No. 25-1079

In the Supreme Court of the United States

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

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICI CURIAE* HEATING, AIR-CONDITIONING & REFRIGERATION DISTRIBUTORS INTERNATIONAL AND PLUMBING-HEATING-COOLING CONTRACTORS—NATIONAL ASSOCIATION SUPPORTING RESPONDENTS

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RULE 29.6 STATEMENT

Heating, Air-conditioning, & Refrigeration Distributors International ("HARDI") is a nonprofit, nonstock trade association. HARDI states it has no parent company, and no publicly held company has a 10% or greater ownership interest.

Plumbing-Heating Cooling Contractors—National Association ("PHCC") is a nonprofit, nonstock trade association. Plumbing-Heating Cooling Contractors—National Association states it has no parent company, and no publicly held company has a 10% or greater ownership interest.

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INTERESTS OF *AMICI CURIAE*[1]

Heating, Air-conditioning & Refrigeration Distributors International ("HARDI") is a 501(c)(6) non-profit trade association. HARDI has more than 1,100 member companies who represent an estimated 70 percent of the U.S. wholesale distribution market of heating, ventilation, air-conditioning, and refrigeration ("HVACR") equipment, supplies, and controls.

The Plumbing-Heating-Cooling Contractors—National Association ("PHCC"), a 501(c)(6) non-profit, is the oldest construction trades association in the country. It represents approximately 3,200 plumbing and HVACR contractors employing over 64,000 professionals across the country. PHCC contractors are typically the primary point of contact for consumers repairing, installing, or upgrading an HVAC system.

HARDI and PHCC advocate before legislators, policymakers, and courts to support sensible, market-based regulations for the HVACR industry. HARDI and PHCC members supported the passage of the American Innovation and Manufacturing Act of 2020 ("AIM Act" or "Act") and have consistently engaged in the rulemaking process to facilitate implementation of the Act. HARDI and PHCC members have relied on the certainty provided by decades of consistent and predictable regulation to invest in the transition to safe and sustainable refrigerant technology.

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[1] No counsel for a party authored this brief in whole or in part. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. The parties were given timely notice of *amici curiae*'s intent to file this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The AIM Act, designed to phase down the use of hydrofluorocarbons ("HFCs"), represents the latest iteration of a decades-long regulatory program to mitigate the environmental impacts of refrigerant use domestically and internationally, and to speed the transition to new generations of less environmentally harmful refrigerants invented by U.S. chemical innovators.[2]

Regulation of the U.S. refrigerant industry has followed a consistent, market-based formula. In accordance with international treaties to transition to each new generation of refrigerant technology, Congress sets a cap on total U.S. production and use of the legacy class of refrigerants according to a historical baseline and sets the schedule of phased reductions from that cap. Congress then delegates to EPA responsibility for divvying up the declining capped total among U.S. producers and importers through a system of tradable allowances apportioned according to those market participants' historical baseline market share. The consistency and predictability of this formula has been critical to facilitating a gradual shift to each new generation of refrigerant technology. The domestic heating, ventilation, air-conditioning, and refrigeration ("HVACR") industry has relied on this approach to make substantial, long-term investments in the manufacturing, supply chain, and workforce capacity needed to transition to next-generation refrigerants.

Congress first codified this approach with the passage of Title VI of the Clean Air Act in 1990 to implement the Montreal Protocol treaty, which directed

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[2] In this brief, HFCs and similar chemical compounds are primarily referred to as "refrigerants." Those compounds are also used for heating, in aerosols, as foaming agents, and as firefighting chemicals.

the phaseout of stratospheric ozone-depleting refrigerants through a market-based allowance allocation system. The HVACR industry advocated both in Congress and before EPA to establish an allowance allocation system based on historical market share—precisely what EPA's implementing regulations under Title VI have consistently done. This program has been highly successful in almost entirely phasing out the use of ozone-depleting refrigerants in the U.S. market.

The AIM Act simply mirrors and builds on the architecture of Title VI to establish a similar market-based allowance allocation system for the phasedown of HFCs to implement the Kigali Amendment to the Montreal Protocol. When EPA issued implementing regulations that allocated allowances based on market share, it built on this well-understood history and on the text of the AIM Act, which ties phasedowns to the historical market for HFC production and consumption. Amici and their members, representing large swaths of the affected industry, supported a regulatory program that would be consistent with Title VI in order to provide certainty and predictability.

There can be no non-delegation problem under these circumstances, where Congress directed EPA to follow the same market-based approach it had been following for years and stakeholders understood that EPA would do exactly that. Moreover, striking down this regulatory program after over a half-decade of industry reliance would throw the U.S. refrigerant industry into chaos. As of 2024, annual HFC production and consumption in the U.S. have been phased down to 60% of the historical market baseline under the AIM Act, and is poised to step down further to 30% by 2029. The transition to next-generation refrigerants is thus well underway. The industry has invested billions of dollars and reconfigured manufacturing lines and supply chains to support the

market for next-generation refrigerants and the HVACR products designed to use such refrigerants; removing that certainty would open the door to a flood of imports by foreign competitors that make legacy refrigerants and products, and create market distortions that would threaten the U.S. refrigerant industry and its customers.

To the extent the Court wishes to revisit the non-delegation doctrine, the AIM Act's allowance allocation system is not the appropriate vehicle to do so.

The Court should deny the petition for certiorari.

ARGUMENT

I. EPA HAS CONSISTENTLY USED HISTORICAL MARKET SHARE TO IMPLEMENT CAP-AND-TRADE PROGRAMS FOR REFRIGERANTS, AND CONGRESS MODELED THE AIM ACT AFTER THOSE PROGRAMS

Congress's efforts to phase down emissions of HFCs through the AIM Act built upon a long history of efforts to regulate and phase down previous generations of refrigerants—both globally and in the United States, through treaties and statutes implemented by EPA over nearly four decades. To achieve each of these phasedowns, Congress has set and then reduced an overall market cap, and EPA has allocated refrigerant allowances that could be expended or traded for production and consumption to market participants based on those participants' historical market share.

Refrigerants used in the early 20th century, such as sulfur dioxide and ammonia, were toxic and flammable. To address this issue, U.S. chemical manufacturers in the 1930s developed non-toxic, non-flammable synthetic halogenated hydrocarbons, known as chlorofluorocarbons ("CFCs") or more commonly by their trade name "Freon." This first generation of synthetic refrigerants had two key drawbacks when released into the

atmosphere. First, CFCs destroy the ozone layer in the stratosphere that protects the Earth from ultraviolet radiation. Second, CFCs are very powerful greenhouse gases, up to thousands of times more powerful than carbon dioxide.

Through a series of international treaties and domestic implementing statutes and regulations, CFCs were replaced with hydrochlorofluorocarbons ("HCFCs")—which were less ozone-depleting but still powerful greenhouse gases—and then HFCs, which are not ozone-depleting but remain potent greenhouse gases. HFCs are now in the process of being replaced by fourth-generation refrigerants, primarily hydrofluoroolefins ("HFOs"), which are neither ozone-depleting nor potent greenhouse gases.

These domestic and international efforts to transition to new generations of refrigerants have all followed the same basic structure: (1) establishing market-based caps on production and consumption levels (where consumption is defined as production plus imports minus exports, thereby reflecting total domestic use) using a specific baseline year and (2) mandating a phasedown of those caps over time to facilitate a transition to the new alternative class.

The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, considered one of the most successful multilateral environmental treaties ever, required parties to phase out ozone-depleting substances by mandating that each country cap production and consumption at 1986 levels (*i.e.*, the baseline) and reduce those levels below the baseline over time. *See* Montreal Protocol on Substances that Deplete the Ozone Layer arts. 2A, 2B, Sept. 16, 1987, 1522 U.N.T.S. 3. Following unanimous consent of the Senate in 1988, the U.S. became the first major refrigerant-producing country to ratify the Montreal Protocol.

To effectuate the Montreal Protocol, EPA promulgated regulations in 1988 that established the first allowance-based system of controls on production and consumption of ozone-depleting substances in the United States. *See* 53 Fed. Reg. 30,566 (Aug. 12, 1988). The 1988 rules established allowances that reflected the total market for production and consumption of ozone-depleting substances in 1986, and then allocated allowances to each producer and importer of ozone-depleting substances according to its historical market share. *Id.* at 30,586 ("As EPA defined and proposed it, the allocated quota system simply grandfathers past market shares"). The rule further permitted trading of those allowances among industry participants, which could affect market shares going forward. *Id.*

The U.S. refrigerant industry—which consisted of a handful of major refrigerant producers, importers and exporters of bulk refrigerants, and a larger, diffuse number of refrigeration and other related equipment manufacturers spread across different sectors—was heavily engaged in both the negotiation of the Montreal Protocol and EPA's implementing regulations. *See* Robert W. Hahn, *The Political Economy of Instrument Choice: An Examination of the U.S. Role in Implementing the Montreal Protocol*, 83 Nw. U. L. Rev. 592, 598 (1989). The refrigerant industry strongly supported the approach of allocating allowances based on historical market share. *Id.* at 607 (citing Comments of Alliance for Responsible CFC Policy on EPA's 1988 Proposed Rule on Protection of Stratospheric Ozone).

Congress codified this program in 1990 through amendments to the Clean Air Act added in a new Title VI. Pub. L. No. 101-549, §§ 601–618, 104 Stat. 2399, 2648–2672 (1990) (codified at 42 U.S.C. §§ 7671–7671q). Consistent with the Montreal Protocol, Title VI established production and consumption baselines, first of CFCs and

then HCFCs, in the U.S. market in a designated year, and mandated a step-down relative to those baselines over time. *See* 42 U.S.C. §§ 7671c, 7671d. Title VI also directed EPA to promulgate rules for the allocation and trading of allowances for the production and consumption of ozone-depleting substances in accordance with those baseline levels and the phase-out schedule. *Id.* § 7671f. The 1990 Amendments passed with overwhelming bipartisan support and were signed into law by President George H.W. Bush.[3]

In each of EPA's implementing regulations over the subsequent years, EPA continued to allocate allowances based on each market participant's historical market share. *See, e.g.*, 57 Fed. Reg. 33,754, 33,761 (July 30, 1992) ("EPA proposed baseline allowances for the Class I substances based on each company's production and consumption of each of the substances in the baseline year."); 60 Fed. Reg. 24,970 (May 10, 1995) ("allowances are assigned to companies according to production and importation during base years"); 74 Fed. Reg. 66,412, 66,415 (Dec. 15, 2009) ("The 2003 allocation rule apportioned production and consumption baselines to each company in amounts equal to the amounts in the company's highest 'production year' or 'consumption year,' as described above"). These allocations have consistently gone to the same entities throughout this transition, as the producers and importers of each new generation of refrigerants are in many cases the same entities that produced the legacy products.

Title VI and its implementing regulations have been highly successful in phasing out ozone-depleting substances. Between 1990 and 2010, CFC production in

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[3] U.S. EPA, *The Clean Air Act—Highlights of the 1990 Amendments* (1990), https://www.epa.gov/sites/default/files/2015-11/documents/the_clean_air_act_-_highlights_of_the_1990_amendments.pdf.

the United States fell to zero, and HCFC consumption fell by 75 percent. *See* Mark Roberts, *Finishing the Job: The Montreal Protocol Moves to Phase Out HFCs*, 32 Nat. Res. & Env't 7, 8 (2018). HCFCs are expected to be phased out entirely by 2030.[4]

As ozone-depleting refrigerants were successfully phased out through the transition to HFCs, the United States and the international community shifted to addressing the climate impacts of the rapidly increasing global use of HFCs, which are powerful greenhouse gases. *See* 86 Fed. Reg. 55,116, 55,123 (Oct. 5, 2021). The Kigali Amendment to the Montreal Protocol, signed in 2016, established a global phasedown of HFCs that effectively mirrored the structure of the CFC and HCFC phaseouts: the Kigali Amendment committed parties to a declining cap on HFC production and consumption over time in signatory countries relative to a historical baseline level. The United States, with the support of the U.S. refrigerant industry that had developed the successor class of HFO refrigerants, championed the move to phase down HFCs through the Kigali Amendment. *See* Roberts, *supra* at 8.

Although the United States did not ratify the Kigali Amendment until 2022, the U.S. refrigerant industry continued to support domestic implementing policies. The AIM Act passed with broad bipartisan support and was signed into law by President Trump in 2020. *See* Pub. L. No. 116-260, § 103, 134 Stat. 1182, 2255 (2020) (codified at 42 U.S.C. § 7675). Consistent with the Kigali Amendment, the AIM Act sets a baseline cap on HFC production and consumption at total U.S. market levels in 2011-2013 and

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[4] *See* Cong. Rsch. Serv., RL30853, Clean Air Act: A Summary of the Act and Its Major Requirements 17 (2022), https://crsreports.congress.gov/product/pdf/RL/RL30853.

phases that down by 85 percent by 2036. *See* 42 U.S.C. § 7675(e).

In passing the AIM Act, Congress drew on the benefit of thirty years of experience with its predecessor cap-and-trade programs for CFCs and HCFCs under Title VI of the Clean Air Act. Indeed, the AIM Act mirrors the architecture of Title VI in several ways. Among other things, both statutes establish: (1) a defined list of regulated substances in the relevant class of refrigerants, with each substance assigned potency values, *compare* 42 U.S.C. § 7671a *with id.* § 7675(c); (2) a market-based cap fixed at historical production and consumption levels in a designated year (*i.e.*, the baseline) and a stepwise phasedown schedule expressed as percentages of that baseline, *compare* 42 U.S.C. §§ 7671(2), 7671c-7671d *with id.* § 7675(e); and (3) an allowance allocation and trading system that limits U.S. production and consumption in the market to the statutory percentages of the baseline. *Compare* 42 U.S.C. § 7671f *with id.* § 7675(e)(2)-(3).

The legislative history confirms that Congress explicitly designed the AIM Act to "build[] upon [Congress's] previous experience in phasing out CFCs and their replacement chemicals, HCFCs," finding that Title VI "proved an able vehicle to foster an orderly, market-based phasedown of HFCs' predecessors." *See Promoting American Innovation and Jobs: Legislation to Phase Down Hydrofluorocarbons: Hearing on H.R. 5544 Before the H. 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.); *see also Oversight of the Environmental Protection Agency: Hearing on S. 2754 Before the S. Subcomm. on Env't & Pub. Works*, 116th Cong. 2, 39 (2020) (statement of Sen.

Mike Braun) ("Senate Bill 2754 provides for a 15-year phasedown of hydrofluorocarbons (HFC), and is generally modeled on EPA programs that, over the past 30 years, guided transitions out of earlier generations of refrigerants, such as chlorofluorocarbons (CFC) and hydrochlorofluorocarbons (HCFC)").

EPA officials also testified to Congress as the AIM Act was being considered that "most of the main components [of the AIM Act], particularly the phase-down," were "very similar" to Title VI "and how [EPA] implement[s] that in the domestic program." *See Hearing on H.R. 5544 Before the H. Subcomm. on Env't & Climate Change of the H. Comm. on Energy & Com.*, 116th Cong. at 22-23 (statement of Cynthia Newberg, Office of Stratospheric Ozone, U.S. EPA). In testimony regarding the Senate version of the AIM Act, EPA similarly stated that if it were to pass, "EPA would likely leverage existing Clean Air Act Title VI programs to implement [the AIM Act] … EPA would develop and implement an appropriate regulatory program that builds on lessons learned during the phaseout of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs)." *Hearing on S. 2754 Before the S. Subcomm. on Env't & Pub. Works*, 116th Cong. at 39 (statement of Andrew Wheeler, Administrator, U.S. EPA).

In 2021, EPA promulgated regulations implementing the allowance allocation and trading program established by the AIM Act. 86 Fed. Reg. 55,116 (Oct. 5, 2021). Just as it did with respect to CFC and HCFC allowances, EPA allocated the general pool of HFC allowances in accordance with market participants' historical market share. *Compare* 86 Fed. Reg. at 55,118 ("Company production and consumption allowance allocations are based on the three highest years (not necessarily consecutive) of production or consumption between 2011 and 2019") *with* 57 Fed. Reg. at 33,761 ("EPA proposed

baseline allowances for the Class I substances based on each company's production and consumption of each of the substances in the baseline year.").

II. THE AIM ACT'S UNAMBIGUOUS INTENT TO ESTABLISH A MARKET-BASED ALLOWANCE ALLOCATION SYSTEM MAKES THIS CASE A POOR VEHICLE FOR RECONSIDERATION OF THE NON-DELEGATION DOCTRINE

This long history on which Congress drew in enacting the AIM Act demonstrates two things: EPA had an intelligible principle to guide it in implementing the AIM Act's cap-and-trade program, and this would be a poor case in which to reconsider the non-delegation doctrine.

Petitioner narrowly reads discrete language in the AIM Act out of context to contend that the statute unconstitutionally delegates legislative authority to EPA. Specifically, Petitioner asserts that subsection (e)(3), which directs EPA to effectuate the use and phasedown of HFC allowances by establishing an "allowance allocation and trading program in accordance with this section" provides EPA with too little direction on how to allocate those allowances. But the phrase "this section" refers to the entire AIM Act, codified at section 7675 of Title 42. Petitioner's reading ignores the broader text and structure of the Act and the statutory history showing that Congress plainly intended for EPA to institute a market-based program akin to the Title VI phaseout of ozone-depleting substances.

The text, structure, purpose and legislative history of the AIM Act show that Congress explicitly modeled the statute on Title VI of the Clean Air Act. In doing so, Congress's purpose was to institute a "market-based" approach to the HFC phasedown in the same manner as had been so effective for prior classes of refrigerants. *See, e.g.*, *Hearing on H.R. 5544 Before the Subcomm. on Env't & Climate Change*, 116th Cong. at 7. This market-based

approach is explicitly embedded in the text and structure of the HFC allowance and phasedown system. The HFC production and consumption baselines are entirely market-based—they are calculated using historical production and consumption levels in the U.S. refrigerant market from 2011 to 2013. 42 U.S.C. § 7675(e)(1). The allocable pool of allowances that EPA sets for each year is calculated as a declining percentage of that historical market baseline. *Id.* § 7675(e)(2)(D). And no one may produce or consume HFCs in the U.S. market without having a corresponding amount of allowances to expend for that production or consumption. *Id.* § 7675(e)(2)(A). In other words, each production or consumption allowance reflects a share of the U.S. refrigerant market (for HFCs) that market participants can expend to produce or import HFCs (or trade to others to do the same). Thus when Congress set total allowances based on the total market (measured by total production and consumption of all HFCs by all companies in the United States) and directed EPA to develop rules for allocating those allowances "in accordance with this section"—meaning the AIM Act as a whole—it follows that Congress intended for those allocations to be tied to historical market shares. *Id.* § 7675(e)(3).

The historical context and purpose of the Act unambiguously confirm not only Congress's intended approach, but also that no further direction was needed in the statute to clarify Congress's intention for EPA. Congress does not legislate in a vacuum, but rather "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). As explained above, and as the D.C. Circuit found, Congress deliberately and explicitly modeled the AIM Act's HFC allowance allocation and phasedown mechanisms on the nearly identical program for prior refrigerants established under Title VI of the CAA, which Congress

knew EPA had implemented through a market-based allocation system. *See IGas Holdings, Inc. v. Env't Prot. Agency*, 146 F.4th 1126, 1139 (D.C. Cir. 2025).

Any doubt as to that intent is dispelled by the many structural and textual parallels between the two statutes. Under Title VI's allowance allocation and trading program, EPA calculated the baseline cap on allowances using the industry's total historical production and consumption levels from the designated baseline years, and then allocated allowances based on each company's individual historical market share. Congress drafted the AIM Act's allowance allocation provisions with the benefit of thirty years of experience with the Title VI program and its allocation methodology, as well as years of experience with EPA's initial Montreal Protocol regulations before that.

That allowances would be allocated based on market share also reflects the industry's understanding of the AIM Act and the realities of the refrigerant sector. Participants in the refrigerant industry have long supported an allowance allocation system based on market share, starting with the early regulations implementing the phaseout of ozone-depleting substances. *See* Hahn, *supra*, at 607. Indeed, many of the entities investing in next-generation HFOs are the same entities that historically produced and imported HFCs.[5] Given the clear connection to the Title VI regime and its successful allowance allocation and trading mechanism,

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[5] The two companies that primarily invented each subsequent generation of refrigerants were DuPont (later spun off as Chemours) and Honeywell (later spun off as Solstice Advanced Materials). *See* Harvard Business School Digital Initiative, *DuPont and Honeywell: How Two Competitors Came Together to Fight Climate Change*, https://d3.harvard.edu/platform-rctom/submission/dupont-and-honeywell-how-two-competitors-came-together-to-fight-climate-change/ (Nov. 4, 2016).

largely the same industry participants understood the AIM Act to call for the same market-based approach to phasing down the HFC generation of refrigerants. *See, e.g.*, Comments of The Chemours Company FC, LLC, *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the AIM Act, No. EPA-HQ-OAR-2021-0044* (Feb. 26, 2021), https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0044-0025 ("Allocation of allowances to historic producers and importers is [] supported by the 30-year history of EPA's stratospheric ozone program which has always allocated allowances in this manner … Congress openly and deliberately intended a similar outcome in enacting the AIM Act"); *see also Hearing on H.R. 5544 Before the H. Subcomm. on Env't & Climate Change*, 116th Cong. at 60 (statement of Gary Bedard on behalf of the Alliance for Responsible Atmospheric Policy) ("The AIM Leadership Act relies on three key components [including] a market-based allocation system that gradually phases down production"); *id.* at 49 (statement of John Galyen, Chairman of the Air-Conditioning, Heating, and Refrigeration Institute) ("The legislation is based substantially on existing EPA programs that allowed for orderly transitions from earlier generations of refrigerants in ways that protected the environment while supporting American-based companies' market objectives").

Stability and predictability in the market and the regulatory regime are critical to the HVACR industry given the significant investments and long lead-times required to develop manufacturing and distribution capabilities for new refrigerant compounds and equipment designed to use those new refrigerants. Congress was well aware of these industry dynamics when developing the allowance system under the AIM Act. *See, e.g.*, *Hearing on H.R. 5544 Before the H.*

Subcomm. on Env't & Climate Change, 116th Cong. at 39 (statement of John Galyen) ("With an orderly transition, the American HVACR industry has certainty, stability, and predictability with regard to product lines, supply chains, distribution networks, and legal and regulatory requirements. This will enable businesses to invest and innovate").

To the extent this Court is interested in exploring or revitalizing the non-delegation doctrine, the AIM Act is not a good vehicle for doing so. Even if the language of the allowance allocation provision leaves EPA some discretion, the long and consistent history of regulation of the refrigerant industry culminating in the AIM Act, and Congress's direction to EPA in subsection (e)(3) to allocate consistent with the AIM Act as a whole, make clear that EPA had at least a sufficiently "intelligible principle" regarding the method of allocation. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). Congress is entitled to leave some discretion to the agency within defined policy parameters and principles, especially when dealing with a highly technical industry such as this one. *See Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946); *see also FCC v. Consumers' Rsch.*, 606 U.S. 656, 673 (2025) (finding that the narrower and more technical the issue, the less guidance is needed to comply with non-delegation principles). And a unique statute like this one in which Congress and EPA drew on decades of similar regulatory efforts presents issues that are not likely to arise in the mine-run case involving delegation. Resolution of this case is accordingly not a good vehicle to clarify the doctrine.

III. FINDING THE AIM ACT'S ALLOWANCE ALLOCATION PROVISIONS UNCONSTITUTIONAL WOULD HAVE DEVASTATING CONSEQUENCES FOR THE DOMESTIC REFRIGERANT INDUSTRY

Granting certiorari would be especially unwise because any reversal would have calamitous effects on the American refrigerant industry. If the Court were to invalidate the allowance allocation and trading provisions of the AIM Act, that would likely entail striking down the production and consumption phasedown in its entirety. The D.C. Circuit concluded that subsection (e)(3)—which directs EPA to develop regulations for allocating HFC allowances—cannot be severed from subsection (e)(2), which establishes the overall allowance system and phasedown structure. *See IGas Holdings*, 146 F.4th at 1136. If the allocation provision is unconstitutional, the HFC allowance and phasedown mechanisms are likely to be rendered inoperative—meaning that there would be no quantity-based restrictions on production or importation of HFCs. This would disrupt the HVACR market that is in the midst of transitioning out of HFCs, create confusion among contractors and consumers, and penalize firms that have acted in good faith to meet regulatory expectations. HFC allowances have already been reduced to 60% of baseline in 2024, and will drop further to 30% of the baseline in 2029.

Domestic manufacturers have been working to comply with the statutory phasedown schedule by investing in the transition to lower-global warming potential ("GWP") refrigerants. Not all refrigerants are the same: chemical production lines are designed for specific refrigerant types. Manufacturers of bulk refrigerants have shifted to reduce production of HFCs and instead invested to convert their facilities (and build new ones) to produce low-GWP HFOs. Because HFOs (and HFO blends) are mildly flammable, refrigerant

manufacturers have also needed to invest in safety equipment for their production facilities. Developing these production lines and facilities has been a significant, multi-year investment made in reliance on the phasedown mandate and the anticipated demand for next-generation refrigerants.

This is equally true for HVACR equipment manufacturers; manufacturing lines are unique to specific types of products and refrigerants. Accommodating new refrigerant compounds in refrigeration equipment requires, among other things, different components, devices to mitigate flammability risks, and changes to ensure that products adhere to new safety standards (e.g., building codes) that apply to installation of the refrigeration equipment. Accordingly, equipment manufacturers have also made significant, multi-year capital and engineering investments in retooling production lines, reengineering refrigeration products, validating product safety, and developing supply chains to produce and distribute those products that use lower-GWP refrigerants.[6] HVACR manufacturing capital expenditures, for example, rose from $760.2 million in 2017 to $1.2545 billion in 2021, and exceeded $1 billion in each of 2019, 2020, and 2021.[7] These investments spurred a significant expansion of the domestic manufacturing

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[6] *See, e.g.*, Comments of AHRI, *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the AIM Act, No. EPA-HQ-OAR-2021-0044* (Jul. 7, 2021), https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0044-0170 (explaining that manufacturing of new HVACR equipment requires investment multiple years in advance of anticipated demand).

[7] *See An Economic Analysis of the U.S. HVACR Equipment and Water Heater Manufacturing Industry: A Report Prepared for the Air-Conditioning, Heating, and Refrigeration Institute* 11–12 (July 2023), https://www.ahrinet.org/economic-analysis-us-hvacr-equipment-and-water-heater-manufacturing-industry.

base: the number of manufacturing facilities in the refrigeration industry has grown substantially, increasing for ten straight years starting in 2015; and HVACR manufacturing employment has expanded each year since 2016.[8] The HVACR industry overall accounted for $144.4 billion in economic output in 2021 alone.[9]

Likewise, distributors have invested in warehousing processes designed to meet new fire code requirements for storage of flammable refrigerants. Distributors have established relationships with refrigerant suppliers that are premised on a limited supply of legacy refrigerants and the transition to new refrigerants. An influx of unrestricted imports would undercut these U.S. distributors' market share. HVACR contractors have invested in retraining their workforce and acquiring new tools and equipment to manage lower-GWP products. Reversing course on the transition now would negate the purpose of those capital investments, which have already been factored into the cost of doing business.

Consumers of air-conditioning, refrigeration, and related equipment—including for industrial, commercial, and residential applications and in motor vehicles—have been transitioning to install new equipment and to service that equipment with the new refrigerants. Companies that reclaim refrigerants from existing equipment for recycling and reuse have also invested in HFC reclamation processes and equipment. Given the significant investments that the entire industry across the refrigerant supply chain has made in reliance on the statutory phasedown schedule, even granting certiorari

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[8] *HVACR Manufacturing: Economic Trends and Insights: A Report Prepared for the Alliance for Responsible Atmospheric Policy and AHRI* 4, 9 (Summer 2025).

[9] *Economic Analysis of the U.S. HVACR Equipment and Water Heater Manufacturing Industry*, *supra*, at 2.

now—in the middle of this transition—would inject significant uncertainty into the market.

These investments would be wasted in significant part if the AIM Act is invalidated. The HVACR industry requires long lead-times to reconfigure product lines to accommodate demand for new refrigerant compounds and refrigeration equipment. And once a product line is retooled to accommodate fourth-generation HFO refrigerants, it cannot simply be converted back to accommodate third-generation HFC refrigerants without significant expense. Unrestricted HFC production and consumption would cause an influx of imports of higher-global warming potential legacy HFC refrigerants and equipment containing those legacy HFCs into the market. It would also create significant unpredictability in demand for specific refrigerant compounds to which manufacturers would not be able to adjust quickly and easily.

A reversal on the HFC phasedown program would also confer a competitive advantage to foreign-based manufacturers of bulk HFCs and equipment who did not invest in the phasedown. These imported products would have a price advantage in competing against equipment that the U.S. industry has already reengineered to use low-GWP refrigerant substitutes at significant cost in order to comply with the phasedown. The resulting disruption would force American firms to choose between duplicative product lines—maintaining lower-GWP alternatives while attempting to compete with the influx of high-GWP options—or ceding market share to imports. Such a disjointed market could ultimately lead to refrigerant shortages for supermarkets, other commercial facilities, and residential HVAC equipment, as refrigerant suppliers and refrigeration product manufacturers will no longer be able to plan supply chains around predictable demand. *See, e.g.*, *Hearing on H.R.*

5544 Before the H. Subcomm. on Env't & Climate Change, 116th Cong. at 39 (statement of John Galyen).

Moreover, unregulated production and consumption of HFCs would likely result in violations of the United States' treaty obligations under the Kigali Amendment and the Montreal Protocol. Primarily, unconstrained production and consumption of HFCs in the United States would result in an exceedance of the cap and phasedown schedule set out in Articles 2J(1) and 2J(3) of the Kigali Amendment to the Montreal Protocol. Under Article 4 of the Montreal Protocol, exceedances by the United States could result in the imposition of trade control measures prohibiting trade in HFCs with the United States by other parties to mitigate any further non-compliance by the United States. Cutting off the importation of HFCs would further exacerbate the economic harm to the HVACR industry and to end users of refrigeration equipment that rely on the global supply chain.

At bottom, EPA issued allowance regulations using the same method that it has used in similar programs for decades and that Congress and everyone in the industry understood it would use, and industry has now spent billions of dollars implementing this transition. The Court should not disrupt these reliance interests.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted.

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