



Comments from the Environmental Investigation Agency on the Potential Amendments to the Cap-and-Trade Regulation

The Environmental Investigation Agency (EIA) appreciates this opportunity to submit comments to the California Air Resources Board (CARB) on the potential amendments to the Cap-and-Trade Regulation relevant to the Compliance Offset Program and market rules. EIA is an independent campaigning organization based in Washington D.C., working worldwide to protect the global climate, forests, and threatened species with intelligence, for the benefit of people and wildlife. We have undertaken groundbreaking investigations into the illegal trade in ozone-depleting substances (ODS) and other fluorinated substances such as hydrofluorocarbons (HFCs) since the mid-1990s and have been closely involved in international ozone and climate negotiations as well as domestic policy regarding these substances for several decades.

Inclusion of Additional ODS and HFC Refrigerants Eligible for Destruction Offsets

These comments focus on the proposal to expand the list of eligible ODS refrigerants in the Compliance Offset Protocol ODS Projects Subchapter 2.2.1(b)¹ as suggested by the Offset Protocol Task Force to include R-22, R-134a, R-125, R-32, and R-143a.² **EIA is strongly opposed to including these substances as eligible for offset destruction credits at this time.** Except for HCFC-22, these substances are not ODS and are not subject to the current phaseout in the U.S. There is no phase-out of HFCs in place, rather a phase-down that allows production into the future. Furthermore, HCFC-22 continues to be produced in significant and growing quantities for feedstock use in making other fluorocarbons, and recovered HCFC-22 as a feedstock instead of more virgin production could be used to reduce the need for additional HCFC-22 feedstock production.

The inclusion of HFCs and HCFCs also disincentivizes establishing polluter pay policies like EPR (Extended Producer Responsibility) for fear of losing additionality.

Additionality Issues

Carbon markets are not suited to dealing with HFCs due to their continued production, and the inclusion of HFCs and HCFC-22 as “ODS” eligible for destruction presents fundamental issues with additionality. The Compliance Offset Protocol states that to meet the additionality requirement, “eligible offsets must be generated by projects that yield additional GHG reductions that exceed any GHG reductions otherwise required by law or regulation or any GHG reduction that would otherwise occur in a conservative business-as-usual scenario.”³ Firstly, there is already a legal requirement and steep penalties for venting these gases through section 608 of the Clean Air Act.⁴ Secondly, both the California Air Resources Board and the federal government have proposed requirements for some equipment to use reclaimed refrigerant under

¹ CARB. Compliance Offset Protocol Ozone Depleting Substances Projects. p.8. (November 2014).

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2014/capandtrade14/ctodsprotocol.pdf>

² Compliance Offsets Protocol Task Force Final Recommendations. p.187. (March 2021).

https://ww2.arb.ca.gov/sites/default/files/2021-03/offsets_task_force_final_report_030221.pdf

³ CARB. Compliance Offset Protocol Ozone Depleting Substances Projects. p.11. (November 2014).

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2014/capandtrade14/ctodsprotocol.pdf>

⁴ EPA. Section 608 of the Clean Air Act: Stationary Refrigeration and Air Conditioning. (2017).

https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/section_608_of_the_clean_air_act.pdf

the AIM Act, Subsection H rule.⁵ Any destruction does not necessarily equate to additional emission reductions if that HFC could instead be reused in new equipment thereby replacing the need for new production. Conversely, a broader compliance market for ODS and HFC destruction projects could divert scarce recovered refrigerant away from reclamation to destruction thereby reducing the supply of reclaimed refrigerant for use under CARB's policies. HFCs that are recovered during this period of the phasedown should be reclaimed to offset the need for virgin production of HFCs which in turn will support the acceleration of the phasedown and proposed Subsection H reclaim use requirements.

HCFC-22 Reclaim for Feedstock Uses

A similar case exists for HCFC-22 where destruction for carbon offsets is not necessarily additional. All the potential additional gases are in continued production, including HCFC-22, which is still produced as a feedstock for making products including chloroform, HFO-1234yf, and Teflon.⁶ Since it is still widely produced in the United States, recovered HCFC-22 could be used as a feedstock rather than destroyed in order to reduce the amount of virgin HCFC-22 produced. In other words, destroying HCFC-22 could lead to more emissions due to the production of more HCFC-22 for feedstock use. The most widely used feedstock is HCFC-22 with estimated global annual emissions of feedstock production and use at over 50 million tonnes of CO₂e.⁷ There is still considerable U.S. HCFC-22 production and reclaimed gas can also reduce the need for virgin production overseas and US imports.

EIA appreciates the opportunity to comment on these potential amendments to the Compliance Offset Program for ODS. We strongly encourage CARB to refrain from including the proposed HFCs and HCFC substances in the list of eligible ODS refrigerants for offset credits, as these substances are still being produced domestically and do not represent truly additional emissions reductions. Offsets were conceived of as a last resort,⁸ not a primary means of achieving emission reductions. Applying gases still in production to an offset program is therefore in conflict with best practices to reach global climate goals. EIA instead urges the state of California to pursue an EPR program and other requirements to ensure the sustainable and proper end-of-life management of these gases.

Sincerely,

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⁵ EPA. Proposed Rule: Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020. (2023).

<https://www.federalregister.gov/documents/2023/10/19/2023-22526/phasedown-of-hydrofluorocarbons-management-of-certain-hydrofluorocarbons-and-substitutes-under>

CARB. § 95376. Refrigerant Recovery, Reclaim, and Reuse Requirements (R4 Program).

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hfc2020/frorevised.pdf#page=41>

⁶ EIA. F-Gases at the Fenceline, Exposing The Fluorochemical Production Sector's Undisclosed Emissions. Figure 10: Examples of Fluorochemical Production Pathways with Significant Emission. (October 2023).

<https://us.eia.org/wp-content/uploads/2023/10/EIA-GasmetReport-FINAL-3sm.pdf>. Based on TEAP May 2023 Progress Report - Volume 1, Section 5.3.3? <https://ozone.unep.org/node/13636>.

⁷ EIA. F-Gases at the Fenceline, Exposing The Fluorochemical Production Sector's Undisclosed Emissions. Table 4: Estimated Annual Emissions of ODS Feedstock Production and Use. (October 2023). Emissions and average GWP of 1663 derived from MCTOC, 2022: Table 2.9.

⁸ ISO (the International Organization for Standardization). Net Zero Guidelines. (2022).

<https://www.iso.org/obp/ui/en/#iso:std:iso:iwa:42:ed-1:v1:en>