ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION

WASHINGTON, D.C. 20460

July 15, 2026

SENT VIA ELECTRONIC MAIL

Mr. Kenneth Ponder
President
RMS of Georgia, LLC
610 McFarland 400 Drive
Alpharetta, GA 30004

Re: Denial of Administrative Petition for Reconsideration and Revision from RMS of Georgia, LLC d/b/a Choice Refrigerants

Dear Mr. Ponder,

This letter responds to the administrative petition submitted by RMS of Georgia, LLC d/b/a Choice Refrigerants[1] ("Choice") dated September 30, 2025. In the administrative petition, Choice requests the U.S. Environmental Protection Agency (EPA) reconsider and revise two final rules issued by the Agency related to the methodology for allocating hydrofluorocarbon (HFC) allowances under the American Innovation and Manufacturing (AIM) Act and allocate additional HFC allowances to Choice. The two final EPA rules are the "Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the AIM Act" ("2021 Allocation Framework Rule")[2] and "Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years" ("2024 HFC Allocation Rule").[3] For the reasons explained in this letter, the EPA is denying Choice's administrative petition.

On December 6, 2021, Choice filed a petition for judicial review to challenge the 2021 Allocation Framework Rule. One of Choice's claims, germane to their September 2025 administrative petition and this letter, is that Congress impermissibly delegated legislative power to the EPA by giving it unguided discretion to distribute HFC allowances. On June 20, 2023, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion denying Choice's challenge.[4]

Further, on September 14, 2023, Choice filed a petition for judicial review to challenge the 2024 HFC Allocation Rule, arguing that the AIM Act unconstitutionally delegates legislative power to the EPA by

[1] RMS of Georgia, LLC d/b/a Choice Refrigerants.
[2] 86 FR 55116 (Oct. 5, 2021).
[3] 88 FR 46836 (July 7, 2023).
[4] *See Heating, Air Conditioning & Refrigeration Distributors, Int., et al., v. EPA*, 71 F.4th 59, 63 (D.C. Cir. 2023).

granting the Agency unconstrained authority to allocate HFC allowances. On August 1, 2025, the D.C. Circuit issued an opinion denying Choice's challenge.[5]

Subsequently, on September 30, 2025, Choice submitted an administrative petition to the EPA requesting reconsideration and revision of the 2021 Allocation Framework Rule and 2024 HFC Allocation Rule to update the EPA's HFC allowance allocation methodology.[6] In their administrative petition, Choice claims "the D.C. Circuit's 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." Choice argues that the D.C. Circuit's decision directs the EPA to allocate HFC allowances under the AIM Act using the same methodology as the Clean Air Act (CAA) title VI program for ozone-depleting substances (ODS), which was based on a "market share approach." Therefore, Choice argues that the EPA must change the Agency's prior rulemakings and revise the Agency's allocation methodology. After making the suggested regulatory changes, Choice argues that Choice would be entitled to additional allowances, which the EPA would accommodate by allocating additional HFC allowances to Choice in the next program allocation as well as in future years.

In the September 2025 administrative petition to the EPA, Choice does not raise an after-arising ground as contemplated by CAA section 307(d)(7)(B) and therefore does not meet the requirements for a mandatory reconsideration under that statutory provision. As discussed in the preceding paragraphs, Choice filed petitions for judicial review of both rules (2021 Allocation Framework Rule and the 2024 HFC Allocation Rule) it now asks the EPA to administratively reconsider. Choice lost both of those cases, and the D.C. Circuit upheld both of the rules Choice is asking the EPA to reconsider.

In the more recent challenge to the 2024 HFC Allocation Rule, in which the D.C. Circuit issued an opinion in August 2025, the D.C. Circuit's core holding is "that the AIM Act does not unconstitutionally delegate legislative power because it sufficiently constrains the EPA's discretion to allocate HFC allowances."[7] In its decision, the D.C. Circuit determined that the text and structure of the AIM Act does not give unbounded discretion, as Choice argued. In their September 2025 administrative petition to the EPA, Choice selectively quotes some aspects of the D.C. Circuit's reasoning provided to support this ruling, but that text does not constitute binding legal precedent from the D.C. Circuit and cannot form the basis for a mandatory reconsideration under CAA section 307(d)(7)(B). Even if the D.C. Circuit's reasoning could be used in this manner, the D.C. Circuit was supportive of the EPA's allocation methodology. The D.C. Circuit noted that the EPA had "discretion to decide how to allocate allowances" modeled on "similar programs established under the Clean Air act [that] allocated allowances to market participants according to their market share."[8] Further, the court "agree[d] with the EPA that the statute guided the agency 'to allocate . . . allowances among persons that have produced or imported hydrofluorocarbons.'"[9]

In addition to claiming that the EPA must grant administrative reconsideration under CAA section 307(d)(7)(B), Choice also petitions the Agency to reconsider the two allocation rules (2021 Allocation Framework Rule and the 2024 HFC Allocation Rule) under the Administrative Procedures Act (APA). In their administrative petition, Choice claims that the D.C. Circuit decision requires the

[5] *See IGas Holdings, Inc., v. EPA*, 146 F.4th 1126 (D.C. Cir. 2025).
[6] Letter from Mr. Kenneth Ponder dated Sept. 30, 2025 available at https://www.epa.gov/system/files/documents/2026-01/rms-of-georgia-llc-dba-choice-refrigerants.pdf.
[7] *See IGas Holdings, Inc., v. EPA*, 146 F.4th 1126, 1136 (D.C. Cir. 2025).
[8] *Id*.
[9] *Id*.

EPA to allocate HFC allowances based on a "market share approach modeled on the Title VI phaseout." As noted in the prior paragraph, this is not the holding of the D.C. Circuit, but rather an explanation provided by the D.C. Circuit as part of its analysis in support of upholding the EPA's action and rejecting Choice's legal challenge. Even if this were a holding of the D.C. Circuit, in both the ODS phaseout under CAA title VI and the HFC phasedown under the AIM Act, the Agency allocated allowances, with very limited exception, to entities based on market shares determined by their historic production, import, and export activity. In other words, the specific issues raised in Choice's petition regarding "market share" would have been addressed in a substantively identical manner under the ODS phaseout as the EPA is handling them in the HFC phasedown.[10,11]

For these reasons, the EPA denies Choice's administrative petition.

If you have questions about the content of this letter, please contact Luke Hall-Jordan at hall-jordan.luke@epa.gov, with a courtesy copy to hfcallocation@epa.gov.

Sincerely,

Aaron Szabo
Assistant Administrator

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[10] The limited exception under the AIM Act is to allocate for "application-specific users" as required by Congress pursuant to 42 U.S.C. 7675(e)(4)(A)(iv).

[11] The EPA also effectuated a very narrow one-time set-aside provision for new importers and previously unidentified importers as codified in 40 C.F.R. 84.15; the Agency continues to issue allowances to any eligible entities following the methodology in 40 C.F.R. 84.11.