



April 7, 2020

The Honorable John Barrasso, Chair
The Honorable Thomas R. Carper, Ranking Member
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 2754 (American Innovation and Manufacturing Act of 2019) Written Comments

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide written comments on S. 2754, the American Innovation and Manufacturing Act of 2019 (AIM Act). Illinois Tools Works Inc. (ITW) is a U.S. manufacturer of value-added commercial and industrial-use products, components and systems. ITW is a Fortune 200 company operating a diverse global portfolio of 84 manufacturing divisions, including commercial foodservice equipment, automotive aftermarket and emergency roadside tire inflator products, among others.

For the purposes of S. 2754, the ITW Food Equipment Group, LLC (ITW FEG) is among the world's largest manufacturers with a product scope that includes commercial foodservice refrigeration equipment brands manufactured in the US. ITW FEG has introduced environmentally sustainable marketplace options to promote responsible resource usage, energy savings and overall good stewardship practices, while meeting the needs of the diverse North American commercial kitchen appliance market. Although the primary trade association for commercial foodservice equipment, the North American Association of Food Equipment Manufacturers (NAFEM), to which we belong alongside over 150 competing manufacturers, has no settled, consensus position on S. 2754, **ITW strongly suggests that the committee address significant flaws in the legislation prior to allowing it to advance in the Senate**, even though we support the aims of the US Environmental Protection Agency's (EPA) 2015 regulation (Rule 20) that formerly prohibited higher global warming potential substances, such as hydrofluorocarbons (HFCs).

HFCs were used as refrigerant and foam-blowing agents in commercial foodservice refrigeration equipment. In fact, ITW FEG has re-engineered our impacted products across 500 base models, taking a market leadership position to complete this comprehensive transition ahead of the schedule imposed by Rule 20. Therefore, from our perspective, we believe that S. 2754's attempt to restart the HFC transition is unnecessary overall, with certain key provisions falling short and/or producing negative unintended consequences for manufacturers.

Generally, the AIM Act seeks to confer on the EPA the authority to regulate HFCs that the agency was found to be lacking by the DC Circuit Court of Appeals (*Mexichem Fluor v. EPA*, 2017). However, the bill does not expressly seat its provisions in any new or existing federal statute, thus, failing to clarify the EPA's foundation of authority to regulate HFCs or successor alternatives. This leads us to see the bill as superfluous at best, and problematic for future EPA HFC (and subsequent alternatives) rulemakings even more. More about subsequent alternatives in Section 9 comments below.

Under Section 2(b), the Sense of Congress calls for EPA regulation to "provide for a safe HFC transition..." for impacted appliance stakeholders. However, speaking for the commercial foodservice refrigeration equipment sector, the majority of our industry has already transitioned away from HFC usage. So, how should we understand the objectives or need for the bill? Either:

- The AIM Act is a solution in search of a problem. It looks to facilitate a new EPA HFC regulation, notwithstanding the already-widely reduced use of HFCs that vitiates the need for a new mandate; or
- The AIM Act is meant to empower and clarify EPA authority beyond only one near-term rulemaking by establishing ongoing oversight of HFCs and successor chemicals as a practical matter. ITW believes this rationale makes more sense to the extent legislation is needed at all. However, if so, we maintain that the bill remains problematic.

ITW sees it as troublesome to allow proceedings to be accelerated under Section 7. While we and other manufacturers struggled with the determination of policymakers during Rule 20's development, which included over two years of stakeholder input, we envision far more havoc if the EPA is provided a mandate supplanting thorough due diligence, thereby placing a negative burden on manufacturers and shortchanging intended consumer benefits.

Section 7(a) allows for the EPA to be petitioned to speed up a previously scheduled substance phasedown that "takes into account 'technical achievability'." An "achievability" threshold is not only vague, but also must be tangibly demonstrated. In other words, manufacturers' product design roadmaps require diligent planning, design and prototyping the highly engineered products covered under the bill, and cannot be deemed ready for commerce without iterative testing and confirmation when the product must be changed in material ways. Considering HFCs, public policy can never determine alone if a product will work or not given the multiple and complex requirements, including third-party certification for performance and safety, among other things. So, Section 7(a) would leave manufacturers on uneven ground compared to other stakeholders who might have parochial reasons to accelerate a new substance's consideration. We, and by extension, our customers would have no recourse if we are unable to convince policymakers that an alleged technical achievability is implausible.

Similarly, the element of “commercial demands” is ill-defined. Commercial demand, or broad availability of a regulated substance, is a required measurement to ensure that proposed alternative substances can sufficiently supply re-engineered products without creating marketplace disturbances. Yet, as the Rule 20 process illustrated, manufacturers rightly asserted that, despite supply assurances to the contrary, some of the proposed HFC alternatives (now HFOs) were not commercially available to widely support any one equipment group, much less all end uses required to transition in the impossible timeframe of as little as six months in several cases. It was eventually conceded that both the HFO market delivery timeline and quantities had been misrepresented, resulting in the more reasonable effective dates found in Rule 20’s final version. ITW would argue that Section 7(a) of the AIM Act would foster future risks of bad public policy detrimental to manufacturers, especially small and medium enterprises.

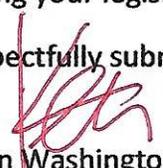
In addition, Section 7(b)(1)(B) specifies that data supporting consideration for a petition must be “relevant, publicly available, peer-reviewed scientific data.” As was true with HFOs, it is well likely that any successor substitute would be proprietary to its inventor. How can stakeholders have the necessary transparency to ensure a robust consideration of a substitute under those conditions? Proprietary data, by definition and practicality, is not meant to be widely available!

In line with longstanding EPA policy for refrigeration equipment, Section 9(a) gives regulatory direction to the EPA for rulemakings to prevent atmospheric release of “regulated substances” when serviced by technicians and consumers. Specifically, these provisions would suggest ongoing agency authority to regulate both HFCs and alternative substances without limitation, with which we do not disagree. However if, as proponents purport, the AIM Act is limited in scope only to HFCs as “regulated substances,” what need is there to apply the venting prohibition indefinitely beyond HFCs as provided in Sections 9(a)(2) and 9(a)(4) (“a substitute for a regulated substance.”)? We assert that the language aims to clearly support the EPA regulating HFC substitutes (e.g., HFOs and beyond) serially and without limitation as they are introduced into the marketplace, not just for today’s products using HFCs.

Taken together, we reiterate that Sections 7 and 9 do not build sufficiently even protections for manufacturers’ future rulemaking concerns.

In conclusion, ITW thanks you for allowing written comments as you consider the AIM Act. Again, as we support the continued deployment of sustainable products to meet consumer needs, we would strongly urge the committee to question the need for this measure, as well as consider the foregoing challenges to commercial foodservice refrigeration equipment manufacturers during your legislative review. We look forward to continuing to work with you.

Respectfully submitted,


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Government Affairs