6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA-HQ-OAR-2021-0289; FRL-10805-01-OAR]

Notification of Determination: Petitions Denied under Subsection (i) of the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition Denials.

SUMMARY: The purpose of this notification is to alert the public to and provide explanation of the Environmental Protection Agency's (EPA) decisions to deny two petitions submitted under the American Innovation and Manufacturing Act of 2020. The first petition requests that the Environmental Protection Agency provide an exemption for the use of certain regulated substances in pain relief sprays and the second petition requests that the Agency subject gas canisters of certain regulated substances to import restrictions established under the HFC Allocation Framework Rule. These petitions were submitted to the Agency pursuant to its authority under the Act to promulgate rules that 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.

DATES: EPA denied the two petitions referenced in this notification via letters signed on March 21, 2023. Any petitions for review of the final letters denying the petitions for rulemaking must be filed in the Court of Appeals for the appropriate circuit on or before [insert 60 days from publication date].

FOR FURTHER INFORMATION CONTACT: Allison Cain, Stratospheric Protection Division, Office of Atmospheric Programs (6205A), Environmental Protection Agency, telephone number: 202-564-1566; email address: cain.allison@epa.gov. You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Subsection (i) of the American Innovation and Manufacturing Act of 2020 (AIM Act or the Act),[1] entitled "Technology Transitions," provides that 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. Under subsection (i)(3) a person may petition the Environmental Protection Agency (EPA) to promulgate a rule for the restriction on the use of a regulated substance[2] in a sector or subsector, and the Act states that the petition shall include a request that the Administrator negotiate with stakeholders in accordance with subsection (i)(2)(A). Once EPA receives a petition, the AIM Act directs the Agency to make petitions publicly available within 30 days of receipt and to grant or deny the petition within 180 days of receipt. If the EPA denies a petition, the Agency shall publish in the *Federal Register* an explanation of the denial.

II. Which petitions is EPA denying?

The Agency received two petitions that were submitted under subsection (i) of the AIM Act. The first petition requests that the Environmental Protection Agency provide an exemption for the use of certain regulated substances in pain relief sprays and the second petition requests that the Agency subject gas canisters of certain regulated substances to import restrictions established under the HFC Allocation Framework Rule.[3] These petitions were submitted by the Gebauer Company (hereby, "Gebauer") on September 23, 2022, and A.V.W. Inc (hereby, "AVW") on December 15, 2022, respectively. After reviewing these petitions and considering,

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[1] The AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), and is codified at 42 U.S.C. 7675.

[2] The Act provides that "regulated substance" refers to those substances included in the list of regulated substances in subsection (c)(1) of the Act and those substances that the Administrator has designated as a regulated substance under subsection (c)(3). Subsection (c)(1) lists 18 saturated hydrofluorocarbons (HFCs), and by reference their isomers not so listed, as regulated substances. This is the current list of regulated substances, as no additional substances have been designated as regulated substances under subsection (c)(3).

[3] Links to copies of these petitions and other petitions received to date can be found in the table at *https://www.epa.gov/climate-hfcs-reduction/petitions-under-aim-act*. EPA has a docket (Docket ID EPA-HQ-OAR-2021-0289), where all subsection (i) petitions are posted, and where the public may submit information related to those petitions.

to the extent practicable in light of the information provided in the submissions, the "Factors for Determination" in subsection (i)(4) of the AIM Act, EPA denied the two petitions.[4]

The petition submitted by Gebauer sought an "Acceptable Use Exemption" for HFC-245fa and HFC-134a for use as a "pain relief spray." The petition noted these HFCs are currently used by Gebauer to formulate its FDA-cleared medical devices, which provide temporary pain relief or pain prevention by cooling tissue surfaces. EPA explained in its denial that after Gebauer's submitted its petition, the Agency issued a proposed rule titled, "Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act of 2020" (87 FR 76738, December 15, 2022). This rule proposed restrictions on the use of HFCs in aerosol products, among others, and specifically addressed the need for an exemption for HFC use in "pain relief sprays." Because EPA has already initiated a rulemaking that addresses the HFC use covered in this petition, EPA denied the petition as moot. Granting a petition initiates a rulemaking where the Agency will examine restrictions on the use of HFCs covered by the petition. EPA is in the process of assessing whether to allow for continued use of HFCs in "pain relief sprays," factoring in, to the extent practicable, the considerations provided in AIM Act subsection (i)(4), in the current rulemaking. Initiating a new rulemaking on this question while the current rulemaking is ongoing is therefore unnecessary. This denial does not address the merits of the request submitted by Gebauer.[5]

The petition submitted by AVW requested that EPA "subject the importation of small gas canisters containing 100% HFC-152a to the same import regulations that govern bulk shipments of HFC-152a." As explained in its denial, EPA already considered and decided the issue of whether aerosol cans should be treated as bulk in the HFC Allocation Framework Rule.[6]

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[4] The letters denying the two petitions are available in the docket for this action.
[5] EPA notes the petition failed to satisfy the statutory requirement to address negotiated rulemaking. See AIM Act subsection (i)(3)(A).
[6] The HFC Allocation Framework Rule, also referred to as the "Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act," can be found in the *Federal Register* (86 FR 55116).

Therefore, to the extent that this petition was a request to alter how allowances are expended under that program, EPA denied the petition on the basis that the request was not properly made under subsection (i) of the AIM Act. Subsection (i) authorizes the EPA to promulgate restrictions specific to uses of HFCs in particular sectors and subsectors. The AVW petition referenced "packaged dusters" as one use for EPA to restrict under subsection (i). The December 15, 2022 proposed rule (87 FR 76738) proposed restrictions on the use of HFCs in aerosol products, among others, and specifically proposed restrictions on the use of dusters. Because EPA had already initiated a rulemaking that addressed the use and sector requested by the petition, EPA therefore also denied this aspect of the petition as moot.[7]

III. What happens after EPA denies a petition?

Where the Agency denies a petition submitted under subsection (i) of the AIM Act, the statute requires that the Administrator shall publish in the *Federal Register* an explanation of the denial per subsection (i)(3)(C), which the Agency is doing through this notification.

Judicial Review

The AIM Act provides that certain sections of the Clean Air Act (CAA) "shall apply to" the AIM Act and actions "promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA]." 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Under section 307(b)(1) any petitions for review of these actions denying the petitions must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notification is published in the *Federal Register*.

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

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[7] EPA notes the petition failed to satisfy the statutory requirement to address negotiated rulemaking. See AIM Act subsection (i)(3)(A).