ing] to refer to any substantive provisions." Choice Reply Br. 14. As already discussed, however, the Act's structure and history clearly show that Congress relied on Title VI for more than the procedural provisions expressly incorporated. *See, e.g.*, *Hearing on H.R. 5544*, 116th Cong. 2 (statement of Rep. Paul Tonko) ("The legislation is modeled on Title VI of the Clean Air Act," which "proved an able vehicle to foster an orderly, market-based phasedown of HFCs' predecessors.").

Finally, Choice accuses the EPA of taking different positions in prior proceedings and argues that the EPA's decision to model its HFC phasedown on Title VI today does not prevent the EPA from "abandon[ing] this system in the future." Choice Reply Br. 14; *see also Am. Trucking*, 531 U.S. at 472 ("[A]n agency [cannot] cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute."). We decline to consider this possibility because it is not our job to address hypothetical future applications of the AIM Act. *Cf. Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 584 (1998) (We will not "invalidate legislation on the basis of . . . hypothetical . . . situations not before" us. (cleaned up)). If the EPA "abandon[s] this system in the future," Choice Reply Br. 14, that action can be subject to further APA challenge.

For the reasons discussed, we deny Choice's petition.

III.

Petitioner IGas challenges the EPA's 2024 Rule as arbitrary and capricious. According to IGas, the EPA's decision to calculate market share by considering an entity's three highest years of production and consumption between 2011 and 2019 was unreasonable because it excluded 2020 data.[4] Because the EPA's methodology was reasonable, we reject IGas's challenge and deny its petition for review.

A.

As a threshold matter, we disagree with the EPA's contention that IGas forfeited its argument that the agency "failed to independently consider whether 2020 data should be included" in the allocation methodology. IGas Br. 15. The EPA argues that IGas's comments during the agency-review process urged the agency to adopt data from *both* 2020 and 2021, which did not adequately preserve its argument on appeal that EPA should consider *only* the 2020 data. *See* 42 U.S.C. § 7607(d)(7)(B) (An argument is preserved for appeal if it was made "with reasonable specificity during the period for public comment" before the agency.). But the EPA's assertion that IGas did not previously "point[] to any material difference between the 2020 and 2021 data," EPA Br. 41, is belied by the record. In direct response to the EPA's concern about

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[4] IGas has standing to challenge the 2024 Rule. Igas imports HFCs regulated by the EPA's Rule and receives allocations for that import activity. It is thus an "object of the action . . . at issue," and there is "little question" that the action has caused it injury and that a judgment preventing the action will redress that injury. *Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002) (cleaned up).

stockpiling in 2020 and 2021, IGas offered different reasons for disproving the stockpiling theory for each year. *Compare* J.A. 260-61, *with* J.A. 262-63. Because IGas pointed out differences in the 2020 and 2021 data, IGas's "comment to the agency was adequate notification of the general substance" of a claim that the agency should consider each year's data separately. *S. Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882, 891 (D.C. Cir. 2006); *see also Appalachian Power Co. v. EPA*, 135 F.3d 791, 817-18 (D.C. Cir. 1998) ("[T]he [Clean Air] Act does not require that precisely the same argument that was made before the agency be rehearsed again, word for word, on judicial review.").

B.

On the merits, we conclude that the EPA reasonably excluded the 2020 data. Under the Clean Air Act, made applicable to the AIM Act through 42 U.S.C. § 7675(k)(1)(C), we "may reverse any [] action found to be arbitrary, capricious, [or] an abuse of discretion." 42 U.S.C. § 7607(d)(9)(A). "To determine whether EPA's rules are arbitrary and capricious, we apply the same standard of review under the Clean Air Act as we do under the Administrative Procedure Act (APA)." *Allied Loc. & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000) (cleaned up). Under that standard, an agency must engage in reasoned decision-making. *See Michigan v. EPA*, 576 U.S. 743, 750 (2015). This means that "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v.*

State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (cleaned up). Agency action is arbitrary and capricious if the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem," or "offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* But our "scope of review under the 'arbitrary and capricious' standard is narrow," and we are not to "substitute [our] judgment for that of the agency." *Id.* Further, "when an agency relies on multiple grounds for its decision," we may "sustain the decision as long as one is valid and the agency would clearly have acted on that ground even if the other were unavailable." *Casino Airlines, Inc. v. NTSB*, 439 F.3d 715, 717 (D.C. Cir. 2006) (cleaned up).

Applying that deferential standard of review, the EPA's decision to exclude the 2020 data from its allocation methodology was not arbitrary and capricious because the agency reasonably concluded that (1) the data was unrepresentative of market share, and (2) its inclusion would disrupt the market.

First, the EPA reasonably determined that the 2020 data was "less representative due to several important global and market factors," "such as the COVID-19 pandemic and supply chain disruptions," "and therefore [did] not accurately represent companies' market share." *2024 Rule*, 88 Fed. Reg. at 46843. The EPA conducted extensive stakeholder outreach and received comments agreeing with its concern that the "production and importation of HFCs

in 2020 [] were influenced by external factors such as the COVID-19 pandemic and supply chain disruptions." *Id.* Indeed, IGas's own comments conceded that 2020 was "anomalous as a result of the COVID-19 pandemic where supply chain difficulties dominated all markets." J.A. 60; *see also* J.A. 256 (continuing to represent that there were "significant difficulties with supply and transportation caused by the COVID-19 pandemic"). The EPA's final rule further noted that the agency "received comments from a trade organization whose members represent 70 percent of the dollar value of the HVAC-Refrigeration market, 400 whole companies, nearly 300 manufacturing associates and nearly 100 manufacturer representatives, who supported the Agency's proposal to exclude 2020 and 2021 from evaluation." *2024 Rule*, 88 Fed. Reg. at 46843. It was plainly reasonable for the EPA to rely on the comments of a "breadth of stakeholders," *id.* at 46844, as well as IGas's own comments about the 2020 data.

We also reject IGas's argument that the 2020 data should be included even if it is atypical, to avoid punishing companies that managed to do well in atypical years. The EPA's decision that allocations should reflect typical market share is a policy judgment entitled to deference. *See Bluewater Network v. EPA*, 370 F.3d 1, 11 (D.C. Cir. 2004) (We do not "substitute our policy judgment for that of the Agency."). Our job is limited to "ensuring that EPA has examined the relevant data and articulated a satisfactory explanation for its action." *Id.* (cleaned up). Here, the EPA has done that. The EPA acknowledged the issue raised by IGas, but disagreed "that it would be appropriate to incorporate data

influenced by the pandemic because some entities did well during those years." *2024 Rule*, 88 Fed. Reg. at 46845. The EPA reasonably declined to "provid[e] a company with additional future allowances based on activity in years that are so unusual." *Id.*[5]

Second, the EPA's decision to exclude the 2020 data because of its potential to disrupt the market independently supports upholding the 2024 Rule. In the 2024 Rule, the EPA chose to maintain existing market-share calculations—which did not include 2020 data—because "[r]egulated entities have . . . previously expressed a preference for allowances to be allocated using a consistent approach for as long as possible." *2024 Rule*, 88 Fed. Reg. at 46844. The agency determined that "[a]pplying a similar approach as the one taken" previously "will provide a longer-term planning horizon for HFC producers and entities importing, which will enable entities to make decisions about which HFCs, and HFC substitutes, to produce and import as the market transitions[.]" *Id.* For those reasons, the EPA concluded, retaining the Framework Rule's dataset to set allowances was the

[5] And contrary to IGas's assertions, the EPA was not inconsistent in its treatment of 2020 data. IGas argues that the EPA's decision to exclude 2020 data as unrepresentative is undermined by the Framework Rule, which required entities to be an active market participant in 2020 to be eligible for allowances. But the Framework Rule recognized the atypicality of 2020 by providing exceptions for entities that were inactive in 2020 due to the COVID-19 pandemic. *See Framework Rule*, 86 Fed. Reg. at 55144 (stating that the EPA will "give individualized consideration to circumstances of historical importers that were not active in 2020," "for example if [inactivity] was due to the COVID-19 pandemic").

"best means for reducing (though not eliminating) disruption to the market." *Id.* The EPA thus "justif[ied] its rule with a reasoned explanation." *Stilwell v. Off. of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009).

We disagree with IGas's claim that excluding 2020 data does not advance the EPA's stated goal of continuity and that the EPA's conclusion was "left completely unexplained." IGas Br. 42 (quoting *West Virginia v. EPA*, 362 F.3d 861, 866 (D.C. Cir. 2004)). And although IGas argues otherwise, the EPA was not required to conduct studies to conclusively show that the 2020 data would have significantly changed individual allocations. The APA "imposes no general obligation on agencies to produce empirical evidence." *Stilwell*, 569 F.3d at 519.

For the foregoing reasons, we deny IGas's petition.[6]

So ordered.

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[6] We need not examine the additional reasons that the EPA provided for excluding the 2020 data, including its statements that 2020 was not a representative year due to stockpiling ahead of the AIM Act's passage, and that 2020 data was not as reliable or well-vetted as data from 2011 to 2019. That analysis would be superfluous. *See Casino Airlines*, 439 F.3d at 717 ("We have consistently held that when an agency relies on multiple grounds for its decision, some of which are invalid, we may nonetheless sustain the decision as long as one is valid and the agency would clearly have acted on that ground even if the other were unavailable." (cleaned up)).

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1261

IGAS HOLDINGS, INC., et al.,
Petitioners,
v.
ENVIRONMENTAL PROTECTION AGENCY,
Respondent,
AIR-CONDITIONING, HEATING, AND REFRIGERATION INSTITUTE AND ALLIANCE FOR RESPONSIBLE ATMOSPHERIC POLICY,
Intervenors.

Filed: Sept. 30, 2025

Before: Pillard, Pan, and Garcia, *Circuit Judges*.

ORDER

Upon consideration of petition RMS of Georgia, LLC's petition for panel rehearing filed September 15, 2025, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

* * *

Appendix C

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. art. I, §1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

42 U.S.C. §7675. American Innovation and Manufacturing

(a) Short title

This section may be cited as the "American Innovation and Manufacturing Act of 2020".

(b) Definitions

In this section:

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Allowance

The term "allowance" means a limited authorization for the production or consumption of a regulated substance established under subsection (e).

(3) Consumption

The term "consumption", with respect to a regulated substance, means a quantity equal to the difference between--

(A) a quantity equal to the sum of--

(i) the quantity of that regulated substance produced in the United States; and

(ii) the quantity of the regulated substance imported into the United States; and

(B) the quantity of the regulated substance exported from the United States.

(4) Consumption baseline

The term "consumption baseline" means the baseline established for the consumption of regulated substances under subsection (e)(1)(C).

(5) Exchange value

The term "exchange value" means the value assigned to a regulated substance in accordance with subsections (c) and (e), as applicable.

(6) Import

The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) Produce

(A) In general

The term "produce" means the manufacture of a regulated substance from a raw material or feedstock chemical (but not including the destruction of a regulated substance by a technology approved by the Administrator).

(B) Exclusions

The term "produce" does not include--

(i) the manufacture of a regulated substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or

(ii) the reclamation, reuse, or recycling of a regulated substance.

(8) Production baseline

The term "production baseline" means the baseline established for the production of regulated substances under subsection (e)(1)(B).

(9) Reclaim; reclamation

The terms "reclaim" and "reclamation" mean--

(A) the reprocessing of a recovered regulated substance to at least the purity described in standard 7002016 of the Air-Conditioning, Heating, and Refrigeration Institute (or an appropriate successor standard adopted by the Administrator); and

(B) the verification of the purity of that regulated substance using, at a minimum, the analytical methodology described in the standard referred to in subparagraph (A).

(10) Recover

The term "recover" means the process by which a regulated substance is--

(A) removed, in any condition, from equipment; and

(B) stored in an external container, with or without testing or processing the regulated substance.

(11) Regulated substance

The term "regulated substance" means--

(A) a substance listed in the table contained in subsection (c)(1); and

(B) a substance included as a regulated substance by the Administrator under subsection (c)(3).

(c) Listing of regulated substances

(1) List of regulated substances

Each of the following substances, and any isomers of such a substance, shall be a regulated substance:

Chemical Name	Common Name	Exchange Value
CHF_2CHF_2	HFC-134	1100
CH_2FCF_3	HFC-134a	1430
CH_2FCHF_2	HFC-143	353
$CHF_2CH_2CF_3$	HFC-245fa	1030
$CF_3CH_2CF_2CH_3$	HFC-365mfc	794
CF_3CHFCF_3	HFC-227ea	3220
$CH_2FCF_2CF_3$	HFC-236cb	1340
CHF_2CHFCF_3	HFC-236ea	1370
$CF_3CH_2CF_3$	HFC-236fa	9810
$CH_2FCF_2CHF_2$	HFC-245ca	693
$CF_3CHFCHFCF_2CF_3$	HFC-43-10mee	1640

CH_2F_2	HFC-32	675
CHF_2CF_3	HFC-125	3500
CH_3CF_3	HFC-143a	4470
CH_3F	HFC-41	92
CH_2FCH_2F	HFC-152	53
CH_3CHF_2	HFC-152a	124
CHF_3	HFC-23	14800.

(2) Review

The Administrator may--

(A) review the exchange values listed in the table contained in paragraph (1) on a periodic basis; and

(B) subject to notice and opportunity for public comment, adjust the exchange values solely on the basis of--

(i) the best available science; and

(ii) other information consistent with widely used or commonly accepted existing exchange values.

(3) Other regulated substances

(A) In general

Subject to notice and opportunity for public comment, the Administrator may designate a substance not included in the table contained in paragraph (1) as a regulated substance if--

(i) the substance--

(I) is a chemical substance that is a saturated hydrofluorocarbon; and

(II) has an exchange value, as determined by the Administrator in accordance with the basis described in paragraph (2)(B), of greater than 53; and

(ii) the designation of the substance as a regulated substance would be consistent with the purposes of this section.

(B) Savings provision

(i) In general

Nothing in this paragraph authorizes the Administrator to designate as a regulated substance a blend of substances that includes a saturated hydrofluorocarbon for purposes of phasing down production or consumption of regulated substances under subsection (e), even if the saturated hydrofluorocarbon is, or may be, designated as a regulated substance.

(ii) Authority of administrator

Clause (i) does not affect the authority of the Administrator to regulate under this Act 1 a regulated substance within a blend of substances.

(d) Monitoring and reporting requirements

(1) Production, import, and export level reports

(A) In general

On a periodic basis, to be determined by the Administrator, but not less frequently than

annually, each person who, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to the Administrator a report that describes, as applicable, the quantity of the regulated substance that the person--

(i) produced, imported, and exported;

(ii) reclaimed;

(iii) destroyed by a technology approved by the Administrator;

(iv) used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or

(v) used as a process agent.

(B) Requirements

(i) Signed and attested

The report under subparagraph (A) shall be signed and attested by a responsible officer (within the meaning of the Clean Air Act (42 U.S.C. 7401 et seq.)).

(ii) No further reports required

A report under subparagraph (A) shall not be required from a person if the person--

(I) permanently ceases production, importation, exportation, destruction, transformation, use as a process agent, or

reclamation of all regulated substances; and

(II) notifies the Administrator in writing that the requirement under subclause (I) has been met.

(iii) Baseline period

Each report under subparagraph (A) shall include, as applicable, the information described in that subparagraph for the baseline period of calendar years 2011 through 2013.

(2) Coordination

The Administrator may allow any person subject to the requirements of paragraph (1)(A) to combine and include the information required to be reported under that paragraph with any other related information that the person is required to report to the Administrator.

(e) Phase-down of production and consumption of regulated substances

(1) Baselines

(A) In general

Subject to subparagraph (D), the Administrator shall establish for the phase-down of regulated substances--

(i) a production baseline for the production of all regulated substances in the United States, as described in subparagraph (B); and

(ii) a consumption baseline for the consumption of all regulated substances

in the United States, as described in subparagraph (C).

(B) Production baseline described

The production baseline referred to in subparagraph (A)(i) is the quantity equal to the sum of--

(i) the average annual quantity of all regulated substances produced in the United States during the period--

(I) beginning on January 1, 2011; and

(II) ending on December 31, 2013; and

(ii) the quantity equal to the sum of--

(I) 15 percent of the production level of hydrochlorofluorocarbons in calendar year 1989; and

(II) 0.42 percent of the production level of chlorofluorocarbons in calendar year 1989.

(C) Consumption baseline described

The consumption baseline referred to in subparagraph (A)(ii) is the quantity equal to the sum of--

(i) the average annual quantity of all regulated substances consumed in the United States during the period--

(I) beginning on January 1, 2011; and

(II) ending on December 31, 2013; and

(ii) the quantity equal to the sum of--

(I) 15 percent of the consumption level of hydrochlorofluorocarbons in calendar year 1989; and

(II) 0.42 percent of the consumption level of chlorofluorocarbons in calendar year 1989.

(D) Exchange values

(i) In general

For purposes of establishing the baselines pursuant to subparagraphs (B) and (C), the Administrator shall use the exchange values listed in the table contained in subsection (c)(1) for regulated substances and the following exchange values for hydrochlorofluorocarbons and chlorofluorocarbons:

Table 2

Chemical Name	**Common Name**	**Exchange Value**
$CHFC1_2$	HCFC-21	151
CHF_2C1	HCFC-22	1810
$C_2HF_3C1_2$	HCFC-123	77
C_2HF_4C1	HCFC-124	609
CH_3CFC1_2	HCFC-141b	725
CH_3CF_2C1	HCFC-142b	2310
$CF_3CF_2CHC1_2$	HCFC-225ca	122

CF_2C1CF_2CHC1F	HCFC-225cb	595

Table 3

$CFC1_3$	CFC-11	4750
CF_2C1_2	CFC-12	10900
$C_2F_3C1_3$	CFC-113	6130
$C_2F_4C1_2$	CFC-114	10000
C_2F_5C1	CFC-115	7370

(ii) Review

The Administrator may--

(I) review the exchange values listed in the tables contained in clause (i) on a periodic basis; and

(II) subject to notice and opportunity for public comment, adjust the exchange values solely on the basis of--

(aa) the best available science; and

(bb) other information consistent with widely used or commonly accepted existing exchange values.

(2) Production and consumption phase-down

(A) In general

During the period beginning on January 1 of each year listed in the table contained in subparagraph (C) and ending on December 31 of the year before the next year listed on that

table, except as otherwise permitted under this section, no person shall--

(i) produce a quantity of a regulated substance without a corresponding quantity of production allowances, except as provided in paragraph (5);

(ii) consume a quantity of a regulated substance without a corresponding quantity of consumption allowances; or

(iii) hold, use, or transfer any production allowance or consumption allowance allocated under this section except in accordance with regulations promulgated by the Administrator pursuant to subsection (g).

(B) Compliance

For each year listed on the table contained in subparagraph (C), the Administrator shall ensure that the annual quantity of all regulated substances produced or consumed in the United States does not exceed the product obtained by multiplying--

(i) the production baseline or consumption baseline, as applicable; and

(ii) the applicable percentage listed on the table contained in subparagraph (C).

(C) Relation to baseline

On January 1 of each year listed in the following table, the Administrator shall apply the applicable percentage, as described in subparagraph (A):

Date	Percentage of Production Baseline	Percentage of Consumption Baseline
2020-2023	90 percent	90 percent
2024-2028	60 percent	60 percent
2029-2033	30 percent	30 percent
2034-2035	20 percent	20 percent
2036 and thereafter	15 percent	15 percent

(D) Allowances

(i) Quantity

Not later than October 1 of each calendar year, the Administrator shall use the quantity calculated under subparagraph (B) to determine the quantity of allowances for the production and consumption of regulated substances that may be used for the following calendar year.

(ii) Nature of allowances

(I) In general

An allowance allocated under this section--

(aa) does not constitute a property right; and

(bb) is a limited authorization for the production or consumption of a regulated substance under this section.

(II) Savings provision

Nothing in this section or in any other provision of law limits the authority of the United States to terminate or limit an authorization described in subclause (I)(bb).

(3) Regulations regarding production and consumption of regulated substances

Not later than 270 days after December 27, 2020, which shall include a period of notice and opportunity for public comment, the Administrator shall issue a final rule--

(A) phasing down the production of regulated substances in the United States through an allowance allocation and trading program in accordance with this section; and

(B) phasing down the consumption of regulated substances in the United States through an allowance allocation and trading program in accordance with the schedule under paragraph (2)(C) (subject to the same exceptions and other requirements as are applicable to the phase-down of production of regulated substances under this section).

(4) Exceptions; essential uses

(A) Feedstocks and process agents

Except for the reporting requirements described in subsection (d)(1), this section does not apply to--

(i) a regulated substance that is used and entirely consumed (except for trace

quantities) in the manufacture of another chemical; or

(ii) a regulated substance that is used and not entirely consumed in the manufacture of another chemical, if the remaining amounts of the regulated substance are subsequently destroyed.

(B) Essential uses

(i) In general

Beginning on December 27, 2020, and subject to paragraphs (2) and (3) and clauses (ii) and (iii), the Administrator may, by rule, after considering technical achievability, commercial demands, affordability for residential and small business consumers, safety, and other relevant factors, including overall economic costs and environmental impacts compared to historical trends, allocate a quantity of allowances for a period of not more than 5 years for the production and consumption of a regulated substance exclusively for the use of the regulated substance in an application, if--

(I) no safe or technically achievable substitute will be available during the applicable period for that application; and

(II) the supply of the regulated substance that manufacturers or users of the regulated substance for

that application are capable of securing from chemical manufacturers, as authorized under paragraph (2)(A), including any quantities of a regulated substance available from production or import, is insufficient to accommodate the application.

(ii) Petition

If the Administrator receives a petition requesting the designation of an application as an essential use under clause (i), the Administrator shall--

(I) not later than 180 days after the date on which the Administrator receives the petition--

(aa) make the complete petition available to the public; and

(bb) when making the petition available to the public under item (aa), propose and seek public comment on--

(AA) a determination of whether to designate the application as an essential use; and

(BB) if the Administrator proposes to designate the application as an essential use, making the requisite allocation of allowances; and

(II) not later than 270 days after the date on which the Administrator receives the petition, take final action on the petition.

(iii) Limitation

A person receiving an allocation under clause (i) or (iv) or as a result of a petition granted under clause (ii) may not produce or consume a produced quantity of regulated substances that, considering the respective exchange values of the regulated substances, exceeds the number of allowances issued under paragraphs (2) and (3) that are held by that person.

(iv) Mandatory allocations

(I) In general

Notwithstanding clause (i) and subject to clause (iii) and paragraphs (2) and (3), for the 5-year period beginning on December 27, 2020, the Administrator shall allocate the full quantity of allowances necessary, based on projected, current, and historical trends, for the production or consumption of a regulated substance for the exclusive use of the regulated substance in an application solely for--

(aa) a propellant in metered-dose inhalers;

(bb) defense sprays;

(cc) structural composite preformed polyurethane foam for marine use and trailer use;

(dd) the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector;

(ee) mission-critical military end uses, such as armored vehicle engine and shipboard fire suppression systems and systems used in deployable and expeditionary applications; and

(ff) onboard aerospace fire suppression.

(II) Requirement

The allocation of allowances under subclause (I) shall be determined through a rulemaking.

(v) Review

(I) In general

For each essential use application receiving an allocation of allowances under clause (i) or (iv), the Administrator shall review the availability of substitutes, including any quantities of the regulated substance available from reclaiming or prior production, not less frequently than once every 5 years.

(II) Extension

If, pursuant to a review under subclause (I), the Administrator determines, subject to notice and opportunity for public comment, that the requirements described in subclauses (I) and (II) of clause (i) are met, the Administrator shall authorize the production or consumption, as applicable, of any regulated substance used in the application for renewable periods of not more than 5 years for exclusive use in the application.

(5) Domestic manufacturing

Notwithstanding paragraph (2)(A)(i), the Administrator may, by rule, authorize a person to produce a regulated substance in excess of the number of production allowances held by that person, subject to the conditions that--

(A) the authorization is--

(i) for a renewable period of not more than 5 years; and

(ii) subject to notice and opportunity for public comment; and

(B) the production--

(i) is at a facility located in the United States;

(ii) is solely for export to, and use in, a foreign country that is not subject to the prohibition in subsection (j)(1); and

(iii) would not violate paragraph (2)(B).

(f) Accelerated schedule

(1) In general

Subject to paragraph (4), the Administrator may, only in response to a petition submitted to the Administrator in accordance with paragraph (3) and after notice and opportunity for public comment, promulgate regulations that establish a schedule for phasing down the production or consumption of regulated substances of regulated substances that is more stringent than the production and consumption levels of regulated substances required under subsection (e)(2)(C).

(2) Requirements

Any regulations promulgated under this subsection--

(A) shall--

(i) apply uniformly to the allocation of production and consumption allowances for regulated substances, in accordance with subsection (e)(3);

(ii) ensure that there will be sufficient quantities of regulated substances, including substances available from reclaiming, prior production, or prior import, to meet the needs for--

(I) applications that receive an allocation under clause (i) of subsection (e)(4)(B); and

(II) all applications that receive a mandatory allocation under items

(aa) through (ff) of clause (iv)(I) of that subsection; and

(iii) foster continued reclamation of and transition from regulated substances; and

(B) shall not set the level of production allowances or consumption allowances below the percentage of the consumption baseline that is actually consumed during the calendar year prior to the year during which the Administrator makes a final determination with respect to the applicable proposal described in paragraph (3)(C)(iii)(I).

(3) Petition

(A) In general

A person may petition the Administrator to promulgate regulations for an accelerated schedule for the phase-down of production or consumption of regulated substances under paragraph (1).

(B) Requirement

A petition submitted under subparagraph (A) shall--

(i) be made at such time, in such manner, and containing such information as the Administrator shall require; and

(ii) include a showing by the petitioner that there are data to support the petition.

(C) Timelines

(i) In general

If the Administrator receives a petition under subparagraph (A), the Administrator shall--

(I) not later than 180 days after the date on which the Administrator receives the petition--

(aa) make the complete petition available to the public; and

(bb) when making the petition available to the public under item (aa), propose and seek public comment on the proposal of the Administrator to grant or deny the petition; and

(II) not later than 270 days after the date on which the Administrator receives the petition, take final action on the petition.

(ii) Factors for determination

In making a determination to grant or deny a petition submitted under subparagraph (A), the Administrator shall, to the extent practicable, factor in-

(I) the best available data;

(II) the availability of substitutes for uses of the regulated substance that is the subject of the petition, taking into account technological achievability, commercial demands,

affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import;

(III) overall economic costs and environmental impacts, as compared to historical trends; and

(IV) the remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3), if applicable.

(iii) Regulations

After receiving public comment with respect to the proposal under clause (i)(I)(bb), if the Administrator makes a final determination to grant a petition under subparagraph (A), the final regulations with respect to the petition shall--

(I) be promulgated by not later than 1 year after the date on which the Administrator makes the proposal to grant the petition under that clause; and

(II) meet the requirements of paragraph (2).

(D) Publication

When the Administrator makes a final determination to grant or deny a petition under subparagraph (A), the Administrator shall publish a description of the reasons for that grant or denial, including a description of the information considered under subclauses (I) through (IV) of subparagraph (C)(ii).

(E) Insufficient information

If the Administrator determines that the data included under subparagraph (B)(ii) in a petition are not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator to acquire the necessary data.

(4) Date of effectiveness

The Administrator may not promulgate under paragraph (1) a regulation for the production or consumption of regulated substances that is more stringent than the production or consumption levels required under subsection (e)(2)(C) that takes effect before January 1, 2025.

(5) Review

(A) In general

The Administrator shall review the availability of substitutes for regulated substances subject to an accelerated schedule established under paragraph (1) in each sector and subsector in which the regulated substance is used, taking into account technological achievability, commercial

demands, safety, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import, by January 1, 2026 (for the first review), by January 1, 2031 (for the second review), and at least once every 5 years thereafter.

(B) Public availability

The Administrator shall make the results of a review conducted under subparagraph (A) publicly available.

(6) Savings provision

Nothing in this subsection authorizes the Administrator to promulgate regulations pursuant to this subsection that establish a schedule for phasing down the production or consumption of regulated substances that is less stringent than the production and consumption levels of regulated substances required under subsection (e)(2)(C).

(g) Exchange authority

(1) Transfers

Not later than 270 days after December 27, 2020, which shall include a period of notice and opportunity for public comment, the Administrator shall promulgate a final regulation that governs the transfer of allowances for the production of regulated substances under subsection (e)(3)(A) that uses--

(A) the applicable exchange values described in the table contained in subsection (c)(1); or

(B) the exchange value described in the rule designating the substance as a regulated substance under subsection (c)(3).

(2) Requirements

The final rule promulgated pursuant to paragraph (1) shall--

(A) ensure that the transfers under this subsection will result in greater total reductions in the production of regulated substances in each year than would occur during the year in the absence of the transfers;

(B) permit 2 or more persons to transfer production allowances if the transferor of the allowances will be subject, under the final rule, to an enforceable and quantifiable reduction in annual production that--

(i) exceeds the reduction otherwise applicable to the transferor under this section;

(ii) exceeds the quantity of production represented by the production allowances transferred to the transferee; and

(iii) would not have occurred in the absence of the transaction; and

(C) provide for the trading of consumption allowances in the same manner as is applicable under this subsection to the trading of production allowances.

(h) Management of regulated substances

(1) In general

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 shall 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.

(2) Reclaiming

(A) In general

In carrying out this section, the Administrator shall consider the use of authority available to the Administrator under this section to increase opportunities for the reclaiming of regulated substances used as refrigerants.

(B) Recovery

A regulated substance used as a refrigerant that is recovered shall be reclaimed before the regulated substance is sold or transferred to a new owner, except where the recovered regulated substance is sold or transferred to a new owner solely for the purposes of being reclaimed or destroyed.

(3) Coordination

In promulgating regulations to carry out this subsection, the Administrator may coordinate those regulations with any other regulations promulgated by the Administrator that involve--

(A) the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment; or

(B) reclaiming.

(4) Inapplicability

No regulation promulgated pursuant to this subsection shall apply to a regulated substance or a substitute for a regulated substance that is contained in a foam.

(5) Small business grants

(A) Definition of small business concern

In this paragraph, the term "small business concern" has the same meaning as in section 632 of Title 15.

(B) Establishment

Subject to the availability of appropriations, the Administrator shall establish a grant program to award grants to small business

concerns for the purchase of new specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance, including the purchase of approved refrigerant recycling equipment (as defined in section 609(b) of the Clean Air Act (42 U.S.C. 7671h(b))) for recycling, recovery, or reclamation in the service or repair of motor vehicle air conditioning systems.

(C) Matching funds

The non-Federal share of a project carried out with a grant under this paragraph shall be not less than 25 percent.

(D) Authorization of appropriations

There is authorized to be appropriated to carry out this paragraph $5,000,000 for each of fiscal years 2021 through 2023.

(i) Technology transitions

(1) Authority

Subject to the provisions of this subsection, the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used.

(2) Negotiated rulemaking

(A) Consideration required

Before proposing a rule for the use of a regulated substance for a sector or subsector under paragraph (1), the Administrator shall consider negotiating with stakeholders in the sector or subsector subject to the potential

rule in accordance with the negotiated rulemaking procedure provided for under subchapter III of chapter 5 of Title 5 (commonly known as the "Negotiated Rulemaking Act of 1990").

(B) Negotiated rulemakings

If the Administrator negotiates a rulemaking with stakeholders using the procedure described in subparagraph (A), the Administrator shall, to the extent practicable, give priority to completing that rulemaking over completing rulemakings under this subsection that were not negotiated using that procedure.

(C) No negotiated rulemaking

If the Administrator does not negotiate a rulemaking with stakeholders using the procedure described in subparagraph (A), the Administrator shall, before commencement of the rulemaking process for a rule under paragraph (1), publish an explanation of the decision of the Administrator to not use that procedure.

(3) Petitions

(A) In general

A person may petition the Administrator to promulgate a rule under paragraph (1) for the restriction on use of a regulated substance in a sector or subsector, which shall include a request that the Administrator negotiate with stakeholders in accordance with paragraph (2)(A).

(B) Response

The Administrator shall grant or deny a petition under subparagraph (A) not later than 180 days after the date of receipt of the petition.

(C) Requirements

(i) Explanation

If the Administrator denies a petition under subparagraph (B), the Administrator shall publish in the Federal Register an explanation of the denial.

(ii) Final rule

If the Administrator grants a petition under subparagraph (B), the Administrator shall promulgate a final rule not later than 2 years after the date on which the Administrator grants the petition.

(iii) Publication of petitions

Not later than 30 days after the date on which the Administrator receives a petition under subparagraph (A), the Administrator shall make that petition available to the public in full.

(4) Factors for determination

In carrying out a rulemaking using the procedure described in paragraph (2) or making a determination to grant or deny a petition submitted under paragraph (3), the

Administrator shall, to the extent practicable, factor in--

(A) the best available data;

(B) the availability of substitutes for use of the regulated substance that is the subject of the rulemaking or petition, as applicable, in a sector or subsector, taking into account technological achievability, commercial demands, affordability for residential and small business consumers, safety, consumer costs, building codes, appliance efficiency standards, contractor training costs, and other relevant factors, including the quantities of regulated substances available from reclaiming, prior production, or prior import;

(C) overall economic costs and environmental impacts, as compared to historical trends; and

(D) the remaining phase-down period for regulated substances under the final rule issued under subsection (e)(3), if applicable.

(5) Evaluation

In carrying out this subsection, the Administrator shall--

(A) evaluate substitutes for regulated substances in a sector or subsector, taking into account technological achievability, commercial demands, safety, overall economic costs and environmental impacts, and other relevant factors; and

(B) make the evaluation under subparagraph (A) available to the public, including the factors associated with the safety of those substitutes.

(6) Effective date of rules

No rule under this subsection may take effect before the date that is 1 year after the date on which the Administrator promulgates the applicable rule under this subsection.

(7) Applicability

(A) Definition of retrofit

In this paragraph, the term "retrofit" means to upgrade existing equipment where the regulated substance is changed, which--

(i) includes the conversion of equipment to achieve system compatibility; and

(ii) may include changes in lubricants, gaskets, filters, driers, valves, o-rings, or equipment components for that purpose.

(B) Applicability of rules

A rule promulgated under this subsection shall not apply to**--**

(i) an essential use under clause (i) or (iv) of subsection (e)(4)(B), including any use for which the production or consumption of the regulated substance is extended under clause (v)(II) of that subsection; or

(ii) except for a retrofit application, equipment in existence in a sector or subsector before December 27, 2020.

(j) International cooperation

(1) In general

Subject to paragraph (2), no person subject to the requirements of this section shall trade or transfer a production allowance or, after January 1, 2033, export a regulated substance to a person in a foreign country that, as determined by the Administrator, has not enacted or otherwise established within a reasonable timeframe after December 27, 2020, the same or similar requirements or otherwise undertaken commitments regarding the production and consumption of regulated substances as are contained in this section.

(2) Transfers

Pursuant to paragraph (1), a person in the United States may engage in a trade or transfer of a production allowance--

(A) to a person in a foreign country if, at the time of the transfer, the Administrator revises the number of allowances for production under subsection (e)(2), as applicable, for the United States such that the aggregate national production of the regulated substance to be traded under the revised production limits is equal to the least of--

(i) the maximum production level permitted for the applicable regulated substance in the year of the transfer under this section, less the production allowances transferred;

(ii) the maximum production level permitted for the applicable regulated substances in the transfer year under applicable law, less the production allowances transferred; and

(iii) the average of the actual national production level of the applicable regulated substances for the 3-year period ending on the date of the transfer, less the production allowances transferred; or

(B) from a person in a foreign country if, at the time of the trade or transfer, the Administrator finds that the foreign country has revised the domestic production limits of the regulated substance in the same manner as provided with respect to transfers by a person in United States under this subsection.

(3) Effect of transfers on production limits

The Administrator may--

(A) reduce the production limits established under subsection (e)(2)(B) as required as a prerequisite to a transfer described in paragraph (2)(A); or

(B) increase the production limits established under subsection (e)(2)(B) to reflect production allowances acquired under a trade or transfer described in paragraph (2)(B).

(4) Regulations

The Administrator shall--

(A) not later than 1 year after December 27, 2020, promulgate a final rule to carry out this subsection; and

(B) not less frequently than annually, review and, if necessary, revise the final rule promulgated pursuant to subparagraph (A).

(k) Relationship to other law

(1) Implementation

(A) Rulemakings

The Administrator may promulgate such regulations as are necessary to carry out the functions of the Administrator under this section.

(B) Delegation

The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of the powers and duties of the Administrator under this section as the Administrator determines to be appropriate.

(C) Clean Air Act

Sections 113, 114, 304, and 307 of the Clean Air Act (42 U.S.C. 7413, 7414, 7604, 7607) shall apply to this section and any rule, rulemaking, or regulation promulgated by the Administrator pursuant to this section as though this section were expressly included in title VI of that Act (42 U.S.C. 7671 et seq.).

(2) Preemption

(A) In general

Subject to subparagraph (B), during the 5-year period beginning on December 27, 2020, and with respect to an exclusive use for which a mandatory allocation of allowances is provided under subsection (e)(4)(B)(iv)(I), no State or political subdivision of a State may enforce a statute or administrative action restricting the management or use of a regulated substance within that exclusive use.

(B) Extension

(i) In general

Subject to clause (ii), if, pursuant to subclause (I) of subsection (e)(4)(B)(v), the Administrator authorizes an additional period under subclause (II) of that subsection for the production or consumption of a regulated substance for an exclusive use described in subparagraph (A), no State or political subdivision of a State may enforce a statute or administrative action restricting the management or use of the regulated substance within that exclusive use for the duration of that additional period.

(ii) Limitation

The period for which the limitation under clause (i) applies shall not exceed 5 years

from the date on which the period described in subparagraph (A) ends.