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U.S. Environmental Protection Agency
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Washington, D.C. 20460

September 30, 2025

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Petition for Reconsideration and Revision of AIM Act Allowance Allocation Framework by RMS of Georgia, LLC	))))	Docket Nos. EPA–HQ–OAR–2021-0669 and EPA–HQ–OAR–2021-0044

PETITION FOR RECONSIDERATION AND REVISION

Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act, 86 Fed. Reg. 55,116 (Oct. 5, 2021), Docket No. EPA–HQ–OAR–2021–0044 (“***2022 Framework Rule***”)

Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years, 88 Fed. Reg. 46,836 (Jul. 7, 2023), Docket No. EPA-HQ-OAR-2022-0430 (“***2024 Framework Rule***”)

On August 1, 2025, the D.C. Circuit held that EPA’s AIM Act allowance program must be based on a market share approach modeled on the Title VI phaseout of ozone-depleting chlorofluorocarbons. Unlike EPA’s current AIM Act allowance rules, the ODS program never awarded allowances on the basis of fraudulent or illegal imports from China, and thus EPA must revise its allowance rules and undo its prior allotment of millions of AIM Act allowances to Chinese-backed importers that have manipulated the allowance market. RMS of Georgia, LLC d/b/a Choice Refrigerants (“Choice”) lost significant market share as a result of EPA's improper crediting of cheaters and should receive additional allowances in the next control period as a remedy.

Choice Refrigerants respectfully petitions the U.S. Environmental Protection Agency pursuant to sections 307(b)(1) and 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1)

and 7607(d)(7)(B), pursuant to the American Innovation and Manufacturing Act of 2020, 42 U.S.C. § 7675 ("AIM Act"),[1] and pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 551-559 and 701-706, and the agency's inherent authority, to reconsider and revise its HFC allowance allocation program rules in light of the D.C. Circuit's decision in *IGas Holdings, Inc. v. EPA*, 146 F.4th 1126 (D.C. Cir. 2025) ("*IGas Holdings*"). The D.C. Circuit decision materially changed the AIM Act legal landscape and constitutes after-arising grounds under the Clean Air Act's rulemaking provisions that necessitates revising the allowance program rules.[2]

Because EPA's AIM Act allowance allocation framework is inconsistent with *IGas Holdings* to the extent that it allocates some AIM Act allowances on a basis other than actual historical market share, EPA must reconsider and revise its current 2024-2028 allocation framework rules and adopt an allocation method that accords with the D.C. Circuit's directive that allowances must be allocated on the basis of actual market share for all future AIM Act control periods.[3] As a corollary, because EPA's 2022 Framework Rule and its substantially identical 2024 Framework Rule allocated allowances in program years 2022 through 2025 using a method that did not reflect Choice's historic market share, Choice requests that EPA issue additional allowances to Choice in the next program allocation year to compensate for shortfalls in allocations to Choice under EPA's improper allocation method. For background, Choice refers EPA to its prior comment letters submitted in EPA's rulemaking proceedings for the 2022 Framework Rule and 2024 Framework Rule.[4]

About Choice Refrigerants

Choice Refrigerants is an American manufacturer based in Alpharetta, Georgia, and inventor of various patented hydrofluorocarbon ("HFC") products, including Choice® R-421A and Choice® R-421B refrigerants, as well as Choice®-branded R-410A and other products. Choice is a small business employer and was one of the first EPA-certified refrigerant reclaimers in the United States.[5] Choice® R-421A and Choice® R-421B refrigerants are popular drop-in environmentally preferable substitutes for HCFC-22 (previously patented by Honeywell), which

[1] AMERICAN INNOVATION AND MANUFACTURING ACT OF 2020, Consolidated Appropriations Act § 103 (H.R. 2764), Pub. L. No. 110-161, 121 Stat. 2128 (2020), *codified at* 42 U.S.C. § 7574.

[2] As Choice wishes to avoid litigation and believes that EPA will appropriately respond to the D.C. Circuit's order, Choice has in good faith forborne from filing a petition for review with the D.C. Circuit under Clean Air Act § 307(b)(1) based on these after-arising grounds.

[3] Choice does not accept the D.C. Circuit panel's decision in *IGas Holdings* that the AIM Act is a constitutional delegation of discretion to EPA to decide what persons receive allowance allocations; accordingly, Choice is appealing the panel decision in No. 23-1261. However, for the moment the D.C. Circuit's holding that AIM Act allowances must be allocated on the basis of the ODS program market-share approach is controlling on the agency.

[4] *Choice Letter*, dated Dec. 19, 2022 (EPA-HQ-OAR-2022-0430-0103) (Comments on 2024 Framework Rule); *Choice Letter* dated Sept. 29, 2021 (Comments on 2022 Allowance Allocation); *Choice Letter*, dated July 6, 2021 (EPA-HQ-OAR-2021-0044-0168) (Comments on 2022 Framework Rule); *Choice Letter*, dated Mar. 29, 2021 (Comments on HFC baselines and allocations leading up to 2022 Framework Rule); *Choice Letter*, dated Feb. 25, 2021 (same).

[5] *See* https://www.epa.gov/section608/epa-certified-refrigerant-reclaimers.

was phased out in EPA's Title VI ODS allowance program.

Importantly, Choice's patented refrigerants are American products, invented in America, manufactured in America, and protected by U.S. patents. Choice has manufactured its patented products in all years of the relevant AIM Act allowance baseline timeframe (from 2011-2019) by either importing HFC components to blend into its patented products or by importing pre-blended products and finishing and packaging the products in Alpharetta. As described in Choice's prior submissions, from 2011 through approximately 2017, Choice produced Choice® R-421A in the United States using HFC components imported primarily from China. In that time period, Choice typically arranged to source HFC components from a Chinese chemical supplier and the components were shipped to Choice's manufacturing facility in Alpharetta, where they were blended together with a proprietary additive according to ASHRAE specifications. The blend product was then packaged, labeled, and sold to various downstream distributors in the U.S. refrigerant market. Notably, for most of the relevant timeframe, Choice has been unable to source HFC components from domestic U.S. chemical manufacturers (and is still unable to do so) because, as documented in official government reports, the major domestic HFC chemical producers are unwilling to supply HFC components to smaller producers of R-22 substitutes like Choice that compete against their own products and have instituted so-called "swap" agreements among themselves which exclude competitors such as Choice.[6]

Basis for Reconsideration

A. The D.C. Circuit Decision Constitutes After-Arising Grounds for Review

Choice requests reconsideration and revision of EPA's 2022-23 and 2024-28 AIM Act allowance allocations[7] because the D.C. Circuit's decision in *IGas Holdings* changed the legal landscape applicable to those rules by articulating for the first time an "intelligible principle" constraining EPA's authority under the AIM Act.[8] The decision in *IGas Holdings* is a subsequent "judicial decision[] that significantly changed the legal landscape" in determining that "the regulation was unlawful as originally promulgated." *Alon Refining Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 646 (D.C. Cir. 2019) (citing *Honeywell Intern., Inc. v. EPA*, 705 F.3d 470, 473 (D.C. Cir. 2013).[9] Accordingly, EPA has the duty and inherent authority to revisit and conform

[6] *See* USITC, *Hydrofluorocarbon Blends and Components from China, Inv. No. 731-TA-1279 (Final),* Pub. 4629 at 11 (Aug. 2016) ("Three domestic integrated producers, Arkema, Chemours, and Honeywell, swap HFC components amongst themselves for use in the production of refrigerant blends. Although the swapping of components subject to these arrangements does not constitute captive production, as that term is ordinarily understood, the swap arrangements constitute something ***less than a pure merchant market.***") (emphasis added). Choice calls upon the Trump Administration to investigate and enforce against this blatant anticompetitive conduct in the refrigerant market.

[7] *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act*, 86 Fed. Reg. 55,116 (Oct. 5, 2021); *Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years*, 88 Fed. Reg. 46,836 (Jul. 7, 2023).

[8] Choice incorporates by reference the briefs, record materials, and opinion filed in *IGas Holdings*.

[9] *Accord Honeywell Intern., Inc. v. EPA*, 705 F.3d 470, 473 (D.C. Cir. 2013) ("[subsequent D.C. Circuit

its AIM Act regulations to the legal principles determined by the court.

Specifically, in *IGas Holdings*, the court held that the AIM Act requires allowances to be allocated on a "historical market share" basis modeled on the ODS program allocation methodology in Clean Air Act Title VI. *IGas Holdings*, 146 F.4th at 1140 ("The guideposts are found in Title VI and its implementing regulations, which allocated allowances according to the historical market share of industry participants."). The principle announced by the D.C. Circuit in *IGas Holdings* was (according to the court) necessary to prevent the AIM Act from transgressing the U.S. Constitution's prohibition on transferring legislative powers and must be observed by EPA in all actions under the AIM Act.

EPA did not follow the ODS methodology in formulating its AIM Act 2022 and 2024 framework rules and EPA did not in fact allocate some allowances according to historic market share, which reduced Choice's market share by some 30%. In its AIM Act rulemakings, EPA disavowed any statutory constraint that would require EPA to follow the ODS program or a true market share approach. In those rulemakings, EPA interpreted the AIM Act's lack of an express statutory standard to grant it discretion to award allowances in any "reasonable manner." 2024 Framework Rule RTC at 91–92; *see also* Final Brief for Respondents, *Heating, Air-Conditioning, & Refrigeration Distributors International v. U.S. EPA*, No. 21-1251(D.C. Cir., filed Jul. 21, 2022) at 44 (asserting that EPA was free to issue allowances in any "manner both reasonable and reasonably explained"); Transcript of Oral Argument, *Heating, Air-Conditioning, & Refrigeration Distributors International v. U.S. EPA*, No. 21-1251 (D.C. Cir., dated Nov. 18, 2022) at 60 (counsel for EPA asserting "there is no congressional guideline on EPA's discretion" with regard to allowance allocations). In its 2024 framework rulemaking, EPA explicitly rejected the interpretation of the AIM Act that the D.C. Circuit subsequently adopted, to wit: that the Act required it to allocate allowances in a way that followed the phaseout of ozone-depleting substances in Title VI. *See, e.g.*, *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act; Proposed Rule*, 86 Fed. Reg. at 27,167 (acknowledging that allowing new market entrants deviated from Title VI practice); 86 Fed. Reg. at 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"); 86 Fed. Reg. at 55,142 (rejecting use of the "company-specific" baselines used in Title VI); 86 Fed. Reg. 27,203 (citing differences between AIM Act phasedown and ODS phaseout as the reason why EPA may shift allocation methodologies over time); 86 Fed. Reg. at 27,171 n.47 (noting that "under the ODS phaseout, essential uses were exempt from the phaseout and were therefore in addition to the amounts allocated" but "under the AIM Act, application-specific and essential use allocations are not exemptions"). Essentially, EPA interpreted its authority under § 7576(d) as not limited to the ODS market approach for allowance allocations, which is inconsistent with the D.C. Circuit court's holding in *IGas Holdings*.

Apart from its express statements disavowing any limit on its allocation authority, EPA's divergent interpretation of the AIM Act is illustrated by the agency's consideration of an auction format, free allowances, and other methods for allowance allocation that were not based on

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decision] in *Arkema* constitutes after-arising grounds [that] changed the legal landscape on that issue, which suffices to constitute after-arising grounds").

historic market share. Instead of following a market share approach, EPA ultimately adopted an allocation method that gave allowances to persons that merely filed customs paperwork or filed paperwork in EPA's greenhouse gas reporting program,[10] but EPA made no effort to identify which persons were the actual owner of imported HFCs or actually used HFCs in the refrigerant market that would constitute market share. EPA also allocated allowances to shipments of HFCs from China that were imported illegally or as part of fraudulent schemes that were designed to cheat U.S. customs laws or bilk suppliers in an effort to artificially increase import quotas in advance of the AIM Act's first control period. EPA made no effort to winnow out these illegal and fraudulent imports, which do not reflect actual market share in the U.S. refrigerant market. EPA also made no effort to align its allowance allocation system with the purposes of the AIM Act to promote American manufacturing and innovation. As a result, EPA allocated AIM Act allowances to persons that did not in fact have historical market share in the U.S. HFC market.

Thus, as discussed below, EPA's allocation methods are inconsistent with the concept of historical market share, are inconsistent with the method used in the ODS program, and are inconsistent with the intent of Congress and President Trump when endorsing the AIM Act as a program to benefit American businesses. Accordingly, EPA's current AIM Act allocation rules are inconsistent with the limits on EPA's authority imposed by Congress in the AIM Act and should be revised.

B. Allowance Allocations Must Follow History Market Usage, Not Award Market Share to Illegal Importers

AIM Act § 7675(e)(3) directs 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 AIM Act provide a standard for determining who receives those allowances or in what proportion to others. Recognizing that the AIM Act lacks any textual direction as to how EPA should allocate allowances, the D.C. Circuit determined that Congress modeled the AIM Act on the Title VI ODS phasedown cap-and-trade program, and that EPA must look to the Title VI ODS allocation program for a method to allocate AIM Act allowances. The core holding of *IGas Holdings* is that the AIM Act requires EPA to allocate allowances on the basis of historical market share in the same manner as the Title VI ODS program. 146 F. 4th at 1139-40. This holding is essential to the court's reasoning, as the court recognized that the text of the AIM Act did not itself supply constitutionally required delegation guidance and held that the only principle that saved the AIM Act from constitutional invalidation was the legislative history's reference to the previous CFC and HCFC phaseouts. In light of that principle, EPA must reconsider and revise its allowance allocation rules.

1. EPA Must Revise Its Regulations to Conform with Historic Market Share Principles

Looking to the ODS cap-and-trade program as a model for the AIM Act, to the extent

[10] EPA has since proposed to rescind its greenhouse gas reporting program. U.S. EPA, *Reconsideration of the Greenhouse Gas Reporting Program*, 90 Fed. Reg. 44,591 (Sept. 16, 2025).

Title VI itself has any delegation principle, it requires allowances to be given to "*the person concerned*" with production or import activities during the cap-and-trade baseline years.[11] In Title VI, Congress focused on the particular producer of ODS chemicals according to *that* entity's historical production activity. Congress then directed that consumption imports be treated in the same manner. § 7671c(a), (c). In light of the statutory language in Title VI, the ODS program allocated consumption allowances on the basis of historic ***usage*** of ODS chemicals. *See Honeywell Intern., Inc. v. EPA*, 705 F.3d 470, 473 (2013) (ODS allowances based on "historical usage of HCFCs by participating companies").

As described above, in its AIM Act rulemakings EPA previously disavowed any obligation to follow the ODS allocation approach in distributing AIM Act allowances. Accordingly, EPA must reconsider and revise its AIM Act allocation program to reflect the actual historical market share of U.S. refrigerant market participants focused on usage of HFCs. When revising its AIM Act allocation rules to be compliant with the D.C. Circuit's newly announced interpretation of the AIM Act in *IGas Holdings*, EPA must adhere to the following principles:

- *First*, if EPA determines to award consumption allowances on the basis of import activity, EPA must adopt a definition of "importer" that ensures that allowances are allocated to persons that have legal rights to market share and actually ***used*** the particular imported HFCs in manufacturing or distribution activities in the U.S. that reflect actual market share in the U.S. refrigerant sector;

- *Second*, EPA may not award allowances to companies that illegally imported HFCs or ***used fraudulent or illegal schemes to artificially inflate*** their HFC import volumes during the baseline years;

- *Third*, EPA may not award allowances to persons that merely filed import paperwork or paid import duties, but that ***have no legal rights to the imported HFC*** chemicals. Paperwork filers do not necessarily have actual market share in the refrigerant market and are certainly not the manufacturers and innovators Congress sought to promote in the AIM Act. As discussed below, EPA's current application of its importer definition has resulted in rewarding illegal import activities with billions of dollars of allowances;

- *Fourth*, neither may EPA allocate allowances based on mere paperwork reporting of HFC imports to EPA's Greenhouse Gas Reporting Program, as the action of reporting imports does not necessarily reflect market share or historic usage of HFCs;

- *Fifth*, instead of relying merely on paperwork filing, EPA must determine which persons had actual historic ***market share based on ownership and usage*** of imported HFCs. Ownership must be evaluated on the basis of ownership rights, intellectual

[11] Title VI states: "it shall be unlawful for any person to produce any . . . [ODS] 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).

property rights, or contractual rights, and must be evidenced by actual usage of HFCs in a manufacturing process or sales distribution channel that accords with the statutory purpose of the AIM Act to promote manufacturing and innovation; and

- *Sixth,* EPA must also acknowledge that Title VI and the AIM Act have different legislative goals, such that EPA's identification of market actors must make sense within the AIM Act's ***legislative purpose of promoting American manufacturing and innovation***, as distinguished from Title VI's purpose of abating air pollution. EPA may not fill in any remaining gaps as if the AIM Act was a climate program as it has suggested in the past.

Applying these principles, EPA must ensure that (consistent with the AIM Act's market-share guiding principle) it is not awarding allowances to persons that imported HFCs illegally or in derogation of another person's legal or intellectual property ownership and usage rights. To the extent that factual determinations are necessary to identify market actors with actual historic market share within Congress' and President Trump's intention in passing the AIM Act, EPA must, where necessary, undertake administrative fact-finding and afford persons due process (which would typically require a hearing).

2. EPA's Definition of Importer Does Not Align with Market Share

While EPA alluded to market share in its 2022 Framework and 2024 Framework rules,[12] EPA's rules do not actually allocate allowances on the basis of market share – at least as EPA has applied its rules to Choice. In distributing billions of dollars worth of allowances, EPA has in practice based its allocations under the AIM Act solely on what person filed paperwork reports of HFC imports in EPA's Greenhouse Gas Reporting Program under 40 C.F.R. Part 98. Because EPA has never provided any administrative process to stakeholders in conjunction with its annual AIM Act allocation notices, it is unclear how EPA has reconciled this approach with its regulatory definition of "importer" in the AIM Act framework rules. And as noted, EPA has never reconciled its AIM Act approach with the ODS allowance program's focus on actual market share and usage of imported chemicals. As a result, EPA's current AIM Act definition of "importer" does not ensure that allowances are allocated to persons with actual market share, and therefore EPA should revise its regulations to accord with the D.C. Circuit's directive in *IGas Holdings*.

EPA's AIM Act regulations purport to allocate consumption allowances on the basis of what person produced HFCs domestically or imported HFCs into the United States.[13] But rather

[12] *See, e.g.*, 88 Fed. Reg. at 46,848 ("EPA is finalizing its proposed approach to base consumption allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of consumption of regulated substances between 2011 and 2019.").

[13] EPA's regulations are not explicit as to what person has market share and should receive AIM Act allowances, but EPA in practice has used the definition of "importer" as the basis to award allowances to persons that report imports in the GHGRP. 40 C.F.R. § 84.11 ("Allocation of calendar-year consumption allowances. (a) The relevant agency official will issue, through a separate notification, calendar years 2022 and 2023 consumption allowances to entities that imported or produced a bulk regulated substance in 2020 . . . (b) Starting with the allocation of 2024 calendar years allowances the relevant Agency official will issue, through a separate notification, calendar year consumption allowances. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 consumption

than identify actual market share, EPA's AIM Act regulations provide a definition of "importer" that encompasses potentially six different persons, depending on circumstances, which as applied can lead to absurd results that are inconsistent with the principle of market share and usage and undermine Congress' policy goals.

EPA's current definition of "importer" in its AIM Act regulations at 40 C.F.R. § 84.3 reads:

> *Importer means any person who imports a regulated substance into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes [omitting ODS language "as appropriate"]: (1) The consignee; (2) The importer of record; (3) The actual owner; or (4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.*

This definition is similar to EPA's definition of "importer" in its Title VI regulations, except for the omission of the critical phrase "as appropriate" as indicated in the above block quote.[14] Notably, neither the AIM Act nor Title VI provides a statutory definition of "importer." Unfortunately, EPA's current definitions are inadequate to determine what person has historical market share within the U.S. refrigerant market; thus, EPA's current regulations are inconsistent with the AIM Act. Although this definition was used previously in the ODS program, because the universe of market participants was smaller at that time and the fraud schemes that have infected the HFC market had not yet developed, EPA apparently did not have to confront the shortcomings of its definition during the ODS allocation process.

First and foremost, EPA's current definition of "importer" makes no mention of market share or usage of HFCs in the marketplace, which is inconsistent with the guiding principle provided by Congress, as found by the appeals court in *IGas Holdings*. The regulations must be reconsidered and revised on that basis alone.

Second, EPA's regulations are unworkable in relation to the guiding principle of historic market share announced by the court. EPA's current definition of "importer" potentially awards consumption allowances to up to ***six different persons***: (i) the person liable for duties; (ii) that person's agent; (iii) the consignee; (iv) the importer of record; (v) the actual owner; and (vi) the

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allowances is calculated as follows for each entity: . . . (2) For entities that produced or imported a regulated substance in 2021 or 2022, or both 2021 and 2022, and have not been allocated allowances pursuant to § 84.15(e)(3), the relevant Agency official will calculate and issue allowances . . . The relevant Agency official will take the average of the three highest annual exchange value-weighted consumption amounts.").

[14] *Compare* 40 C.F.R. PART 82—PROTECTION OF STRATOSPHERIC OZONE § 82.3 ("Definitions for class I and class II controlled substances. As used in this subpart, the term: . . . Importer means any person who imports a controlled substance or a controlled product into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, ***as appropriate***: (1) The consignee; (2) The importer of record; (3) The actual owner; or (4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.") (emphasis added).

transferee. Of these, only the actual owner bears a direct relationship to actual market share and usage of imported HFCs. EPA's regulations have no rational approach to selecting among these various actors, except for statements by EPA in the preamble to its 2024 Framework rule which apparently add a *seventh* potential recipient of allowances, *i.e.*, the person that first files a GHGRP report.[15]

EPA's regulations make no attempt to identify among these seven potential recipients which person actually owns the HFCs or uses the HFCs in the refrigerant market, except for the "actual owner" which EPA has ignored in actual practice. Moreover, six of the seven potential recipients contemplated by the current regulations are inappropriate proxies for market share. The person liable for duties is not necessarily the person that has legal title to the HFCs or that will use or sell the HFCs in the marketplace such that they would be considered to have market share. To the contrary, customs regulations governing import duties impose payment obligations widely to ensure *some* person pays the duties without regard to what persons actually has market share. Even if a single payor of customs duties could be identified, EPA has provided no procedure to do so, and, in any event, would have to acknowledge the AIM Act's statutory direction that importation for AIM Act purposes is not the same as for customs purposes.[16] Even worse, the definition's suggestion that a duty payor's agent would receive allowances is highly illogical,

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[15] EPA's preamble statements accompanying the 2024 Framework final rule discuss a 'tie-breaker' method for situations in which more than one person files GHGRP reports for the same HFC import, but EPA did not address the more fundamental question of how GHGRP reporting is reflective of market share. Moreover, this preamble discussion was not reflected in any of the 2024 revisions to the AIM Act regulatory text, so it remains at most informal administrative guidance. 88 Fed. Reg. 46,836, 46,848 (July 20, 2023) ("EPA will continue to rely on production, import, export, destruction, and transformation data reported to GHGRP for entity-specific consumption data. It is critical to develop an approach to allocation that helps ensure that only one entity receives credit as the 'entity that imported' particular HFCs. Historically, EPA anticipates that only a single entity has reported import activity to GHGRP, since there is a single entity, which is 'the person, company, or organization primarily liable for the payment of any duties on the merchandize' required to report a bulk HFC import to GHGRP (*see* 40 C.F.R. § 98.416(c) (requiring 'each bulk importer of fluorinated GHGs . . . [to] submit an annual report that summarizes its imports at the corporate level'' if above specified thresholders); 40 C.F.R. § 98.6 (defining 'importer')). That entity's requirement to assign a designated representative for GHGRP reporting purposes does not mean that the designated representative or alternative designated representative is the entity that is required to report to the GHGRP. *See* 40 C.F.R. § 98.4. However, EPA is concerned that entities who took limited if any responsibility for the import, including responsibility for complying with EPA reporting requirements, may attempt to report import activity to GHGRP now that EPA has begun implementing the AIM Act and EPA allocates allowances based on historic import activity. EPA views this as problematic since if, for example, both a consignee and an importer of record received credit for the same historically imported HFCs, this would double allocate allowances for that single shipment. This double-allocation would distort the allowance system such that it was not a best available reflection of historic patterns. For purposes of determining historic import levels, EPA intends to rely on the entity that has historically reported the imports for a shipment to GHGRP. If two or more entities reported the same import to GHGRP in prior reporting years, EPA would include that import in the allowance allocation calculation of the entity that first reported the import to GHGRP or assigned an employee or an authorized third party to report to GHGRP on the entity' behalf as a designated representative. EPA considers historic reporting to GHGRP as indicative of the entity that took primary responsibility for complying with EPA requirements for that import and considers this a critical data point to determining who to credit that import to.").

[16] 42 U.S.C. § 7675(b)(6) ("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.") (emphasis added).

because a mere shipping or import agent that acted on behalf of a principal certainly would not have market share that Congress intended to participate in the allowance program. Similarly, the importer of record is a person that files paperwork and is not necessarily the owner or user of HFCs in the marketplace. EPA's reference to a consignee or transferee perhaps could be connected to actual market share, but EPA's regulations contain no discussion of this linkage or guidelines for how to determine if a consignee or transferee has actual market share. Thus, of the seven candidates for allowances under EPA's existing regulations, only the term "actual owner" has a direct relationship to market share, but as discussed below, EPA has not in practice made any effort to determine actual ownership of HFCs in awarding AIM Act consumption allowances. Although, in many situations the person that imports HFCs, files paperwork, and uses the HFCs in the market may be the same person, the rules must address situations where EPA's framework does not match the on-the-ground factual situation.

3. In Application, EPA's Rules Reward Intellectual Property Cheating

As EPA reconsiders how the AIM Act allowance program should be revised to follow the Title VI market-share approach, EPA should allocate AIM Act allowances only to companies that have actual market share consistent with the purpose of the AIM Act to promote American manufacturing and innovation.[17]

As noted, Choice Refrigerants, is an American small business based in Alpharetta, Georgia that produces patented refrigerant products. As EPA knows from our prior submissions, one of our products, Choice® R-421A, was "pirated" by Chinese-backed importers that infringed our patents and imported pirated R-421A under our specific exemption from customs duties in order to circumvent U.S. customs laws. This scheme was part of a larger effort by Chinese-backed companies to artificially stockpile HFCs in anticipation of the AIM Act HFC phasedown. These illegal imports of R-421A amounted to some 1,410,944 pounds of HFCs in the 2016-2018 timeframe, equivalent to 1,855,391 EV.[18] Because Choice had the exclusive rights to import and use Choice® R-421A under U.S. intellectual property laws, any allowances attributable to R-421A imports (as well as imports of any blending components R-125 and R-134a used by BMP to illegally blend non-patented R-421A in the U.S.) should be allocated to Choice Refrigerants as the true legal owner of the patented product as part of Choice's U.S. market share. This pirated R-421A was imported illegally without a license and was used by intellectual property pirates to circumvent U.S. antidumping laws, as determined in an official government investigation by the

[17] *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.) (cited in *IGas Holdings*, 146 F.4th at 1139) ("The legislation is modeled on Title VI of the Clean Air Act, which was enacted in 1990 with 401 bipartisan votes in the House and proved an able vehicle to foster an ***orderly, market-based phase-down*** of HFCs' predecessors.") (emphasis added).

[18] All allowances associated with R-421A or components imported by LM Supply, Inc., Cool Master USA, LLC, BMP USA, Inc., or other affiliated companies controlled by or under common ownership of Ben Meng or iGas should be credited to Choice Refrigerants. This category includes at least 1,410,944 pounds of R-421A known to have been imported by BMP and its affiliates in the 2016-2018 timeframe. Known quantities of infringing imports represent 1,855,391 tons CO_2e (at GWP/Exchange Value of 2,630) [(1,410,944/2000)*2630=1,855,391] for purposes of computing AIM Act allowances.

U.S. Department of Commerce.[19] As noted, Choice Refrigerants was the only licensed producer of R-421A under U.S. law at the time of these imports; moreover, Choice Refrigerants is the only producer to have been issued SNAP approval for R-421A and the SNAP approval was based on a data set submitted solely by Choice Refrigerants. It is Choice's understanding that the government is currently investigating other illegal imports by this same company group.[20] In such a situation, Choice is the only "actual owner" of the pirated R-421A within the letter and spirit of EPA's "importer" definition and the legislative purposes of the AIM Act.

Considering the purpose of the AIM Act to promote American innovation, it is inconceivable that the Congressional drafters of the statute, the members of Congress that voted for the AIM Act, and President Trump himself who signed the AIM Act into law in 2020, would have intended to give AIM Act allowances to Chinese-backed intellectual property pirates. Handing allowances to importers of pirated versions of American products would magnify the economic damage to U.S. intellectual property interests being wreaked by Chinese-backed companies, contrary to the stated policy of Congress and the last several presidential administrations including the current Trump Administration. In sum, EPA must not implement the AIM Act in a manner that allows companies to flagrantly violate American patent rights yet receive economic windfalls from their illegal actions while American inventors and patent holders bear the economic burden. EPA's decisions on allowance allocation may, quite literally, mean life or death for small businesses like Choice Refrigerants who have their market share and intellectual property stolen.

Looking to the ODS program as a model, we are unaware of any instance under the ODS program that EPA allocated allowances to importers that were illegally importing patented American products. Indeed, in the ODS program in the early 2000's, it would have been unthinkable that EPA would have allocated ODS allowances to an importer (whether Chinese-backed or otherwise) where the import volume was based on knockoff versions of Honeywell's patented R-22 HCFC refrigerant rather than crediting these import volumes to Honeywell itself. The result should be no different if the victim of intellectual property theft is a small business like Choice that is also an American patent holder but not a billion-dollar conglomerate.

In the ODS program, EPA acknowledged significant levels of smuggling of ODS gas into the U.S., yet EPA never issued allowances to the smugglers as legitimate imports. *See, e.g.*, 76 Fed. Reg. at 47,457. In the decades since the ODS program, dishonest importers have grown more sophisticated and instead of conventional smuggling have used customs fraud and financial schemes to disguise illegal imports and artificially inflate apparent importation baselines. EPA should respond to the increasingly sophisticated cheating schemes by nimbly adjusting the AIM Act allocation process to prevent the AIM Act from being corrupted and protect honest American

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[19] The government found that the unpatented R-421A imported by BMP-related companies was used to circumvent antidumping duties on HFC blends. *Hydrofluorocarbon Blends From the People's Republic of China: Final Scope Ruling on Unpatented R-421A; Affirmative Final Determination of Circumvention of the Antidumping Duty Order for Unpatented R-421A*, 85 Fed. Reg. 34,416 (June 4, 2020).

[20] *See, e.g.,* Opposition to Petition to Set Aside Civil Investigative Demands, filed Nov. 11, 2024, *BMP v. U.S.*, Case 8:24-cv-02420-SDM-AEP (M.D. Fla.).

innovators like Choice who have been victimized (and ironically punished by EPA) by these schemes.

4. Paperwork Filers Do Not Necessarily Have Market Share

Similarly, EPA should allocate AIM Act allowances only to companies that have actual market share consistent with the purpose of the AIM Act to promote American manufacturing and innovation. EPA cannot legally use the GHGRP program as the basis for allocating allowances to the entity that happened to file a GHGRP report years ago, rather than to the actual owner of HFC imports or producer of HFC blends from imported components. The actual owner needs allowances to continue its business at the same level as before passage of the AIM Act (after taking into account mandated AIM Act step-downs). Although EPA understandably wants to "ensure that only one entity receives credit" as the HFC importer, 87 Fed. Reg. at 66,378, using the GHGRP program as an inaccurate proxy for importer status is inconsistent with the policy goal of allocating allowances to market participants.

As Choice has pointed out in previous letters to EPA, it makes no sense (either practically or legally) to give AIM Act allowances to a paperwork filer that was functioning on behalf of the actual party-in-interest. In effect, EPA would be handing over the actual owner's business to an import agent based on nothing more than the happenstance that the import agent was given the responsibility of filing a GHGRP report years ago under a data gathering program that was never intended to be a legal mechanism for allocating market share or establishing legal rights to imports. The AIM Act makes no mention of the GHGRP, although Congress certainly was aware of the program at the time of passage. Congress certainly could not have intended this result when passing the AIM Act, and EPA has never explained why this makes good policy other than being easy for the agency to implement.

In its earlier rulemaking proposals, EPA recognized that the AIM Act allowance system should be a "reflection of historic [import] patterns." 87 Fed. Reg. at 66,378. But EPA then illogically assumed that "the entity that first reported the import to GHGRP" reflects these historic import patterns. 87 Fed. Reg. at 66,378. To the contrary, the entity that best reflects history market activity is the entity that actually used the imports to create products that were then sold into the U.S. refrigerant distribution system to serve downstream customer needs. Mere import agents, brokers or arrangers are not market participants that have market share or market activity in terms of allocating a share of the market through an allowance system that meaningfully "reflect[s] historical patterns." And giving allowances to mere paperwork filers does not accord with the ODS programs focus on "usage" of chemicals. As applied to intellectual property theft, awarding illegal imports merely on the basis that the offender files a GHGRP report compounds the injury suffered by American manufacturers and innovators who have their products stolen.

Moreover, as the agency itself has recently recognized in proposing to rescind most of the GHGRP, EPA does not have legal authority to require reporting by Subpart OO suppliers in the first place. The sole legal authority for the GHGRP program is section 114(a) of the Clean Air Act. *See* 74 Fed. Reg. at 56,264 ("EPA is promulgating this rule under its existing CAA authority, specifically authorities provided in CAA sections 114 and 208"). Section 114(a) allows EPA to require reporting from persons "who the Administrator believes may have information necessary

for the purposes set forth in this subsection, or who is subject to any requirement of" the Clean Air Act. However, section 114 only provides EPA this authority "[f]or the purpose" of developing certain rules, one of which is "any standard of performance under section 7411." But Subpart OO suppliers are not emitters or stationary sources to which a section 111 emissions standard would apply. In fact in some instances, suppliers may never take possession of or physically handle HFCs. EPA has not identified or proposed any section 111 emission standard particular to HFCs or any HFC emissions source, or even the possibility that such an emissions standard would be developed, and how collection of import data would support that effort. Nor did EPA explain in the GHGRP rule how collecting import data from intermediate supply chain suppliers would support the purpose of developing a section 111 emissions standard or any other "purpose" predicate to its section 114 authorities. In the GHGRP rule, EPA attempted to justify the rule by arguing that "[t]his final rule imposes requirements on direct sources of GHG emissions." 74 Fed. Reg. 56286. But Subpart OO suppliers are not direct sources of emissions.

EPA has previously described using GHGRP data as "parallel" to its AIM Act allocation program. 87 Fed. Reg. at 66,378. This statement is incorrect. EPA's AIM Act rules allocate allowances to "importers," which as noted is one of seven potentially different entities, including an actual owner. There is no requirement in the AIM Act that an importer must be the person that filed a GHGRP report for any particular imports, particularly when the GHGRP reporter has illegally imported an American patented product that should be credited to the patent holder. As EPA recognized in its February 2021 NODA, the purposes of the GHGRP are not identical to the purposes of the AIM Act, although there is some overlap. EPA describes the NODA as reporting "information . . . regarding hydrofluorocarbon consumption and production in the United States for the years 2011, 2012, and 2013." 86 Fed. Reg. at 9,059. EPA stated that the purpose of providing the information was "in preparation for upcoming regulatory actions under the [AIM Act]." *Id.* However, the data contemplated in the NODA were actually greenhouse gas reporting data, which is not necessarily the same as consumption and production data as those terms are used in the AIM Act. For the reasons discussed above, the company listed as the reporter for purposes of the GHGRP is not necessarily the party that should be considered to be the person with actual market share corresponding to the imported HFCs for purposes of AIM Act allowance allocations.

5. Artificial Market Share

EPA also must also be careful not to award allowances to companies that have artificially created the illusion of market share by importing HFCs which they have not paid for or do not own. It is widely known in the refrigerant industry that there are multiple instances in which companies have cheated customs laws or cheated their suppliers to import hundreds of millions of HFCs for which they did not pay full price or to which they did not have legal ownership rights. The government (including Customs and Border Protection, the Department of Commerce, the Justice Department, and EPA) are aware of many of these cheating schemes, yet EPA has intentionally blinded itself to these illegal practices as if they do not exist for purposes of allocating AIM Act allowances. Ignoring cheating and rewarding artificially inflated import volumes based on illegal practices is not consistent with the AIM Act's directive to EPA to base allowance allocations on historical market share. Historical market share must mean legal and legitimate market share. As a result, given the directive in *IGas Holdings* that AIM Act allowances must be allocated on the basis of historical market share, ***EPA has a duty to reconsider and revise its***

regulations to adjust past and future allocations to reflect only legal and legitimate imports as a measure of market share.

Choice Is Entitled to Adjustment Allowances

Because Choice's allowance allocation, if based on true market share, would have been greater than Choice actually received under EPA's now-invalidated 2022 Framework and 2024 Framework allocation rules, Choice is entitled to an adjustment in its allowance allocation for each of the past AIM Act control periods.

If EPA acts promptly, the adjustment can be applied in the form of additional allowances in the next upcoming AIM Act allocation year for 2026. *See, e.g., Americans for Clean Energy v. EPA*, 864 F.3d 691 (2017) ("*ACE*") (ordering remedy for shortchanging allowances); U.S. EPA, *Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, 87 Fed. Reg. 39,600, 39,628 (July 1, 2022) (issuing additional biofuel credits as remedy for deficiency in prior years; explaining that "we are addressing the remand of the 2016 annual rule by the U.S. Court of Appeals for the D.C. Circuit, in [*ACE*] by establishing a supplemental volume of 250 million gallons for 2022"); U.S. EPA, *Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export*, 76 Fed. Reg. 47,451 (Aug. 5, 2011) (allocating additional HCFC allowances as a remedy for shortfall to Arkema and Solvay under court-invalidated ODS program rule); U.S. EPA, *Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export*, 78 Fed. Reg. 20,004, 20,016 (Apr. 3, 2013) (providing additional recoupment allowances as remedy for allowance shortfall in response to court decision).

As applied to Choice, assuming EPA acts promptly in time for upcoming 2026 allowance allocations, Choice should receive adjusted allowance allocations reflecting all imports of R-421A in the 2011-2019 baseline years, to be applied as supplemental allowances in the 2026 control year reflecting shortfalls in Choice's allowance allocation for AIM Act control years 2022-2025. Going forward, Choice should also receive additional allowances for all future years based on its true historical market share baseline in the 2011-2019 averaging period.

Because EPA has already established allocations for the R-421A imports at issue, allocations for all other market participants would be unchanged, except for deduction of allowances from allocations to the entities that were previously credited with illegal imports. EPA need not provide additional allowances to other market participants, even if similarly situated, as Choice was the only stakeholder to challenge EPA's allocations in the 2022 and 2024 Framework rules. *Cf. Trump v. CASA, Inc.*, 606 U.S. 831 (2025) (remedy appropriate only for litigants). Similarly, Choice is not asking that EPA alter the existing status of new entrants that entered the AIM Act previously despite not having historical market share.

* * * * *

Conclusion

For the reasons detailed in this petition and the comments incorporated by reference herein, Choice Refrigerants respectfully requests that EPA reconsider and revise its 2022 and 2024 framework rules and allocate Choice its fair market share. If you have any questions, please contact me at (770) 777-0597 or choice.refrigerants@gmail.com.

Respectfully submitted,

Kenneth Ponder
President

cc (by email): Aaron Szabo, Assistant Administrator, Office of Air and Radiation
Cynthia Newberg, Director, Stratospheric Protection Division

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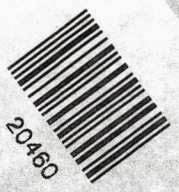

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