



**Comments of the Competitive Enterprise Institute on S. 2754, the
American Innovation and Manufacturing Act of 2019
Senate Committee on Environment and Public Works
April 6, 2020**

The Competitive Enterprise Institute is a public policy and analysis organization committing to advancing the principles of free markets and limited government. We have raised a number of concerns with the American Innovation and Manufacturing (AIM) Act of 2019 (S. 2754), as well as the United Nations’ 2016 Kigali Amendment on which it is based. We also testified at the House Committee on Energy and Commerce hearing on the House companion version of the AIM Act, H.R. 5544, focusing on the substantial costs that its restrictions on hydrofluorocarbons (HFCs) would impose on homeowners, vehicle owners, and small business owners.¹ We thank the Senate Committee on Environment and Public Works for this opportunity to comment on the bill.

This comment will focus on the most problematic provisions in the AIM Act and their impacts on individuals and businesses that rely on HFCs. We will not address the larger question of whether the AIM Act is advisable, except to note that the findings section at the beginning of the bill makes several far-fetched claims that it will increase American jobs and expand exports of impacted products. In reality, the bill is more likely to do the opposite.²

The AIM Act has been getting additional scrutiny over the last few months, especially as more and more entities that rely on HFCs are beginning to recognize how much damage it would inflict on them. Thus far, Senators skeptical of the AIM Act have focused their concerns on the lack of state preemption in the bill, and rightly so. Indeed, the main rationale for setting national HFC standards is to preclude a patchwork of state requirements, but that goal cannot be met if the bill still allows states to set their own HFC policies above and beyond the federal ones.

State preemption is an obvious must-have in any federal HFC legislation, and the fact that it was excluded from the AIM Act demonstrates the severely one-sided nature of the bill as introduced. Unfortunately, the lack of state preemption is not the only major flaw in this bill. This comment will discuss several others that must be addressed before S. 2754 receives further consideration.

1. Section 7 Accelerated Schedule

There are literally hundreds of millions of pieces of HFC-dependent equipment in use today—nearly every vehicle air conditioner, most residential air conditioners and refrigerators, the equipment found in more than a million businesses such as restaurants and food stores, most air

¹ Testimony of Ben Lieberman, Competitive Enterprise Institute, before the House Subcommittee on Environment and Climate Change, January 14, 2020, <https://cei.org/content/testimony-ben-lieberman-house-subcommittee-environment-and-climate-change>.

² Ben Lieberman, Competitive Enterprise Institute, “The American Innovation and Manufacturing (AIM) Act: Myth vs Fact,” January 16, 2020, <https://cei.org/content/american-innovation-and-manufacturing-aim-act-myth-vs-fact>.

conditioned commercial and public buildings, and the equipment used in many important industrial processes. HFCs also have numerous applications throughout the health care industry. Maintaining this equipment for the rest of its useful life will necessitate a sufficient supply of HFCs for a number of years to come, or else costs would skyrocket for homeowners, car owners, and business owners.

Proponents of the current draft of the bill often emphasize that it lays out a gradual reduction in HFC production over 15 years. However, Section 7, entitled “Accelerated Schedule,” sets out a process by which the Environmental Protection Agency (EPA) can easily reduce the window to as little as four years. Even if the EPA were to refuse to shorten the timelines, the extremely broad citizen suit provisions (discussed in a separate section) virtually guarantee that environmental advocacy groups will try to force them to do so through litigation.

The biggest beneficiaries of an accelerated HFC phaseout are the producers of replacement chemicals. In particular, Honeywell and Chemours hold patents on several substitutes that already cost more than HFCs and will likely spike higher once HFCs are pushed out of the way. In many communications with shareholders, they have projected billions of dollars in growth potential for their substitutes. These companies have every reason to support the strictest HFC limits possible under the law.

Other beneficiaries of an accelerated phaseout include a number of refrigeration and air conditioning equipment makers, especially the first adopters of equipment designed to use the replacements for HFCs. These producers may seek a regulatory advantage over their competitors. Some may also hope to create premature obsolescence of existing equipment by making HFCs prohibitively expensive as soon as possible.

It is also worth noting that the bill and its accelerated schedule provisions are most strongly supported by the very largest equipment makers. It would be disproportionately difficult for their smaller competitors to make a quick transition away from HFCs. For the biggest companies, invoking this provision would be an effective tool to knock out the little guys and gain market share.

The accelerated schedule provisions serve absolutely no useful purpose other than to increase the windfall for certain producers of HFC replacement refrigerants and equipment. It would do so at the expense of everyone else. For these reasons, Section 7 should be eliminated.

The history of refrigerant restrictions should remove any doubt that such accelerated schedule provisions are in there for a reason and will be invoked. Similar accelerator provisions in the 1990 Clean Act Amendments that placed restrictions on chlorofluorocarbons (CFCs) and other ozone-depleting compounds in favor of HFCs were utilized shortly after the bill passed. Some of the same rent-seeking entities that supported an accelerated schedule then would support one now.

In addition to Section 7, Section 10 allows a ban on the use of HFCs in any particular category of new equipment and can take effect even sooner than 4 years. This provision also threatens a

more abrupt transition and would raise costs on the purchasers of such equipment. For this reason, it should be eliminated as well.

2. Section 12 Citizen Suit Provisions

The fact that the deadlines can be accelerated destroys any certainty in the bill and provides a one-way ratchet in the direction of tightening the initial restrictions on HFCs. The same is true for the extensive litigation opportunities in the bill. Section 12 specifically incorporates the highly problematic citizen suit provisions found in the Clean Air Act.

Over the 50-year history of the Clean Air Act, these provisions have led to hundreds of lawsuits resulting in many decisions and settlements that often went beyond what the congressional supporters of the statute originally envisioned. Similarly, S. 2754, as drafted, could hardly do any more to facilitate subsequent litigation.

There should be no doubt that if the current version of the AIM Act becomes law, it will be quickly followed by an avalanche of lawsuits from environmental groups to make its provisions more stringent—often with the support of rent-seeking companies that would also benefit from such changes.

For this reason, these citizen suit provisions should be taken out. The requirements of this bill should be those that Congress agrees upon, not what environmental activists subsequently try to make of them.

3. Section 6 Essential Uses

S. 2754 poses considerable risks for homeowners, car owners, and business owners. By pulling the rug out from under the vast base of HFC-dependent equipment, the bill could result in enormous costs for the owners of this equipment.

Costs aside, there are also concerns about the fact that many HFC replacements are classified as flammable. This raises a number of safety concerns as well as potential building code and other legal violations. For the many businesses that have refrigeration and air conditioning equipment on the premises, the introduction of flammable refrigerants may also raise lease, insurance, occupational safety, and liability concerns. Proponents of the AIM Act insist that all of these flammability-related issues will be quickly resolved at minimal cost, but this sounds overly optimistic to many observers. The bill itself is silent on flammability.

Considering the dramatic and far reaching changes S. 2754 will necessitate and the sheer number of impacted people and businesses, there is a lot that can go wrong. Yet the bill contains no workable contingency measures if and when anything does.

The only compliance flexibility measures are the “Essential Uses” provisions in Section 6, but they provide extremely limited relief. They allow HFC users to petition the EPA for additional time to continue using HFCs in a specific application. However, the burden of proof is very high

and the amount of additional HFCs allowed is quite limited. Worst of all, these provisions cannot even be invoked until the year 2034.

Also missing from the bill is any effort to protect impacted small businesses—mostly the users of HFC-dependent equipment but also small manufacturers of equipment that are placed at a competitive disadvantage relative to their larger counterparts.

Proponents of the bill need to get serious about the costs and risks they are imposing on others and provide sufficient recourse in the event of implementation problems. The essential uses provisions in the current version do not come close.

4. Other Concerns

Beyond these major issues with the AIM Act, there are several other problematic provisions that deserve mention. This includes the ones empowering the EPA to impose new and potentially costly procedures for the handling of refrigerants that would further complicate repairs of air conditioning and refrigeration equipment.

Additionally, there are legitimate concerns that the provisions in the bill identical to those in the Kigali Amendment are an improper legislative end-run around the treaty ratification process as set out in the Constitution.

The bill also has many glaring omissions, such as the absence of any measures to harmonize its HFC restrictions with other federal regulatory programs. This includes the Department of Energy (DOE) energy efficiency standards applicable to many of the same categories of equipment, which could prove troublesome for substitutes less energy efficient than HFCs.

Overall, even beyond the main issues discussed above, virtually every section of the bill needs at least some changes, and there are missing sections that need to be added such as ones ensuring its provisions do not conflict with the Department of Energy and other agencies.

Conclusion

It is clear that the drafting of the AIM Act was not open to all affected parties. The interests of those expecting to gain by securing a captive U.S. market for HFC substitute refrigerants and equipment were abundantly included, but totally absent is any sign of input from the many users of HFCs. We hope that this comment provides information that will help address their concerns.

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