PANEL DECISION ENTERED AUGUST 1, 2025

In the United States Court of Appeals for the District of Columbia Circuit

No. 23-1263

(Consolidated with 23-1261)

RMS OF GEORGIA, LLC D/B/A CHOICE REFRIGERANTS,

Petitioner,

v.

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

Respondents.

On Petition for Review of Final Agency Action
of the Environmental Protection Agency

PETITION FOR REHEARING EN BANC OR PANEL REHEARING

Zhonette M. Brown
Kaitlyn D. Schiraldi
Markham S. Chenoweth
NEW CIVIL LIBERTIES ALLIANCE
4250 N. Fairfax Dr., Suite 300
Arlington, VA 22203
Tel.: (202) 869-5210
zhonette.brown@ncla.legal

David M. Williamson
WILLIAMSON LAW + POLICY, PLLC
1001 Connecticut Ave. NW, Suite 612
Washington, DC 20036
Tel.: (202) 256-6155
maxwilliamson@williamsonlawpolicy.com

Erin M. Hawley
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
Tel.: (202) 393-8690
ehawley@adflegal.org

Counsel for Petitioner RMS of Georgia, LLC

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES*

Cases

---

* Authorities upon which Choice chiefly relies are marked with asterisks.

Statutes

Other Authorities

GLOSSARY

AIM Act or the Act	American Innovation and Manufacturing Act of 2020
EPA	U.S. Environmental Protection Agency
HFC	Hydrofluorocarbon
JA	Joint Appendix
Title VI	Subchapter VI of Chapter 85 of Title 42; 42 U.S.C. §§ 7671–7671q

RULE 40 STATEMENT

The American Innovation and Manufacturing Act of 2020 ("AIM Act") instructs an agency to dictate who may continue participating in a multibillion-dollar industry without providing any intelligible principle concerning how to allocate market share. As EPA explained during rulemaking, the Act grants it discretion to dole out market share in any "reasonable" or nonarbitrary manner. Addm.29, 44. Ultimately, EPA divvied up the market by granting part to new entrants in the interest of "equity," part to certain end-users (like the government) and apportioning the remaining market share based on who reported production and import activity. Petitioner Choice Refrigerants estimates that EPA's unfettered decisions gave other entities more than 20% of Choice's market share. Choice Br. 14.

Despite the economic significance of the affected refrigerants industry—not to mention the consequentiality of deciding which private parties may continue participating in that market and at what level—the panel[1] opined that "how to allocate allowances [market share] in a cap-and-trade program is the sort of 'technical issue' for which little guidance is necessary." Slip Op.18. The panel reasoned that a "particular subject matter," "in a particular industry," is a "narrow sphere" such that "Congress 'can delegate considerable discretion.'" *Id*. Whether

[1] The panel consisted of Judges Pillard, Pan and Garcia; Judge Pan authored the opinion.

Congress can nationalize an industry and leave on-going control of market share to an agency with "little" to no guidance is an important question warranting en banc review.

To supply even the "little guidance" the panel held was required, it employed unorthodox statutory interpretation methods that conflict with precedent to arrive at an interpretation advanced by none of the parties. The panel failed to address the relevant text of the AIM Act or to acknowledge EPA's contemporaneous statutory interpretation. *Contra Loper Bright Enters. v. Raimondo* and *Relentless v. Dep't of Com.*, 603 U.S. 369, 394 (2024) (contemporaneous agency interpretation entitled to consideration and potentially great weight). The panel relied instead upon the purported purpose of the Act, the assumption that Congress meant to incorporate the requisite standard from a *different* statute and floor statements of two legislators. Slip Op.15-17. In the end, the panel deferred to its incorrect characterization of EPA's implementation of the Act. But deferring to an agency's implementation still violates the logic of *Loper Bright*. This petition presents the fundamental questions whether a court may disregard statutory text and interpretation principles or defer to agency action to supply an intelligible principle that is otherwise lacking.

Finally, because the agency's rule contradicts the panel's interpretation of the Act and because the agency misunderstood the scope of its authority (as determined by the panel), the panel's decision not to vacate the rule conflicts with other

decisions. *See FDA v. Wages & White Lion Invs.*, 145 S. Ct. 898, 928 (2025); *United States v. Ross*, 848 F.3d 1129, 1134 (D.C. Cir. 2017).

These conflicts and important constitutional and statutory interpretation questions warrant rehearing en banc. *See* F.R.A.P. 40(b)(2).

FACTUAL AND PROCEDURAL BACKGROUND

Choice is a small business that manufactures refrigerants. Its flagship product is a hydrofluorocarbon ("HFC") blend it patented. Choice Br. 3. Often unable to source chemical components domestically, Choice arranges to import HFCs for its Georgia manufacturing facility. *Id*. at 14.

In the 1990s, EPA encouraged the refrigeration industry to use HFCs to replace other products. As a result, HFCs are widely used in homes, commercial buildings, industrial operations, cars and refrigerated transport, as well as for foam products, aerosols and other purposes. *See* Choice Reply Br. 10 (citing 86 Fed. Reg. 27,150, 27,155). According to Congress, in 2019, 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). In 2022, the domestic refrigerant market was valued at $5.02 billion. Choice Reply Br. 10 (citation omitted).

The AIM Act imposes a cap-and-trade regime similar to that at issue in *West Virginia v. EPA*, 597 U.S. 697 (2022). Through multiple phases the Act eventually

eliminates 85% of HFC production/imports. 42 U.S.C. § 7675(e)(1)(B)(ii)(I). The AIM Act requires HFC producers and importers[2] to hold "allowances" to participate in the market. *Id.* § 7675(e)(2)(A). In the Act, Congress identified the HFCs at issue, the caps for each phase, and provided a method for establishing baselines. Choice Br. 4-5; *see* § 7675(c), (e). Yet Congress provided *no* textual guidance concerning the critical questions of *who* should receive "allowances" and in what proportion. *See* § 7675(e)(3); Choice Br. 5-6. Rather, the Act's text left those determinations to EPA.

EPA interpreted the AIM Act's lack of a standard to grant it discretion to award allowances in *any* "reasonable manner." Choice Br. 17, 22-23, 42; JA504-05 [2024 RTC at 91–92]; Addm.29, 44. EPA explicitly rejected an interpretation of the Act that the panel adopted: that the Act required it to allocate allowances in a way that mimicked the phaseout of ozone-depleting substances ("ODS") in Title VI of the Clean Air Act ("Title VI"). *See, e.g.*, Choice Br. 9-10; Choice Reply Br. 13-14; Addm.21 [86 Fed. Reg. 27,167] (acknowledging that allowing new market entrants deviated from Title VI practice); Addm.33 [86 Fed. Reg. 55,123] (noting EPA could "build on" Title VI experience, but also that the AIM Act requirements "diverge from the text and framework of title VI"); Addm.36 [86 Fed. Reg. 55,142] (rejecting

[2] The Act refers to production and "consumption," but consumption means imports (less exports), not end-user consumption.

use of the "company-specific" baselines used in Title VI); Addm.25 [86 Fed. Reg. 27,203] (citing differences between AIM Act phase*down* and ODS phase*out* as the reason why EPA may shift allocation methodologies over time); *see also* Addm.19 [86 Fed. Reg. 27,171 n.47].

The panel assumed (Slip Op.3, 7, 9, 17) that EPA issued allowances consistent with Title VI's market-share standard. That's wrong. EPA deviated from Title VI and historical market share in material ways. It decided, without any statutory basis and contrary to Title VI, to grant millions of allowances to new market entrants. Choice Br. 10, 13, 40; Choice Reply Br. 14; 86 Fed. Reg. 55,147. EPA also granted application-specific allowances to end-users of priority applications like the military. Choice Br. 5; Choice Reply Br. 9; 86 Fed. Reg. 55,147-48. Even for the remaining "general pool," EPA deviated from a market-share approach by, for example, granting allowances to a company that had arranged for Choice's imports rather than to Choice and to a foreign company that had infringed Choice's patent and illegally imported refrigerants. Choice Br. 14. And while Title VI aligned market-share determinations with activity in the baseline year, EPA used a different tactic for the AIM Act. *Contrast* 42 U.S.C. § 7671c(a), (c) *with* 86 Fed. Reg. 55,145-46. EPA even claimed a new power to shrink market share as a penalty. *See* Addm.40 [86 Fed. Reg. 55,169].

Given EPA's appropriation of Choice's market share, Choice challenged EPA's rule. EPA reasserted it was free to issue allowances in any "manner both reasonable and reasonably explained." Addm.29. The Court, however, did not address the merits of Choice's constitutional claim due to an administrative exhaustion rule. *Heating, Air Conditioning & Refrigeration Distribs. Int'l v. EPA*, 71 F.4th 59, 65 (D.C. Cir. 2023).

Given the Act's lack of a standard, EPA claimed it could vary its allocation method over time, Choice Br. 12; JA13, JA16 [87 Fed. Reg. 66,376, 66,379], and engaged in new rulemaking to address the 2024–2028 phase. EPA adhered to its view that the AIM Act did not incorporate Title VI. It considered, for example, issuing allowances via auction. Choice Br. 13; JA16.

Still suffering market-share loss as a result of EPA's choices, Choice now challenges EPA's unconstitutional exercise of legislative power in its 2024–2028 allowance rule. In the face of *Chevron*'s impending demise, EPA argued for the first time that the AIM Act required it to issue allowances "among persons that have produced or imported hydrofluorocarbons ***or intend to do so*** … ."[3] EPA Br. 29 (emphasis added).

---

[3] The panel misunderstood EPA's position. The panel purported to "agree with the EPA that the statute guided the agency 'to allocate … allowances among persons

Oral argument was held on October 8, 2024. On August 1, 2025, the panel denied Choice's petition.

ARGUMENT

I. WHETHER ALLOCATING MARKET SHARE IN A MULTIBILLION-DOLLAR INDUSTRY REQUIRES "LITTLE GUIDANCE" FROM CONGRESS PRESENTS AN EXCEPTIONALLY IMPORTANT QUESTION

The AIM Act fails to provide EPA with an intelligible principle. It grants EPA control over a multibillion-dollar industry's market share without providing a word of guidance as to whether current market participants are entitled to a slice of that market or in what proportion. Choice estimates that EPA's market-allocation decisions cost it over 20% of its market share in excess of the phasedown ordered by Congress. Choice Br. 14.

The panel made peace with Congress's delegation by determining that the agency needed "little guidance." Yet as the Supreme Court recently reiterated, "the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred." *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2497

---

that have produced or imported hydrofluorocarbons.' EPA Br. 27-29." Slip Op.15. EPA, however, proposed a wider recipient pool, including those who *intend* to produce or import. EPA's grants to new entrants necessitated the "intend to do so" language, which also leaves EPA free to further reallocate market share. Moreover, EPA's litigation-driven position identifies only potential allowance *recipients*, not how allowances/market share should be apportioned.

(2025) (citation omitted). Congress must provide more guidance for matters with significant economic or political impact. *Id*.

EPA claimed that "allowance allocation methodology is precisely the sort of 'detail[]' that Congress may constitutionally leave to EPA to 'fill up.'" EPA Br. 22, 15, 38. But determining who may continue participating in a market and at what level are critical policy questions for any individual company and any industry. Choice Reply Br. 8-10.

EPA well understood that Congress had not limited its market allocation power. It considered granting market share to the highest bidder. JA16. And even where Congress spoke most clearly about certain market sectors, 42 U.S.C. § 7675(e)(4)(iv), EPA noted that the Act did not specify *who* should receive related allowances. Addm.20 [86 Fed. Reg. 27,173]. EPA interpreted the Act to allow it to, among other things, grant market share to new entrants, Choice Br. 8-10, incentivize conduct it found desirable, Choice Br. 13, and take market share as a form of punishment, Choice Br. 11.

The panel opined that, since the Act addressed "a particular subject matter … in a particular industry," EPA was operating in a "narrow sphere" and thus Congress needed provide "little guidance." Slip Op.18. But refrigeration is an established multibillion-dollar industry. Choice Reply Br. 10. Think of every refrigerator, freezer and air conditioner in every home, building and vehicle in America. The

Supreme Court has already held that agency attempts to control a large industry implicate significant political and economic issues. *See West Virginia v. EPA*, 597 U.S. 697, 721-724 (2022). Thus "Congress must give far more detailed instructions if it want[ed EPA] to regulate [the HFC] industry." *Consumers' Rsch.*, 145 S. Ct. at 2525 (Gorsuch, J., dissenting). It is illogical that courts would require a clear statement of Congress's intent to delegate significant power, *Util. Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014), yet find that such delegation itself requires "little guidance."

The panel's industry-by-industry approach is an invitation for Congress to convert free-markets into cap-and-trade regimes one by one—with market share, and the associated reliance, property and liberty interests, controlled by agencies operating with "little guidance." Whether that is the law is an exceptionally important question.

II. THE PANEL OPINION CONFLICTS WITH FUNDAMENTAL STATUTORY INTERPRETATION PRINCIPLES AND PRECEDENTS, ULTIMATELY REWRITING THE ACT

The panel opinion ignores text and substitutes purposivism; refuses to address EPA's contemporaneous statutory interpretation while adopting a version of the agency's litigation-driven position; ignores distinctions between the AIM Act and the statutes the panel relies upon to supply an otherwise missing intelligible principle; and improperly relies on the isolated statements of individual members of

Congress. Ultimately, the panel adopted an interpretation endorsed by none of the parties. *See* EPA Br. 22, 27-29, 38; Intervenors' Br. 8-9, 15-17. The panel's interpretive contortions conflict with decisions from the Supreme Court and this Circuit.

A. The Panel Ignored Text, Which Provided No Intelligible Principle, and Imposed Its Own View of Purpose

Statutory interpretation begins with the text. *See, e.g.*, *Lackey v. Stinnie*, 145 S. Ct. 659, 666 (2025); *Lissack v. Comm'r*, 125 F.4th 245, 257 (D.C. Cir. 2025). Section 7675(e)(3) states that the Administrator "shall issue a final rule-phasing down the production [and consumption] of regulated substances in the United States through an allowance allocation and trading program in accordance with this section …." Nowhere does the Act provide a standard for determining who receives those allowances or in what proportion to others.

Rather than focusing on the (absence of) text, the panel invoked purposivism. It assumed that Congress passed the AIM Act to address greenhouse gas emissions—a term and purpose absent from the text of the statute. Slip Op.2-3. The panel next perused *other* cap-and-trade statutes. *Id.* at 3-4. When the panel finally analyzed the AIM Act, it reasoned that the Act was meant to reduce "HFC 'production and consumption,'" which would require existing market players to lower their "'production and consumption.'" *Id*. at 15-16. In the panel's view, "[a] *natural way* to allocate allowances *to achieve that purpose* is to rely on the market participants'

historical market share." *Id*. at 16 (emphases added). Natural or not, an intelligible principle must be provided by Congress. Yet one searches in vain for a standard in § 7675.

Finding no intelligible principle in the Act's text, the panel was forced to look elsewhere. The panel concluded that the relevant statutory "guideposts" were found *not* in the AIM Act, but in separate statutes: sections of Title VI and their allocation of allowances "according to the historical market share of industry participants." Slip Op.18. But the Supreme Court and this Circuit routinely reject adoption of one statute's language to fill gaps in another statute when the statutes differ. *See, e.g.*, *Wachovia Bank v. Schmidt*, 546 U.S. 303, 305 (2006); *Lorillard v. Pons*, 434 U.S. 575, 585 (1978). Thus, before adopting text from a separate statute, a court must "fully explore the allegedly analogous statute and compare it … with the language and objective of the statute under investigation." *United Shoe Workers v. Bedell*, 506 F.2d 174, 188 (D.C. Cir. 1974); *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 393 (2008). Here, the panel failed to focus on the most relevant language of either the AIM Act or Title VI.

The AIM Act provides that the Administrator "shall issue a final rule-phasing down the production [and consumption] of regulated substances … through an allowance allocation and trading program in accordance with this section …." § 7675(e)(3). In contrast, Title VI states: "it shall be unlawful for any person to

produce any … substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages … refer to a maximum allowable production as a percentage of the quantity of the substance produced *by the person concerned in the baseline year*." 42 U.S.C. § 7671c(a) (emphasis added); *see also* § 7671d(b) (Class II substances). In Title VI Congress limited production specifically by producer [or importer] according to *that* entity's production [or imports] in the baseline year. *Id*. § 7671c(a), (c). Title VI, in other words, requires EPA to allocate allowances based on historical market share at a set time designated by Congress. The AIM Act lacks any such limitation.

Where, as here, the statutes differ, courts presume that "Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 62-63 (2006) (cleaned up). Federal courts "may not narrow a provision's reach by inserting words Congress chose to omit." *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1725 (2020). This is especially true here because subsection (k)(1)(C) of the AIM Act, "Relationship to other law," highlights Congress's choice *not* to incorporate Title VI into the AIM Act. *Contra* Slip Op.16. Subsection (k)(1)(C) expressly incorporates provisions from Titles I and III of the Clean Air Act, not Title VI. *See Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even

greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.").

The notion that Congress meant to implicitly incorporate Title VI "is refuted" by the fact it chose to explicitly incorporate other parts of the Clean Air Act, and it copied language from Title VI[4] while omitting the Title VI market-share standard. *See Russello v. United States*, 464 U.S. 16, 23 (1983). Had Congress intended to incorporate the market-share standard, "it presumably would have done so expressly" as it did in Title VI. *Id.* "The short answer is that Congress did not write the statute that way." *Id.* (citation omitted).

Instead, of considering the Act's text (or lack thereof), the panel relied on vague statements from individual legislators that the AIM Act was "modeled on"[5] Title VI, which provided "an orderly market-based phasedown." Slip Op.16. But "legislative history is not the law." *Gundy v. United States*, 588 U.S. 128, 177 (2019) (Gorsuch, J., dissenting). And the panel relied on the worst sort. *NLRB v. SW*

---

[4] *Compare* 42 U.S.C. §§ 7675(b)(3), (6)-(7) *with* 42 U.S.C. § 7671.

[5] To the extent that the panel implied that by "modeling" Title VI, the AIM Act incorporated background legal principles, there are no such well-established principles or understandings that would be incorporated as "old soil." *See Kousisis v. United States*, 145 S. Ct. 1382, 1392 (2025) (discussing old soil concept); *see also* 42 U.S.C. §§ 7651b-7651d, 7651o (establishing different cap-and-trade regime related to acid rain); *West Virginia v. EPA*, 597 U.S. at 733 (discussing differing cap-and-trade programs).

General, Inc., 580 U.S. 288, 307 (2017) ("Floor statements from two individual legislators rank among the least illuminating forms of legislative history.") (citation omitted).

Finally, the panel's reference to constitutional avoidance, Slip Op.17 n.3, conflicts with decisions from this Court and stretches avoidance to the breaking point of rewriting the statute. The panel did not make the prerequisite finding for constitutional avoidance: that "the statute is found to be susceptible of more than one plausible construction." *See, e.g*., *Almendarez–Torres v. United States*, 523 U.S. 224, 237-238 (1998); *Al Bahlul v. United States*, 767 F.3d 1, 12 (D.C. Cir. 2014). In any event, a court is not free to rewrite a law to avoid a constitutional problem. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 282, 286, 298 (2018) (reversing where lower court "all but ignored the statutory text" in the interest of avoidance). In fact, employing constitutional avoidance to supply a missing intelligible principle poses its own separation of powers problems. *United States v. Stevens*, 559 U.S. 460, 481 (2010) (a court taking up the legislative pen to save a statute intrudes on the province of the legislature and deprives it of the incentive to carefully craft laws). Here, the panel rewrote the Act to supply a historic market-share standard that Congress omitted.

B. The Panel's Refusal to Acknowledge EPA's Contemporaneous Statutory Interpretation Conflicts with *Loper Bright* and *Lissack*

The panel's opinion further violates statutory interpretation principles and conflicts with Supreme Court precedent by burying EPA's contemporaneous interpretation of the AIM Act. EPA's original understanding of the Act was directly contrary to the panel's interpretation. *Supra* 4-5. In its rulemaking, EPA rejected the notion that the Act required it to follow Title VI's method. *Id*. Indeed, EPA justified its deviation from Title VI in part by noting specific differences between the statutes. *See* Addm.17, 19, 21 [86 Fed. Reg. 27,168, 27,171 n.47, 27,176]. During rulemaking and while defending the first rule, EPA described the breadth of its discretion, stating that it needed only provide a reasonable rule, reasonably explained. *See* Choice Br. 23; JA504-05 [2024 RTC at 91-92]; Addm.34-35 [86 Fed. Reg. 55,131-32]; Addm.29, 43-44. But even those basic limitations flow from the prohibition of arbitrary conduct, not from the Act.

The panel's refusal to consider EPA's contrary contemporaneous interpretation conflicts with *Loper Bright* and *Lissack.* While *Loper Bright* prohibits a court from deferring to an agency's statutory interpretation, the Court repeatedly reinforced that an agency's contemporaneous construction may be entitled to "great weight." 603 U.S. at 385-86, 388, 394, 402, 412-13; *Lissack*, 125 F.4th at 259 ("we look to the [agency's] statutory analysis for its persuasive value") (citing *Loper Bright*).

While ignoring EPA's contemporaneous interpretation, the panel deferred to its own understanding of EPA's contemporaneous *implementation* of the Act and EPA's *litigating* position. These maneuvers violate *Loper Bright.* Wrongly assuming that EPA distributed allocations according to market share, *supra* 5, the panel then adopted an interpretation of the Act consistent with that (mis)understanding. This confusion may explain why the panel did not reverse EPA's action.

The panel also purported to "agree with" the position EPA adopted in this litigation. *But see supra* 6 n.3 (explaining the distinction between EPA's position and the panel's characterization of EPA's position). This approach conflicts with this Court's other precedent stating that it "cannot consider" reasoning not articulated, and in this instance contradicted, during rulemaking. *See, e.g.*, *Council for Urological Ints. v. Burwell*, 790 F.3d 212, 223 (D.C. Cir. 2015).

Whether the panel deferred to EPA's contemporaneous implementation or litigation-driven re-interpretation, neither is consistent with the judicial duty, reinforced in *Loper Bright*, to independently determine the best interpretation of the Act.

III. EVEN ACCEPTING THE PANEL'S INTERPRETATION, BECAUSE EPA GROSSLY MISUNDERSTOOD THE ACT THE RULE SHOULD BE VACATED

Even assuming the panel's interpretation is permissible (it isn't), the panel opinion conflicts with controlling precedent by refusing to vacate a rule based on an agency's misunderstanding of its authorizing statute. The panel held that the AIM

Act requires EPA to allocate allowances based on historical market share, but when promulgating its rules EPA disavowed that interpretation and *adjusted* historical market share. *Supra* 5-6. Because EPA failed to grasp the limits of its authority, and promulgated rules inconsistent with the panel's ultimate interpretation of the Act, the Rule should have been vacated. *See Cboe Futures Exch., LLC v. SEC*, 77 F.4th 971, 982 (D.C. Cir. 2023) ("vacatur is the normal remedy") (citation omitted); *Ross*, 848 F.3d at 1134 (court cannot uphold result when agency misunderstands its discretion). When an agency acts contrary to law, vacatur/reversal is appropriate. *See* 42 U.S.C. § 7607(d)(9); *City of Tacoma v. FERC*, 331 F.3d 106, 115-16 (D.C. Cir. 2003). Just this year, the Supreme Court held that an agency's misunderstanding of its governing law was not harmless error. *See Wages & White Lion Invs.*, 145 S. Ct. at 928. So too, here.

CONCLUSION

The panel's endorsement of agency control over market share with little or no guidance from Congress, its abandonment of traditional statutory interpretation either in the interest of constitutional avoidance or in service of deferring to agency implementation, and its refusal to even consider vacatur or any other remedy when the agency acts contrary to law warrant rehearing en banc.

Dated: September 15, 2025

Respectfully submitted,

Zhonette M. Brown

Zhonette M. Brown
Kaitlyn D. Schiraldi
Markham S. Chenoweth
NEW CIVIL LIBERTIES ALLIANCE
4250 N. Fairfax Dr., Suite 300
Arlington, VA 22203
(202) 869-5210
zhonette.brown@ncla.legal

David M. Williamson
WILLIAMSON LAW + POLICY, PLLC
1850 M Street NW, Suite 840
Washington, DC 20036
(202) 256-6155
maxwilliamson@williamsonlawpolicy.com

Erin M. Hawley
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
Tel.: (202) 393-8690
ehawley@adflegal.org

Counsel for RMS of Georgia, LLC

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies as follows:

1. Exclusive of the exempted portions provided in Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1), this petition contains 3,896 words in compliance with the length limitation in Fed. R. App. P. 40(d)(3)(A).

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Zhonette M. Brown
Zhonette M. Brown

Dated: September 15, 2025

CERTIFICATE OF SERVICE

I certify that on this day, I caused to be filed a copy of this brief using the Court's case management electronic case filing system, which will automatically serve notice of the filing on registered users of that system.

Zhonette M. Brown
Zhonette M. Brown

Dated: September 15, 2025

ADDENDUM

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 8, 2024 Decided August 1, 2025

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

Consolidated with 23-1263

On Petitions for Review of a Final Rule
of the Environmental Protection Agency

JoAnn T. Sandifer argued the cause for petitioners IGas Holdings, Inc., et al. With her on the briefs were *Jamie Shookman* and *Daniel G. Solomon*.

Zhonette M. Brown argued the cause for petitioner RMS of Georgia, LLC. With her on the briefs were *Kaitlyn D. Schiraldi* and *David M. Williamson*.

Michael Pepson was on the brief for *amicus curiae* Americans for Prosperity Foundation in support of petitioners.

Sarah A. Buckley, Attorney, U.S. Department of Justice, argued the cause for respondent. With her on the brief was *Todd Kim*, Assistant Attorney General.

Elizabeth B. Dawson argued the cause for intervenors for respondent. With her on the brief were *Thomas A. Lorenzen* and *Robert J. Meyers*.

Sarah C. Tallman, *David Doniger*, *Nanding Chen*, and *Ian Fein* were on the brief for *amicus curiae* Natural Resources Defense Council in support of respondent.

Before: PILLARD, PAN, and GARCIA, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* PAN.

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 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

---

[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).

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]

---

[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 Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020))). Although no party

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 allowances. According to NRDC, if subsection (e)(3) is vacated and the EPA thereby loses its authority to allocate allowances, then no entity could

---

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).

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 "constru[e] 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.

---

[4] IGas has standing to challenge the 2024 Rule. IGas imports HFCs regulated by the EPA's Rule and receives allocations for that

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 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.").

---

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).

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

---

[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").

"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 "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.

---

[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)).

CERTIFICATE AS TO PARTIES

Pursuant to Circuit Rule 28(a)(1)(A), petitioner RMS of Georgia, LLC, through undersigned counsel, hereby certifies the following as to parties related proceedings in this case:

I. PETITIONERS

Petitioners in these consolidated cases are RMS of Georgia, LLC d/b/a Choice Refrigerants (No. 23-1263); IGas Holdings, Inc., IGas USA, Inc., BMP USA, Inc., DMP International Inc., L.M. Supply, Inc., Cool Master U.S.A., LLC, Assured Comfort A/C, Inc., Scales N Stuff, Inc., Golden G Imports LLC, RAMJ Enterprises Inc., and JPRP International, Inc. (No. 23-1261).

II. RESPONDENTS

Respondents are United States Environmental Protection Agency and Michael S. Regan, EPA Administrator.

III. INTERVENORS FOR PETITIONERS

None.

IV. INTERVENORS FOR RESPONDENTS

Respondent-Intervenors are Air-Conditioning, Heating, and Refrigeration Institute and Alliance for Responsible Atmospheric Policy.

V. AMICI CURIAE FOR PETITIONERS

Americans for Prosperity Foundation submitted an Amicus Curiae brief for Petitioner RMS of Georgia.

VI. AMICUS CURIAE FOR RESPONDENTS

Natural Resources Defense Council submitted an Amicus Curiae brief for Respondents.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioner RMS of Georgia, LLC d/b/a Choice Refrigerants states the following:

Petitioner 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.