

Statement of Republican Leader Greg Walden, House Committee on Energy and Commerce

April 8, 2020

Senate Environment and Public Works Committee Hearing Record on S. 2754

We thank the Senate Environment and Public Works Committee for the opportunity to share perspectives on legislation to phase down the use of hydrofluorocarbons (HFCs). We would like to share some of our observations on similar legislation introduced in the House of Representatives that the Committee on Energy and Commerce is actively evaluating. Our review of the comparable House legislation uncovered areas needing substantial improvement to protect Americans and residential consumers from resulting adverse impacts.

Preemption

We are sympathetic to the stated premise to enact this legislation: that States are creating an uneven marketplace for equipment and refrigerant manufacturers through a patchwork of emerging state statutes and regulations. States should not fight amongst themselves over the best way to regulate commerce, creating significant market uncertainty. We note the legislation refuses to expressly accomplish what proponents say is needed: create a uniform set of regulations by affirmatively pre-empting the States from creating a hodgepodge of requirements.

We recognize that some people believe that the creation of a Federal “framework” alone will be enough to solve the problem and that States will “stand down” in this space if Federal legislation is enacted. Yet, two factors make us unwilling to accept those assurances: first, this legislation does not preempt existing state laws -- so they will still need to be followed and enforced. Second, with this language, Congress is not solving but rather knowingly making the problem worse by stacking another layer of regulation on top of the existing ones.

Mandatory Federal Phasedown

The legislation federally mandates an aggressive phasedown of production and use of HFCs. This phasedown is, coincidentally, already taking place voluntarily in the private sector at a pace that allows for adequate and feasible substitutes. This legislation instead would push this transition forward at a faster clip without accounting for feasibility. The artificial schedule will result in price shocks for items like home heating and air conditioning servicing, personal defense sprays against predators, and metered dose inhalers for those with pleural conditions.

Accelerated Phasedown

Under the accelerated phase-down provisions in the bill, any person – whether a market participant seeking competitive advantage or a foreign actor looking for geopolitical benefit – is permitted to petition the Environmental Protection Agency (EPA) to speed the pace of HFCs phasedown beyond that laid out in the bill. In order to grant the petition, EPA only needs to determine that “adequate” – not reliable or high quality – information exists to suggest a more stringent phasedown is “practicable” because there are available substitutes.

Practically speaking, under this legislation, the first company to create an HFC alternative can more aggressively clear the marketplace – without regard to the impact that might have on consumer costs – for deployment of their more expensive technologies or systems.

Technology Transition

Problematically, the technology transition provisions begin by giving EPA discretionary authority to prohibit or restrict the use of an HFC in any sector or subsector. Unlike the rest of the bill, though, the technology transition provisions allow the Administrator to phase out, not just phase down, uses of HFCs for that sector or subsector.

Then there is the petition process, which permits any person – from competing businesses, to foreign powers, to ideologically driven interests -- to petition EPA to engage in a rulemaking to ban or severely restrict HFCs in a sector or subsector – again, based on no standard. And, this is all done with no protection against cost increases for residential consumers.

Essential Uses Exemption

The legislation contains an essential use exemption that redefines what essential means. The exemption is not available until at least 2034, when consumption and production of HFCs are limited to 20 percent of the baseline level. In other words, any essential use (including aircraft fire suppression or metered dose inhalers for pleural conditions) cannot even request relief until 14 years into the phase down when 80 percent less of the product will be available. Essential use exemptions for life-threatening conditions unquestionably should be available immediately, and not in 1 year or 5 years, or 14 years.

Treaty Ratification and Other Federal Laws

We believe this bill has broader – and potentially problematic – implications stemming from existing domestic regulations and international obligations. While this bill does not constitute an official White House submission of treaty implementing legislation, many people believe this is a *de facto* way to implement the Kigali Amendment to the Montreal Protocol – without having it first ratified by the United States Senate. In addition, that is not the only international agreement that could be implicated. Though this measure is not an amendment to the Clean Air Act, there is still the unresolved question as to what it means for Clean Air Act sections 115 and 614, for example.

Submission of the Honorable Greg Walden to Senate Environment and Public Works Committee
American Innovation in Manufacturing Act
April 8, 2020

In conclusion, we do not oppose a legislative effort to phase down production and use of HFCs. We have serious concerns, however, that this legislation will create a more uneven domestic regulatory landscape, increase costs to residential consumers, permit government sanctioned market manipulation, and make essential use exemptions nearly impossible to obtain.

We have attached materials from our Committee work that might be helpful to you.

Thank you for your time and we look forward to working with you on this matter in the future.

PRESS RELEASE

Walden Remarks at Hearing on Hydrofluorocarbons

01.14.20

WASHINGTON, DC – Energy and Commerce Committee Republican Leader Greg Walden (R-OR) remarks at an Environment and Climate Change Subcommittee **hearing** titled, *“Promoting American Innovation and Jobs: Legislation to Phase Down the Use of Hydrofluorocarbons.”*

As Prepared for Delivery

This morning’s hearing will examine a bill that would mandate a rapid phase down, in the United States, of the use of hydrofluorocarbons, or HFCs.

These substances, which contribute to climate change when emitted into the atmosphere, serve many important uses, including as a very critical ingredient in cooling and refrigeration equipment throughout our society.

Scrutiny of this issue for the purpose of addressing risks to the climate is important, and welcome. However, the approach today falls short of what is necessary to make good policy decisions.

Indeed, there appears to be a rush towards a pre-packaged legislative solution, without having developed a full understanding of the problem we are trying to solve or whether this regulatory approach is truly the most appropriate way to work in a dynamic and complex marketplace or in the best interest of the American consumer.

To do this competently requires more upfront work in terms of oversight and background hearings so we can have a record to rely upon as we consider policy options that have long term implications for our environmental policy, market competition, and household economics. This is especially the case in policy areas like this one where most members have limited experience.

Consider that the broad backdrop for this legislation are concerns about international emissions and the international agreement under the Montreal Protocol on Substances that Deplete the Ozone Layer, which was finalized in the late 1980s. Yet the Committee, which was instrumental in developing provisions to address implementation of the Protocol in the Clean Air Act, has not had a single hearing on the topic for more than a decade.

Meanwhile, we're considering a bill that implicates U.S. participation under the Protocol. I would like to better understand how this will work in practice.

Recent amendments under the Protocol, which have not been ratified by the U.S. Senate, anticipate a rapid growth of demand for refrigerants and cooling that is occurring in the developing world.

How to address the needs of the developing world is a key policy matter. For example, we should understand how mandating U.S. conversion to new technologies addresses development internationally and whether it is this bill or Kigali Amendment ratification that is the lynch pin.

It is worth noting that certain industries are already innovating towards non HFC substances, which begs the questions: Does this have to be a mandated phase down? What are the problems in the marketplace that require government intervention, rather than the natural turnover to newer, more innovative technologies?

We would also benefit from a deeper understanding of the implications of any policies to phase out HFCs on the existing U.S. stock of refrigeration and cooling equipment—in businesses and in households, in automobiles— and what the costs of that are.

Are there safety issues to consider with replacement substances? Are there energy efficiency issues? Will routine repair and maintenance costs accelerate for consumers? Will states implement their own, more accelerated schedules for phasing out HFCs that will send the market into further turmoil?

I am hopeful the witnesses can help us answer some of these questions today and help us understand other areas that may be worth exploring.

There appears to be strong support—from industry, environmentalists, and others—to work on this legislation. And to be clear, I am open to working on it. We should look to do more regarding HFCs and related greenhouse gases and we should be open to practical policies. Maybe this legislation is a good starting point, but I think we have to look carefully to be sure it will provide the benefits promised and actually work in the best interests of American consumers.

I should note we have some quality witnesses this morning, including Ben Lieberman, who served on the Committee staff for many years, and did much to ensure we were keeping the consumer in mind.

Walden Remarks at a Environment and Climate Change Subcommittee Markup on CFATS and HFCs

WASHINGTON, DC – Energy and Commerce Committee Republican Leader Greg Walden (R-OR) remarks at a Environment and Climate Change Subcommittee [markup](#) of two bills on Chemical Facility Anti-Terrorism Standards (CFATS) Program and Hydrofluorocarbons (HFCs).

As Prepared for Delivery

Good Morning, Mr. Chairman. Thank you for yielding me this time to speak before we dive into the two bills scheduled for markup today: H.R. 6160 and H.R. 5544.

On H.R. 6160, I appreciate that you have focused the subcommittee's attention on legislation to maintain the authority of the Chemical Facility Anti-Terrorism Standards program – or CFATS.

This program was created after the terrorist attacks of September 11th. Having assessed federal authority to address theft, diversion, and terrorism at chemical facilities, Congress decided accident prevention and process safety laws were insufficient and inappropriate to tackle these malicious, and intentional acts.

CFATS is not your garden variety regulatory program – it was designed to foster collaboration and compliance to make facilities secure. Moreover, a typical regulatory program is not appropriate because each chemical facility faces different security challenges.

CFATS program authority is set to expire on April 17, so I am glad we are moving forward today and hope our bill can quickly get House approval. We should not let this anti-terrorism program expire - letting it do so will encourage countless bad alternatives and much less security.

The second bill in our markup doubleheader is H.R. 5544.

While I know a “legislative” hearing on this bill was held about eight weeks ago, I wonder why the subcommittee and the bill's supporters are rushing to a pre-packaged legislative solution. As a committee, we have not developed a full understanding of the problem we are trying to solve nor whether this approach is truly the most appropriate way to work in a dynamic and complex marketplace or in the best interest of the American consumer.

To do this competently requires more upfront work in terms of oversight and background hearings, so the committee can have a better record than it currently has to rely upon. This is particularly true as we consider policy options that have long term implications for our environmental policy, market competition, and household economics.

To put a finer point here, in the entire Congress, there has only been one hearing on this bill. And we only heard from a limited number of voices at that hearing.

The issue of hydrofluorocarbon production and usage is broader than just air conditioning equipment and refrigeration chemicals. Yet, that is primarily the interest that has been heard from and the focus of questions on this bill. There are more interests we should hear from and more questions to explore – some of them have come to light in the last few days.

For instance, we have learned the aircraft industry has fire suppression problems that this bill creates, the home appliance manufacturers have product transition problems, people who use repellants to save themselves from bear attacks in the woods or sexual predators on the streets have product availability problems with this bill, as do asthmatics and people using metered dose inhalers to treat pulmonary conditions. There are real-world access concerns here, as well as cost impact concerns.

And those concerns augment the ones I already have about provisions in H.R. 5544 that deprioritize consumer needs and let those who are ideologically or financially driven – and have the resources to heavily lobby legislatures – clear the field for their benefit with Congress's blessing.

We can do better than that.

I do not support this bill in its current form.

- H.R. 5544 is bad for end-use consumers,
- it fails to create a stable national marketplace,
- it prevents exemptions for "essential uses" until at least 2034,
- it lacks regulatory transparency,
- its economics will make the southeast less resilient to intense heat and
- it creates policy precedents that are rife with opportunities for mischief.

I know we are marking up this bill today, but I really hope we can take a step back and do some serious, more than cursory, bipartisan work to look into the problems I see in H.R. 5544 – such as pre-emption, the accelerated phase down, the essential uses, market manipulation, and technology transition provisions – and resolve to meaningfully address them.

I yield back the balance of my time.