

The Honorable John Barrasso, M.D.
Chairman
U.S. Senate Committee on Environment & Public Works

Statement for the Record

Environment and Public Works (EPW) Committee Information-Gathering Process –
“S. 2754, the American Innovation and Manufacturing Act of 2019: Written Testimony and
Questions for the Record”

Wednesday, March 25, 2020

I oppose S. 2754, the American Innovation and Manufacturing Act of 2019 (AIM) Act, in its present form. I initiated the Environment and Public Works (EPW) Committee information-gathering process so that the Committee could receive necessary, broad feedback on the bill. My goal in this process is to determine if there is a way to significantly improve the underlying legislation to ensure it does not harm manufacturers and consumers who were not involved in its development.

Introduced on October 30, 2019 by Senator John Kennedy in partnership with EPW Ranking Member Tom Carper, the AIM Act would implement a federal framework to phasedown the use of hydrofluorocarbons (HFCs). The bill was referred to the EPW Committee.

The AIM Act requires, at a minimum, an economy-wide phasedown in the production and consumption of HFCs to roughly 15 percent of their average annual 2011-2013 level by 2036. The phasedown schedule is designed to be consistent with what the U.S. commitment would be under the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer. The Kigali treaty was not sent to the Senate for ratification by either the Obama or Trump administrations. Under the AIM Act, the Environmental Protection Agency (EPA) would implement the phasedown through allowances assigned to, and traded between, companies.

There are multiple issues with the legislation as currently written. First, although some of the legislation’s advocates assert its purpose is to create a uniform, national phasedown, the AIM Act would not preempt current and future state action to phasedown or regulate the uses of HFCs. Many states are already acting to reduce the use of HFCs. Without federal preemption, manufacturers would likely be forced to produce different equipment in different states, driving up costs for companies and prices for consumers.

Additionally, under the bill, EPA would have broad authority under the “accelerated schedule” and “technology transitions” provisions to accelerate the overall phasedown and restrict specific uses of HFCs. With this authority, the agency could fully or partially ban the use of HFCs in multiple manufacturing and product sectors. This excessively broad authority does not include language to prevent increases in consumer costs. The bill also does not provide any way for manufacturing sectors that do not have a viable alternative to HFCs to get an “essential use” exemption before 2034. Under the bill, and through unrestricted state actions, HFCs will be in short supply well before this date.

Many of these issues have been raised during initial proceedings on the companion bill to the AIM Act in the U.S. House of Representatives, H.R. 5544. Representatives Tonko (D-NY-20), introduced H.R. 5544 on January 7, 2020. The House Energy and Commerce Subcommittee on Environment held a legislative hearing on H.R. 5544 on January 14, 2020.

On March 12, 2020, the House Energy and Commerce Subcommittee on Environment marked up H.R. 5544. The AIM Act passed out of the Subcommittee markup on a party line vote, with all Republicans voting against the bill. All Republicans supported preemption being included in the bill, but the vote on a preemption amendment failed on a 10-9 party line vote. All Republicans also supported removing provisions that could accelerate the phasedown of HFCs, but the vote on the accelerator amendment also failed on a 13-9 party line vote. Chairman Tonko (D-NY) indicated that he was “open to negotiations” in the future on softer preemption language.¹

The Trump administration also strongly opposes the AIM Act in its present form. The Trump administration strongly objected to the AIM Act when it was filed as an amendment to the unrelated energy bill during its floor consideration. The Trump Administration made the following statement to bill managers about the AIM Act amendment:

The transition from hydrofluorocarbon use in the heating, ventilation, air conditioning, and refrigeration industry is a matter that should be applied consistently across the country. Therefore, this amendment must include a strong state preemption clause. We also have concerns with a policy that mandates significant changes for the private sector and mandates consumers buy new products without any consideration of cost.

Since the House Subcommittee hearing and markup, the EPW Committee has heard from a number of industries and sectors that were not consulted in the development of the AIM Act. Some HFC substitutes, known as hydrofluoroolefins (HFOs), are flammable or mildly flammable. Substitutes to HFCs are also much more expensive, costing as much as 10 times more per pound. Many niche users of HFCs, including in applications such as propellants in defense sprays and fire suppressants, were not consulted in drafting the bill. The unique impacts on these sectors are therefore not addressed by the legislation.

For example, the Safariland Group manufactures law enforcement and defense products, including defense sprays for law enforcement and military uses. Safariland manufactures these sprays at a manufacturing facility in Casper, Wyoming that employs approximately 75 workers. These sprays help keep police officers and the public safe. In Casper, Safariland has also previously manufactured sprays to defend hikers from bears. Safariland contacted my office to voice its opposition to the legislation as currently drafted. Replacement chemicals would make their sprays less effective and potentially create dangerous situations for police and the public.

¹ Nick Sobczyk and Ariana Figueroa, “Panel OKs industry-backed superpollutant bill,” E&E News (Mar. 12, 2020), <https://www.eenews.net/greenwire/stories/1062585989?t=https%3A%2F%2Fwww.eenews.net%2Fstories%2F1062585989>

The AIM Act would have widespread impact on our lives. HFCs are in every American's home – from air conditioners to refrigerators to cars. These chemicals can also be found in vending machines, foams, and defense sprays. These chemicals are everywhere and Congress must consider the breadth and impact of any legislation banning or limiting their use.

Before the Committee decides whether to vote on the AIM Act and certainly before any consideration of the legislation on the Senate floor, we must hear from all of the stakeholders who were not consulted in the development of this bill. The Committee must hear from stakeholders who are now living with an evolving patchwork of state regulations and we must understand the impact on consumers.

We also need to make sure that everyone who would be affected by this legislation has a chance to have their voice heard. The EPW process initiated today will give a voice to those left out of the development of this expansive new regulatory measure.

Most importantly, we should not force small manufacturers out of business. Nor should we drive-up the cost of repair or replacement for common household items like air conditioners and refrigerators. Before this formal information-gathering process began, I offered language to the sponsors of the bill to address these issues. The language addressed preemption, removal of EPA's broad authority under the "accelerated schedule" and "technology transitions" provisions, and exemptions for HFC users who were not consulted in the development of the legislation. Those fixes were rejected by the bill's sponsors.

This process will allow us to hear broadly on these and other suggested ways to improve the bill. After hearing from a wide variety of stakeholders, and working together in good faith with other members of this Committee, I look forward to evaluating how the AIM Act can be fixed. It needs to be fixed before the Senate considers this significant new regulatory measure.