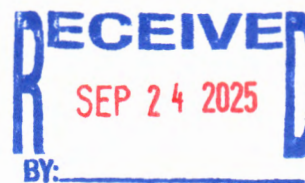




555 12th Street NW, Suite 1001
Washington, D.C. 20004



September 4, 2025

Hon. Lee M. Zeldin, Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Mr. Administrator:

ADMINISTRATIVE PETITION FOR RULEMAKING

The National Federation of Independent Business (NFIB)¹ submits this administrative petition for rulemaking to request that EPA amend Subpart B in Part 84 of Title 40 of the Code of Federal Regulations to revoke regulations issued under the American Innovation and Manufacturing Act of 2020 that regulate or purport to regulate the refrigerant R-410A. This administrative petition for rulemaking is submitted consistently with the right to petition in the First Amendment to the U.S. Constitution and EPA guidance on submission of administrative petitions for rulemaking.²

1. Statutory and Regulatory Background: The AIM Act and the Biden Administration Hydrofluorocarbons (HFC) Final Rule

In 2020, section 103 in Division S of the Consolidated Appropriations Act, 2021, became law, a section known by the statutory short title American Innovation and Manufacturing Act of 2020 ("AIM Act").³ Section 103(i)(1) provides: "Subject to the provisions of this subsection, the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used." And section 103(b)(11), (c)(1), and (c)(3) defines "regulated substance" to mean 18 specifically listed chemicals plus any other substance designated by the Administrator if, after notice and an opportunity for public comment, the Administrator determines "(i) the substance--(I) is a chemical substance

¹ NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty States hear the voice of small business as they formulate public policies. The NFIB membership includes small businesses that use the R-410A refrigerant.

² The EPA guidance on petitions is available at <https://www.epa.gov/petitions> (visited September 2, 2026). To the extent the right of interested persons to seek an amendment of a rule under 5 U.S.C. 553(e) is available, but see subsection (k)(1)(C) of the AIM Act (42 U.S.C. 7675(k)(1)(C)) and section 307(d)(1) of the Clean Air Act (42 U.S.C. 7607(d)(1)), NFIB also invokes that right.

³ The AIM Act is section 103 in Division S of the Consolidated Appropriations Act, 2021 (Public Law 116-260, December 27, 2020). Section 103 is codified at 42 U.S.C. 7675.

that is a saturated hydrofluorocarbon; and (II) has an exchange value, as determined by the Administrator in accordance with the basis described in paragraph (2)(B), of greater than 53; and (ii) the designation of the substance as a regulated substance would be consistent with the purposes of this section.” The Administrator of EPA has not exercised the authority under section 103(c)(3) to designate a substance as a “regulated substance” in addition to the 18 set specifically by statute.⁴

In 2023, to implement the AIM Act, the Biden Administration prescribed Subpart B of Part 84 of title 40 of the Code of Federal Regulations as a final rule in “Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020,” sometimes called the Technology Transitions Rule (“Biden Administration HFC Final Rule”).⁵ The Trump Administration amended Part 84 in 2025 in “Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-Specific Allowances.”⁶

2. EPA Cannot Regulate the Refrigerant R-410A Under the AIM Act

The Biden Administration HFC Final Rule purports to regulate the refrigerant R-410A. But R-410A is not a “regulated substance” under the AIM Act. EPA has the power to make it a “regulated substance” through a process requiring notice to the public and an opportunity for the public to comment, but EPA has not exercised that power through that process.

Trane Technologies describes the situation with respect to the refrigerant R-410A as follows:

R-410A refrigerant is a blend of hydrofluorocarbon (HFC) compounds R-32 and R-125. It has been used as a replacement for R-22 (commonly known as Freon). . . . The American Innovation and Manufacturing (AIM) Act of 2020 directed the Environmental Protection Agency (EPA) to phase down the production and consumption of certain hydrofluorocarbons (HFCs) This phasedown began in 2022 with a 90% production allowance (meaning businesses must reduce HFC-derived CO2 emissions to 90% of baseline

⁴ The Administrator’s authority to declare a substance that is not one of the statutorily-designated 18 substances to be a “regulated substance” under section 103(c)(3) is subject to a rather opaque savings provision: “(B) SAVINGS PROVISION.—(i) IN GENERAL.—Nothing in this paragraph authorizes the Administrator to designate as a regulated substance a blend of substances that includes a saturated hydrofluorocarbon for purposes of phasing down production or consumption of regulated substances under subsection (e), even if the saturated hydrofluorocarbon is, or may be, designated as a regulated substance. (ii) AUTHORITY OF ADMINISTRATOR.—Clause (i) does not affect the authority of the Administrator to regulate under this Act a regulated substance within a blend of substances.” However, since the Administrator has not yet exercised the authority under section 103(c)(3) to designate an “other regulated substance,” and the savings provision only applies with respect to paragraph (3) of subsection 103(c), no occasion has arisen to examine the effect of the savings provision.

⁵ 88 *Fed. Reg.* 73098 (October 24, 2023).

⁶ 90 *Fed. Reg.* 41676 (August 26, 2025).

values) that drops to 15% by 2036 and beyond. . . . R-410A is still perfectly legal for use in *existing* air conditioning and heat pump systems. However, newly manufactured HVAC units in the US are required to use a new refrigerant with a lower global warming potential. . . . Supplies of R-410A should be available for years to come. However, as inventory dwindles, it will become more expensive. This will mean if you need a refrigerant recharge of an R-410A system, the price 5 years from now will be much higher than it is today.⁷

The statutory list of regulated substances in the AIM Act specifically includes hydrofluorocarbon 32 (chemical formula: CH_2F_2 , known as R-32) and hydrofluorocarbon 125 (chemical formula CHF_2CF_3 , known as R-125), the two constituents of R-410A. If the EPA were careful in drafting its regulations, it might well have been able to accomplish indirectly, by regulating R-32 and R-125, its environmental goal with respect to R-410A. But the Biden Administration HFC Final Rule was not carefully drawn, and it purports to regulate R-410A, which it cannot do.

The EPA apparently has misconstrued the AIM statute as if it authorized the EPA to regulate R-410A. Section 84.54 of title 40 of the Code of Federal Regulations⁸ states in pertinent part (with emphasis added):

(a) No person may manufacture or import any product in the following sectors or subsectors that uses a *regulated substance* as listed in this paragraph: . . .

(8) Self-contained automatic commercial ice machines as follows: . . .

(ii) Effective January 1, 2027, batch type ice maker products, as defined in 10 CFR 431.132, with a harvest rate greater than 1,000 pounds of ice per 24 hours, as determined in accordance with 10 CFR 431.134, and continuous type ice machine products, as defined in 10 CFR 431.132, with a harvest rate greater than 1,200 pounds of ice per 24 hours, as determined in accordance with 10 CFR 431.134, using any of the following: . . . R-410A . . . ;

(9) Self-contained refrigerated food processing and dispensing products as follows: . . .

(ii) Effective January 1, 2027, products outside the scope of UL 621, "Ice Cream Makers," Edition 7, dated May 7, 2010, with revisions through September 16, 2020, as of December 26, 2023, with refrigerant charge sizes greater than 500 g, using any of the following: . . . R-410A . . . ; and

⁷ Anne Fonda, Content Writer, reviewed by Jeff Stewart, Refrigeration Chief Engineer, Trane Technologies, "R-410A Refrigerant," available at <https://www.trane.com/residential/en/resources/glossary/what-is-r410a-refrigerant/> (visited September 2, 2025). See also EPA answers to frequently asked questions on HFCs available at <https://www.epa.gov/climate-hfcs-reduction/frequent-questions-phasedown-hydrofluorocarbons> (visited September 2, 2025).

⁸ 88 Fed. Reg. at 73206, col. 3.

(iii) Effective January 1, 2028, for refrigerated food processing and dispensing products within the scope of UL 621, "Ice Cream Makers," Edition 7, dated May 7, 2010, with revisions through September 16, 2020, as of December 26, 2023, using any of the following: . . . R-410A . . .

(c) No person may install any system, nor have any such system be installed through their position as a designer, owner, or operator of that system, in the following sectors or subsectors that uses a *regulated substance* as listed in this paragraph (c): . . .

(15) Effective January 1, 2027, refrigerated food processing and dispensing equipment with a remote condenser using any of the following: . . .
R-410A . . ."⁹

Section 84.3 (cross-referenced in section 84.52) of title 40 of the Code of Federal Regulations defines "regulated substance" as follows:

Regulated substance means a hydrofluorocarbon listed in the table contained in subsection (c)(1) of the AIM Act and a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3). A current list of regulated substances can be found in appendix A to this part.

But R-410A is not "listed in the table contained in subsection (c)(1) of the AIM Act," is not "a substance included as a regulated substance by the Administrator under the authority granted in subsection (c)(3)," and is not on the "current list of regulated substances . . . in appendix A to this part." So, 40 CFR 84.54(a)(8), (a)(9), and (c)(15) cannot apply to self-contained automatic commercial ice machines, self-contained automatic commercial ice machines, or refrigerated food processing and dispensing equipment with a remote condenser that use R-410A.

EPA might have been able to accomplish its environmental goal by appropriately regulating R-32 and R-125 in its regulations (the two AIM-listed "regulated substances" that make up R-410A) in place of of regulating "R-410A," but that is not what EPA did. And EPA's citing "R-410A" is not "close enough for government work" when the AIM Act specified that EPA could not designate another regulated

⁹ 40 CFR 84.54 also has a number of provisions that do not identify specific HFCs by name, but instead prohibit a particular use of an HFC that has more than a specified global warming potential. Thus, for example, section 84.54(c) provides: "(c) No person may install any system, nor have any such system be installed through their position as a designer, owner, or operator of that system, in the following sectors or subsectors that uses a *regulated substance* as listed in this paragraph (c): (1) Effective January 1, 2025, residential or light commercial air conditioning or heat pump systems using a regulated substance, or a blend containing a regulated substance, with a global warming potential of 700 or greater, except for variable refrigerant flow air-conditioning and heat pump systems[.]" Since EPA appears to think (incorrectly) that R-410A is a "regulated substance," and R-410A has a global warming potential of 2088, Slide 17 of Rajan Rajendran, "Refrigerants Update," Emerson Climate Technologies, Inc. (September 19, 2011), available at <https://www.epa.gov/sites/default/files/documents/RefrigerantUpdates.pdf> (visited September 2, 2025), EPA probably thinks that section 84.54(c) currently prohibits installation of a residential HVAC system that uses R-410A.

substance unless it followed the specified notice-and-comment procedure and when the law imposes criminal penalties for violation of section 84.54.¹⁰

The Biden Administration HFC Final Rule treats R-410A as if EPA had designated R-410A to be a “regulated substance,” but EPA did not follow the procedure specified in section 103(c)(3) for doing so. Therefore, R-410A is not a regulated substance under the AIM Act, and the Biden Administration HFC Final Rule is void to the extent it regulates R-410A.

3. EPA Should Revoke Its Purported Regulation of R-410A

In 2010 EPA decided to ban refrigerant R-22 (commonly called Freon) as ozone-depleting and businesses dutifully replaced Freon most commonly with R-410A in applications such as residential heating, ventilating, and air conditioning (HVAC) systems. Now EPA wants to cut down greatly on use of R-410A because EPA finds that it has undesirable global warming potential. The Biden Administration HFC Final Rule implementing the AIM Act creates significant challenges for businesses with HVAC or other systems that use R-410A and especially for small businesses servicing these systems.

Letters submitted during the rule’s comment period highlighted the costs the rule imposes on small businesses. An independent refrigeration distributor said that the cost for “a homeowner to replace a single coil may be about \$1,500” but that under the new rule, homeowners might need to spend “\$10k to replace everything.”¹¹ The National Automatic Merchandising Association also submitted a comment expressing concern over the cost-effectiveness of replacement technologies, especially for small businesses. They pointed out that “these machines cost thousands of dollars to produce,” and that manufacturers will struggle to handle an increase in demand effectively.¹² The Regulatory Impact Analysis (RIA) confirms the concerns raised in the

¹⁰ Section 103(k)(1)(C) in the AIM Act appears to make the criminal penalties of the Clean Air Act applicable to violations of the regulations issued under section 103(k)(1)(A) to implement the AIM Act. In writing regulations enforceable by criminal penalties, the government must give fair warning of what conduct it prohibits, *Johnson v. United States*, 576 U.S. 591, 595 (2015) (“Our cases establish that the Government violates this guarantee by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.”). Enforcement of a criminal penalty against a person for making a prohibited use of “R-410A,” when the agency that made the regulation had no power to prohibit use of “R-410A,” but had power, which it did not exercise, to prohibit the same use of R-32 and R-125 denies due process, especially to the vast majority of people who are not chemists who may know that R-32 and R-125 make up R-410A.

¹¹ Comment letter of Christopher Hendricks, EPA-HQ-OAR-2021-0643-0063, available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0643-0104>.

¹² Comment letter of the National Automatic Merchandising Association at 3, EPA-HQ-OAR-2021-0643-0063, available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0643-0217>.

comment letters, indicating that the rule will impose compliance costs exceeding \$500 million by 2025.¹³

EPA rather callously stated that “this is not the first transition for most of the sectors and subsectors covered by this rule”¹⁴—no doubt referring to the ban on R-22 that moved many to use of R-410A. However, the fact that businesses have borne the costs of past mandates does not mean they accept or can sustain an endless series of future mandated transitions and expenses. Instead, EPA should protect such businesses from further disruptions.

Small businesses rely on HVAC systems that grow more costly to own and operate as time passes because of increases in the price of R-410A caused directly by EPA regulations. Even a small leak can cost a small business owner thousands of dollars. Small businesses cannot afford to subsidize the government’s incremental environmentalism when they are just trying to stay afloat.

Considering the impact on small businesses, EPA should have conducted a regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA).¹⁵ Instead, the agency claimed that the rule would not have a significant economic impact on a substantial number of small entities.¹⁶ This analysis completely overlooked the significant costs placed on small businesses that use HFC-based products like R-410A and thus wrongly certified that there was no impact, bypassing the RFA. However, the RFA clearly states that, during rulemaking, agencies must carefully evaluate small business needs.¹⁷ A proper regulatory flexibility analysis would have revealed the actual adverse economic effects of this phasedown schedule, in line with the RFA’s mandates.

* * * * *

¹³ EPA, “Regulatory Impact Analysis Addendum: Impact of the Technology Transitions Rule” (September 2023), at 10 (Technology Transitions High Additionality Case Incremental Compliance Costs/Savings (millions 2020\$): \$532), available in docket for the Biden Administration HFC Final Rule (EPA-HQ-OAR-2021-0643).

¹⁴ 88 *Fed. Reg.* at 73133, col. 3.

¹⁵ 5 U.S.C. 601-612.

¹⁶ 88 *Fed. Reg.* at 73204, col. 2.

¹⁷ Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 601 note. In paragraph 2(a)(4) of the RFA, Congress declared that “the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity” Congress also noted in paragraph 2(a)(6) of the RFA that “the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation”

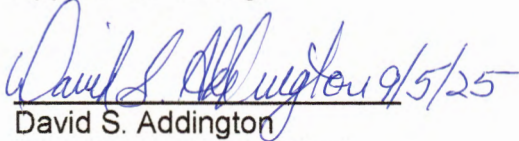
Given the procedural and substantive defects of the Biden Administration HFC Final Rule with respect to R-410A, the substantial harm the Rule causes small businesses, and the discretion ("may by rule restrict") given to the EPA Administrator under section 103(i)(1) in the AIM Act not to regulate, NFIB petitions that EPA amend Subpart B in Part 84 of Title 40 of the Code of Federal Regulations to revoke regulations issued under the AIM Act that regulate or purport to regulate the refrigerant R-410A. EPA should leave the refrigerant R-410A for use according to the needs of the marketplace.

Sincerely,



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Approved for filing:



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