

## Appendix A

### PROPOSED REGULATION ORDER

#### Proposed Amendments to the Low Carbon Fuel Standard Regulation

Amend sections 95481, 95483, 95485, 95486.1, 95487, 95491, 95495, title 17, California Code of Regulations, to read as follows:

(Note: The proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text. The symbol “\* \* \* \*” means that intervening text not amended is not shown. [Bracketed text] is not part of the proposed amendments.)

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, 41510, 41511, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516, 41510, 41511 and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

# LOW CARBON FUEL STANDARD

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## PROPOSED REGULATION ORDER

Amend sections 95481, 95483, 95485, 95486.1, 95487, 95491, and 95495 title 17, California Code of Regulations, to read as follows:

### Subchapter 10. Climate Change Article 4. Regulations to Achieve Greenhouse Gas Emission Reductions Subarticle 7. Low Carbon Fuel Standard

\* \* \* \*

#### § 95481. Definitions and Acronyms.

- (a) *Definitions.* For the purposes of sections 95480 through 95503, the definitions in Health and Safety Code sections 39010 through 39060 shall apply, except as otherwise specified in this section or sections 95482 through 95503:

\* \* \* \*

(21) “Blendstock” [No Change]

(22) “Borrowed Credits” means LCFS base electricity credits that are issued prior to the quarter in which credit-generating transactions have occurred. Borrowed credits can only be sold via the Credit Clearance Market, and only retired for the purpose of meeting compliance obligation.

(23) “Borrowed Credit Window” is the six-year period during which borrowed credits can be issued and after which borrowed credits are recouped.

~~(22)~~ “Brown Grease” [No Change]

~~(23)~~ “Business Partner” [No Change]

~~(24)~~ “Carbon Intensity (CI)” [No Change]

~~(25)~~ “Cargo Handling Equipment” [No Change]

~~(26)~~ “CHAdeMO Connector” [No Change]

(29) “Clean Fuel Reward” is a statewide program established by EDUs to provide a reduction in price on new light duty EV purchases or leases in California. The Clean Fuel Reward is funded exclusively through LCFS proceeds generated by EDUs from electricity fuel.

(~~27~~30) “Compressed Natural Gas (CNG)” [No Change]

(~~28~~31) “Conflict of Interest” [No Change]

(~~29~~32) “Contract Description Code” [No Change]

(~~30~~33) “Conventional Jet Fuel” [No Change]

(~~31~~34) “Correctable Errors” [No Change]

(~~32~~35) “Credit Generator” [No Change]

(~~33~~36) “Credits” and “Deficits” [No Change]

(~~34~~37) “Day” [No Change]

(~~35~~38) “Deficit Generator” [No Change]

(~~36~~39) “Diesel Fuel” [No Change]

(~~37~~40) “Direct Current Fast Charging” [No Change]

(41) “Disadvantaged Communities” means communities that are defined by California Health and Safety Code section 39711(a) that are identified based on geographic, socioeconomic, public health, and environmental hazard criteria, and may include, but are not limited to, either of the following: (1) areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation or (2) areas with concentrations of people that are of low-income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

(~~38~~42) “Distiller’s Corn Oil” [No Change]

(~~39~~43) “Distiller’s Sorghum Oil” [No Change]

(44) “Drayage Trucks” means vehicles as defined in California Code of Regulations, title 13, section 2027(c).

(~~40~~45) “E100,” also known as “Denatured Fuel Ethanol,” [No Change]

(~~41~~46) “Electrical Distribution Utility” means an entity that owns or operates an electrical distribution system, including:

- (A) a public utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility, or IOU);
1. “Large Investor-owned Utility” means an IOU with annual load served equal to or more than 10,000 Gigawatt-hours (GWh) in 2017;
  2. “Medium Investor-owned Utility” means an IOU with annual load served of less than 10,000 GWh and equal to or more than 700 GWh in 2017;
  3. “Small Investor-owned Utility” means an IOU with annual load served equal to or less than 700 GWh in 2017.
- or
- (B) a local publicly-owned electric utility (POU) as defined in Public Utilities Code section 224.3;
1. “Large Publicly-owned Utility” means a California POU with annual load served equal to or more than 10,000 Gigawatt-hours (GWh) in 2017;
  2. “Medium Publicly-owned Utility” means a California POU with annual load served of less than 10,000 GWh and equal to or more than 700 GWh in 2017;
  3. “Small Publicly-owned Utility” means a California POU with annual load served of less than 700 GWh in 2017.
- or
- (C) an Electrical Cooperative (COOP) as defined in Public Utilities Code section 2776.

(4247) “Electric Cargo Handling Equipment (eCHE)” [No Change]

(4348) “Electric Power for Ocean-going Vessel (eOGV)” [No Change]

(4449) “Electric Transport Refrigeration Units (eTRU)” [No Change]

(4550) “Electric Vehicle (EV),” [No Change]

(4651) “Energy Economy Ratio (EER)” [No Change]

(4752) “Environmental Attribute” [No Change]

(4853) “Executive Officer” [No Change]

(4954) “Exchange” [No Change]

(5055) “Export” [No Change]

- (~~51~~56) “Feedstock First Collection Point” [No Change]
- (~~52~~57) “Feedstock Transport Mode” [No Change]
- (~~53~~58) “Final Distribution Facility” [No Change]
- (~~54~~59) “Finished Fuel” [No Change]
- (~~55~~60) “First Fuel Reporting Entity” [No Change]
- (~~56~~61) “Fish Oil” [No Change]
- (~~57~~62) “Fixed Guideway System” [No Change]
- (~~58~~63) “Fossil CNG” [No Change]
- (~~59~~64) “Fossil LNG” [No Change]
- (~~60~~65) “Fossil L-CNG” [No Change]
- (~~61~~66) “Fuel Pathway” [No Change]
- (~~62~~67) “Fuel Pathway Applicant” [No Change]
- (~~63~~68) “Fuel Pathway Code” [No Change]
- (~~64~~69) “Fuel Pathway Holder” [No Change]
- (~~65~~70) “Fuel Production Facility” [No Change]
- (~~66~~71) “Fuel Reporting Entity” [No Change]
- (~~67~~72) “Fuel Transport Mode” [No Change]
- (~~68~~73) “Green Tariff” [No Change]
- (~~69~~74) “GTAP” or “GTAP Model” [No Change]
- (~~70~~75) “Heavy-Duty Vehicle” [No Change]
- (76) “Holdback Credits” means the portion of base residential EV charging credits issued to an EDU that are not contributed by the EDU to the Clean Fuel Reward program.
- (~~71~~77) “Home Fueling” [No Change]

- (~~7278~~) “Hybrid Electric Vehicle (HEV)” [No Change]
- (~~7379~~) “Hydrogen Station Capacity Evaluator” or “HySCapE” [No Change]
- (~~7480~~) “Import” [No Change]
- (~~7581~~) “Importer” [No Change]
- (~~7682~~) “Independent Reviewer” [No Change]
- (~~7783~~) “Ineligible Specified Source Feedstock” [No Change]
- (~~7884~~) “Intermediate Calculated Value” [No Change]
- (~~7985~~) “Intermediate Facility” [No Change]
- (~~8086~~) “LCFS Credit Broker” [No Change]
- (~~8187~~) “Lead Verifier” [No Change]
- (~~8288~~) “Life Cycle Greenhouse Gas Emissions” [No Change]
- (~~8389~~) “Light-Duty Vehicle” and “Medium-Duty Vehicle” [No Change]
- (~~8490~~) “Liquefied Compressed Natural Gas (L-CNG)” [No Change]
- (~~8591~~) “Liquefied Natural Gas (LNG)” [No Change]
- (~~8692~~) “Liquefied petroleum gas (LPG or propane)” [No Change]
- (~~8793~~) “Load-Serving Entity” [No Change]
- (~~8894~~) “Low-Carbon Intensity (Low-CI) Electricity” [No Change]
- (~~8995~~) “Low-Complexity/Low-Energy-Use Refinery” [No Change]
- (96) “Low-Income Communities” means census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Health and Safety Code section 50093.
- (~~9097~~) “Mandatory Reporting Regulation” or “MRR” [No Change]

- (~~94~~98) “Material Misstatement of Operational Carbon Intensity” [No Change]
- (~~92~~99) “Material Misstatement of Low-Complexity/Low-Energy-Use (LC/LEU) Refinery Data” [No Change]
- (~~93~~100) “Material Misstatement of Project Data” [No Change]
- (~~94~~101) “Material Misstatement of Quarterly Fuel Quantity” [No Change]
- (~~95~~102) “Modified Nelson Complexity Score” [No Change]
- (~~96~~103) “Motor Vehicle” [No Change]
- (~~97~~104) “Multi-fuel Vehicle” [No Change]
- (~~98~~105) “Multi-family Residence” [No Change]
- (~~99~~106) “Natural Gas” [No Change]
- (~~400~~107) “Nelson Complexity Score” [No Change]
- (~~404~~108) “Nonconformance” [No Change]
- (~~402~~109) “Ocean-Going Vessel” [No Change]
- (~~403~~110) “On-road” [No Change]
- (~~404~~111) “OPGEE” or “OPGEE Model” [No Change]
- (~~405~~112) “Opt-in Fuel Reporting Entity” [No Change]
- (~~406~~113) “Opt-in Project” [No Change]
- (~~407~~114) “Over-the-Counter” [No Change]
- (~~408~~115) “Performance Review” [No Change]
- (~~409~~116) “Petroleum Intermediate” [No Change]
- (~~440~~117) “Petroleum Product” [No Change]
- (~~444~~118) “Plug-In Hybrid Electric Vehicle (PHEV)” [No Change]
- (~~442~~119) “Positive Validation Statement” and “Positive Verification Statement” [No Change]



- (~~413~~120) "Private Access Fueling Facility" [No Change]
- (~~414~~121) "Producer" [No Change]
- (~~415~~122) "Product Transfer Document (PTD)" [No Change]
- (~~416~~123) "Project Operator" [No Change]
- (~~417~~124) "Public Access Fueling Facility" [No Change]
- (~~418~~125) "Qualified Positive Validation Statement" and "Qualified Positive Verification Statement" [No Change]
- (~~419~~126) "Rack" [No Change]
- (~~420~~127) "Reasonable Assurance" [No Change]
- (~~421~~128) "Regulated Entity" [No Change]
- (~~422~~129) "Renewable Fuel Standard" [No Change]
- (~~423~~130) "Renewable Hydrocarbon Diesel" [No Change]
- (~~424~~131) "Renewable Hydrogen" [No Change]
- (~~425~~132) "Renewable Propane" [No Change]
- (~~426~~133) "SAE CCS Connector" [No Change]
- (~~427~~134) "Shore Power" [No Change]
- (~~428~~135) "Single-family Residence" [No Change]
- (~~429~~136) "Site-specific Data" and "Site-specific Input" [No Change]
- (~~430~~137) "Specified Source Feedstocks" [No Change]
- (~~431~~138) "Staff" [No Change]
- (~~432~~139) "Station Operational Status System (SOSS)" [No Change]
- (~~433~~140) "Steam Quality" [No Change]
- (~~434~~141) "Technical Corn Oil" [No Change]
- (~~435~~142) "Technical Sorghum Oil" [No Change]

- (~~136~~143) "Total Obligated Amount (TOA)" [No Change]
- (~~137~~144) "Total Amount (TA)" [No Change]
- (~~138~~145) "Transaction Date" [No Change]
- (~~139~~146) "Transaction Quantity" [No Change]
- (~~140~~147) "Transaction Type" [No Change]
- (~~141~~148) "Transmix" [No Change]
- (~~142~~149) "Transportation Fuel" [No Change]
- (~~143~~150) "Uncertainty" [No Change]
- (~~144~~151) "Used Cooking Oil" [No Change]
- (~~145~~152) "Validation" [No Change]
- (~~146~~153) "Validation Statement" [No Change]
- (~~147~~154) "Verification" [No Change]
- (~~148~~155) "Verification Body" [No Change]
- (~~149~~156) "Verification Services" [No Change]
- (~~150~~157) "Verification Statement" [No Change]
- (~~151~~158) "Verification Team" [No Change]
- (~~152~~159) "Verifier Review" [No Change]
- (~~153~~160) "Yard Truck" [No Change]
- (~~154~~161) "Yellow Grease" [No Change]

\* \* \* \*

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, 41510, 41511, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516, 41510, 41511 and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil*

*and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

\* \* \* \*

### § 95483. Fuel Reporting Entities.

\* \* \* \*

(c) *For Electricity Used as a Transportation Fuel.*

(1) *Residential EV Charging.* For on-road transportation fuel supplied for electric vehicle (EV) charging in a single- or multi-family residence, the following entities are the credit generators:

(A) *Base Credits.* The EDU or its designee is the credit generator for base credits for the portion of residential EV charging assigned to that EDU by the Executive Officer. The EDU may authorize a third party to sell the EDU's credits. The EDU or its designee must meet the requirements set forth in paragraphs 1. ~~and 2.~~ through 6. below, and paragraphs 1. through 5. in section 95491(d)(3)(A).

Within 30 days of the effective date of this subarticle for large and medium IOUs and POUs, or by December 31, 2022 for small IOUs and POUs, or within 30 days of opting into the LCFS program, whichever is later, each EDU seeking eligibility to generate base credits must demonstrate, by attestation or entrance into any applicable Clean Fuel Reward program (as defined in section 95481(a)(29)) governance agreement, its ability to contribute allocated credits to the Clean Fuel Reward program consistent with CPUC approval of Pacific Gas and Electric's, Southern California Edison's, and San Diego Gas and Electric's filing(s). The Executive Officer may revoke the eligibility of an EDU to generate base credits if it fails to make this required demonstration or if the EDU withdraws or has been removed as a party to the governance agreement. All base credits for any EDU that is not eligible to receive base credits pursuant to this provision will be allocated to the Clean Fuel Reward program pursuant to section 95486.1(c)(1)(A) paragraph 2. An EDU must submit any request to change their base credit generation eligibility status for the Clean Fuel Reward program to the Executive Officer by the September 30 prior to the start of the effective credit generation year.

1. Upon California Public Utilities Commission (CPUC) approval of Pacific Gas and Electric's, Southern California Edison's, and San Diego Gas and Electric's filing(s) to

initiate a ~~statewide point of purchase rebate~~ Clean Fuel Reward program, all opt-in EDUs must contribute a minimum percent of base credits for residential EV charging (or net base credit proceeds) to provide a ~~statewide point of purchase rebate~~ Clean Fuel Reward funded exclusively by LCFS credit proceeds, as per the contribution tabulated below:

<b>EDU category</b>	<b>% Contribution in years 2019 through 2022</b>	<b>% Contribution in years 2023 and subsequent years</b>
<u>Large</u> Investor-owned Utilities	67%	67%
Large Publicly-owned Utilities	35%	45%
Medium Publicly-owned Utilities <u>and Medium Investor-owned Utilities</u>	20%	25%
Small Publicly-owned Utilities <u>and Small Investor-owned Utilities</u>	0%	2%

The Executive Officer will review the implementation of any ~~statewide point of purchase rebate~~ Clean Fuel Reward program, including the actual credit value contribution of each utility to the program, and present a report to the Board by January 1, 2025 with recommendations for further increasing utility contributions to the ~~point of purchase rebate~~ Clean Fuel Reward program.

2. The ~~reward/rebate~~ amounts for any ~~statewide point of purchase rebate~~ Clean Fuel Reward program must be calculated based on the vehicle's battery capacity as tabulated below:

<b>Battery Capacity (kWh)</b>	<b><u>Reward</u><u>Rebate</u> %</b>
$C < 5$	0%
$C = 5$	38.9%

$5 < C < 16$	$\left( 38.9 + \frac{(C - 5)}{11} \times 61.1 \right) \%$
$C \geq 16$	100%

where:

RewardRebate % means the percentage of maximum ~~rebate~~reward a vehicle would receive under the ~~statewide-point of purchase rebate~~Clean Fuel Reward program funded by LCFS credit proceeds. The maximum ~~rebate~~reward is the amount a vehicle with a battery capacity of 16 kWh or greater can receive; and

$C$  means the rated battery capacity of the electric vehicle in kWh.

3. All proceeds from base credits issued pursuant to section 95486.1(c)(1)(A) paragraph 2. must be contributed to any Clean Fuel Reward program.
4. Administrative costs, excluding start-up costs, to support any Clean Fuel Reward program funded by LCFS credit proceeds may not exceed 10 percent of LCFS credit proceeds contributed to the Clean Fuel Reward program annually.
5. Reporting on Clean Fuel Reward Program Implementation. No later than April 30, 2021, and each calendar year thereafter, any administrator of the Clean Fuel Reward program funded by LCFS credit proceeds shall submit a report to the Executive Officer describing the disposition of LCFS Clean Fuel Reward program funds from the previous calendar year. This report shall include:
  - a. The monetary value of LCFS credit proceeds received by the Clean Fuel Reward program; and
  - b. A summary, detailed list, and explanation of administrative costs, including start-up costs, utility overhead costs, and costs for program-related marketing, education, and outreach activities.
6. Restrictions on Use of Holdback Credits. Documentation of adherence to the following restrictions must be included in

the annual report submitted pursuant to section 95491(d)(3)(A)5.

- a. Effective January 1, 2022, at least 30 percent in year one, 40 percent in year two, and 50 percent in subsequent years of holdback credit proceeds must be used to support transportation electrification for the primary benefit of or primarily serving disadvantaged and/or low-income communities and/or low-income individuals eligible under California Alternative Rates for Energy (CARE) or Family Electric Rate Assistance Program (FERA) or the definition of low-income in Health and Safety code section 50093 or the definition of low-income established by a POU's governing body. Administrative costs to support the development and implementation of projects funded by holdback credits may not be counted toward meeting this requirement. These projects may include:
- i. Electrification and battery swap programs for school or transit buses.
  - ii. Additional rebates for low-income individuals, beyond the Clean Fuel Reward and other existing federal and State rebates, for the purchase of new or previously owned EVs, or for the electricity to charge EVs.
  - iii. Electrification of drayage trucks.
  - iv. Investment in EV charging infrastructure, including charging infrastructure in multi-family residences.
  - v. Investment in electric mobility solutions, such as EV sharing, ride hailing, and transit pass programs.
  - vi. Multilingual marketing, education, and outreach on the benefits of EV transportation; basic maintenance and charging of EVs; electric rates designed to encourage EVs; and local, state, and federal incentives available for purchase of EVs.
  - vii. Rebates, credits, or other incentives for nonresidential charging for low-income individuals.

Alternatively, EDUs, in coordination with local environmental justice advocates and local

municipalities, may develop and implement other projects that promote transportation electrification in disadvantaged and/or low-income communities or for low-income individuals. These alternative projects are subject to approval by the Executive Officer. Applications submitted to the Executive Officer must include, and will be evaluated for approval based on, a complete description of the project, demonstration that the project promotes transportation electrification in disadvantaged and/or low-income communities or provides increased access to electric transportation for low-income individuals, and evidence that the project was developed in coordination with local environmental justice advocates and local municipalities.

- b. Holdback credit proceeds must not be used for the following activities:
- i. To meet compliance obligations under the market-based compliance mechanism set forth in title 17, California Code of Regulations Chapter 1, Subchapter 10, article 5 (commencing with section 95800), including the purchase of allowances, for electricity sold into the California Independent System Operator markets.
  - ii. To pay for the costs of MRR, the AB 32 Cost of Implementation Fee Regulation (California Code of Regulations, sections 95200-95207), or the market-based compliance mechanism set forth in title 17, California Code of Regulations Chapter 1, Subchapter 10, article 5 (commencing with section 95800), including the purchase of allowances.
  - iii. To pay for lobbying costs, employee bonuses, shareholder dividends, or costs, penalties, or activities mandated by any legal settlement, administrative enforcement action, or court order. This provision does not prohibit the use of holdback credits to pay costs, penalties, or liabilities associated with the Clean Fuel Reward program in the event that Clean Fuel Reward program funds are insufficient.

- (B) *Incremental Credits.* Any entity, including an EDU, is eligible to generate incremental credits for improvements in carbon intensity

of electricity used for residential EV charging. An entity that generates incremental credits must meet the requirements set forth in paragraphs 2. through 7. in section 95491(d)(3)(A), as applicable.

1. For metered residential EV charging, incremental credits for each FSE may be generated for one of the following:
  - a. Low-CI electricity; or
  - b. Smart charging. In the case of an entity claiming smart charging incremental credits, the credit generator must demonstrate the residence is enrolled in a Time-of-Use rate plan, if offered by the LSE serving the residence.
2. Multiple claims for incremental credits for metered residential EV charging associated with a single FSE ID will be resolved pursuant to the following order of preference:
  - a. The Load Serving Entity (LSE) supplying electricity to the EV associated with the FSE ID and metered data has first priority to claim credits;
  - b. The manufacturer of the EV associated with the FSE ID has second priority; and
  - c. Any other entity has third priority.
3. For non-metered residential EV charging, the EDU is eligible to generate incremental credits for supplying low-CI electricity to the EVs in its service territory.

(C) Borrowed Credits. Large POUs and Large IOUs that opt-in to the LCFS and are eligible to receive base credits per section 95483(c)(1)(A) are the credit generators for borrowed credits.

(2) *Non-Residential EV Charging.*

\* \* \* \*

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571,



38580, 39000, 39001, 39002, 39003, 39515, 39516, and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

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## **§ 95485. Demonstrating Compliance.**

\* \* \* \*

### **(c) *Credit Clearance Market.***

- (1) If a fuel reporting entity does not retire sufficient credits to meet its year-end compliance obligation under section 95485(a), that party must purchase its pro-rata share of credits in the Credit Clearance Market, if one occurs.
  - (A) *If the Credit Clearance Market occurs*, a fuel reporting entity that fails to comply with section 95485(a) is nevertheless in compliance if the party:
    1. Retires all credits in its LRT-CBTS account;
    2. Acquires its Pro-Rata Obligation in the Credit Clearance Market and retires that number of credits by ~~July~~August 31<sup>st</sup> of the year subsequent to the compliance year in question; and
    3. Retires the remaining balance of its annual obligation, with interest, within five years.
  - (B) *If no Credit Clearance Market occurs*, the Executive Officer will record any entity's unmet compliance obligation, and the fuel reporting entity will be deemed in compliance for that year, provided that it has retired all credits in its account, and retires credits equivalent to the Accumulated Deficits, with interest as explained in section 95485(c)(5) below, within five years.
- (2) *Acquisition of "Clearance Market" Credits to Meet an Annual Compliance Obligation.*
  - (A) *Clearance Market Period.* From June 1<sup>st</sup> to July 31<sup>st</sup>, a fuel reporting entity subject to section 95485(c)(1) must acquire credits pledged into the Credit Clearance Market to be retired toward compliance in the previous compliance year. Credits acquired for this purpose are defined as "Clearance Market" credits.

(B) *Use of Clearance Market Credits.* A Clearance Market credit can only be used for the purpose of meeting the fuel reporting entity's compliance obligation from an immediate prior year.

(C) A regulated entity that participates in the Credit Clearance Market for two consecutive years must submit a Compliance Plan to CARB, by August 31 of that second consecutive year, detailing its plan to obtain sufficient credits to meet future annual compliance obligations within a five-year period.

1. *Compliance Plan Requirements.* Submitted Compliance Plans must include the following:

- a. A detailed list of specific business initiatives, strategies, and actions that, if implemented, will achieve a positive credit balance within a five-year timeframe;
- b. Quantification of anticipated LCFS credit generation and acquisition, and discussion of uncertainties and contingencies associated with each listed initiative, strategy, or action;
- c. Quantification of anticipated annual credit shortage and uncertainties over the following five compliance years;
- d. A target timeline for implementing all outlined provisions in the plan;
- e. Data and underlying calculations used to arrive at emission reduction quantification and timelines;
- f. Reference to management policies or practices applicable to implementing listed plan initiatives, strategies, and actions;
- g. List of key roles or positions within the company involved in executing and completing implementation of provisions of the plan;
- h. Data records, including written contracts and associated verbal or electronic records, and invoices used to demonstrate actions underway consistent with the submitted plan;



(3) *Procedure for Selling in the Clearance Market.*

- (A) *Call for Credits.* On the first Monday in April, the Executive Officer shall issue to all fuel reporting entities and credit generators a call for credits to be pledged for sale in the Clearance Market. When calling for credits, the Executive Officer will inform fuel reporting entities of that year's Maximum Price for Credits as determined in subsection (C) below.
- (B) *Pledging Credits for Sale into the Clearance Market.* Fuel reporting entities and credit generators pledging credits for sale into the Clearance Market must report to the Executive Officer in the Annual Compliance Report (on or before April 30<sup>th</sup>) the number of credits they are pledging for sale.
- (C) *Borrowed Credits.* If, for any compliance year, insufficient credits are pledged for sale into the Credit Clearance Market to fully clear outstanding deficits, the Executive Officer shall issue credits equal to the difference between the number of outstanding deficits and the number of credits pledged for sale in the Credit Clearance Market subject to the following:
1. Borrowed credits will be issued to eligible Large IOUs and Large POUs that opt-in to the LCFS and are eligible to receive base credits per section 95483(c)(1)(A). Borrowed Credits will be allocated to eligible utilities based on their pro-rata share of base credits generated in the quarter prior to the issuance of borrowed credits. Borrowed credits must be pledged for sale in the current Credit Clearance Market and may only be sold at the maximum LCFS price per section 95485(c)(3)(D). A minimum portion of proceeds generated from the sale of borrowed credits must be allocated using the 2023 and onward contribution percentages found in section 95483(c)(1)(A) paragraph 1 to the Clean Fuel Reward program.
  2. The first such issuance of borrowed credits will mark the start of the six-year "borrowed credit window," the six-year period during which borrowed credits can be issued and after which borrowed credits are recouped.
  3. *Cumulative Borrowed Credits.* The cumulative number of borrowed credits issued during the borrowed credit window shall not exceed 10 million.

4. Recouping Borrowed Credits. Borrowed credits issued will be recouped from Base credits generated under section 95486.1(c) to each EDU that received borrowed credits on a pro-rata basis, according to the following schedule. The borrowed credits recouped each year will be equally divided across all credit issuance quarters in that year.

<u>Year</u>	<u>Percent of cumulative borrowed credits to be recouped</u>
<u>Year 7</u>	<u>5%</u>
<u>Year 8</u>	<u>10%</u>
<u>Year 9</u>	<u>20%</u>
<u>Year 10</u>	<u>30%</u>
<u>Year 11</u>	<u>35%</u>

where:

Year n refers to the n<sup>th</sup> year from the first year the borrowed credits were issued. For example, if the first borrowed credits are issued in 2021, marking year 1, then the first year that borrowed credits will be recouped would be 2027.

- (GD) *Calculation of the Maximum Price for Credits in the Clearance Market.* The maximum price for credits acquired, purchased or transferred via the Credit Clearance Market shall be set by the following formula:

1. \$200/credit (MTCO<sub>2</sub>e) in 2016.
2. This per credit price shall be adjusted annually by the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.

“Consumer Price Index for All Urban Consumers” means a measure that examines the changes in the price of a basket of goods and services purchased by urban consumers, and is published by the U.S. Bureau of Labor Statistics.

- (DE) *Eligibility to Sell.* Only fuel reporting entities that demonstrated compliance pursuant to section 95485(a) for the prior year can pledge credits for sale into the Clearance Market. Fuel reporting

entities that have an Accumulated Deficit obligation cannot pledge credits for sale into the Clearance Market.

(EF) *Selling in the Clearance Market.* By pledging credits for sale in the Clearance Market, parties agree to the following provisions:

1. Parties pledging credits agree to withhold those credits from sale in the ongoing LCFS credit market until the Executive Officer determines whether a Clearance Market will occur and, if a Clearance Market will occur, until August 1<sup>st</sup>.
2. The Executive Officer will announce whether a Clearance Market will occur by May 15<sup>th</sup> of each year.
3. If the Executive Officer announces that a Clearance Market will not be held that year, parties who have pledged credits to the Clearance Market shall be released from their agreement to withhold those credits from sale in the ongoing LCFS credit market.
4. If a Clearance Market does occur, parties agree to sell or transfer credits at or below the Maximum Price for the pertinent year, until the Clearance Market closes on July 31<sup>st</sup>.
5. Parties that have pledged credits to sell into the Clearance Market cannot reject an offer to purchase pledged credits at the Maximum Price, provided they have not sold or contractually agreed to sell those pledged credits.

(4) *Clearance Market Operation.* The Executive Officer will inform each fuel reporting entity that failed to meet the Annual Compliance obligation under section 95485(a) of its pro-rata share of credits available into the Clearance Market by June 1<sup>st</sup>.

(A) *Calculation of Pro-Rata Shares.* Each fuel reporting entity's pro-rata share of credits available in the Clearance Market will be calculated by the following formula:

Fuel reporting entity A's pro-rata share =

$$\left[ \frac{(A's\ deficit)}{(total\ deficits)} \right] \times [less\ of:\ (pledged\ credits)\ or\ (total\ deficits)]$$

where:

*deficit* refers to one fuel reporting entity's obligation for the compliance year that has not been met pursuant to section 95485(a);

*total deficits* refers to the sum of all fuel reporting entities' obligations for the compliance year that have not been met pursuant to section 95485(a); and

*pledged credits* means the sum of all credits pledged pursuant to section 95485(c)(3).

(B) *Publishing a List of Entities Participating in the Clearance Market.* On or before June 1<sup>st</sup>, the Executive Officer will post the following information on the LCFS web site:

1. The name of each entity that did not meet the requirement of section 95485(a) ~~and the number of credits that each entity is obligated to acquire as their pro-rata share; and~~
2. The name of each entity that has pledged to provide credits for sale in the credit clearance market and the number of credits that each party has agreed to provide; and
3. The name of each entity that received borrowed credits and the total number of borrowed credits pledged for sale in the credit clearance market.

(C) *Clearance Market Operation Period.* If the Executive Officer has determined the Clearance Market will occur, the Clearance Market will operate from June 1<sup>st</sup> through July 31<sup>st</sup>.

\* \* \* \*

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516, and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

\* \* \* \*

**§ 95486.1. Generating and Calculating Credits and Deficits Using Fuel Pathways.**

\* \* \* \*

(c) *Calculation of Credits for EV Charging Using Fuel Pathways.*

(1) *Base Credits to EDUs.* “Base Credit” refers to the credit generated by an EDU for electricity using carbon intensity values provided in the Lookup Table pathway for California Average Grid Electricity and the credit calculation in 95486.1(a).

(A) *Determining Quantity of Electricity.* For calculating base credits to EDUs, the quantity of electricity must be determined as follows:

1. *For Non-Metered Residential EV Charging.* The Executive Officer will use the following method to calculate the quantity of electricity used for non-metered residential charging:

$$Electricity_{Non\ metered}^{EV} = N_{Non\ metered}^{EV} \times Electricity_{Daily\ Average}^{EV} \times T_{reporting\ period}^{days}$$

where:

$Electricity_{Non\ metered}^{EV}$  is the total estimated electricity use in kWh of non-metered residential plug-in electric vehicles assigned to the EDU for the reporting period;

$N_{Non\ metered}^{EV}$  is the total number of non-metered residential EVs within a given EDU service area for the reporting period;

$Electricity_{Daily\ Average}^{EV}$  is the quantity in kWh of electricity used daily for residential charging of EVs, based upon the best data available to the Executive Officer, during the reporting period;

$T_{reporting\ period}^{days}$  is the total number of days in the reporting period.

2. Using the equation in subsection 1. above, the Executive Officer may also calculate, based upon the best data available, the quantity of non-metered electricity used in residential EV charging within service areas for which the EDU has not opted in or is not eligible to receive base credits per section 95483(c)(1)(A). The Executive Officer



may then calculate credits generated from this quantity of electricity and assign a pro-rata share of this quantity of electricity to each EDU that has opted-in using the <sup>EV</sup> ~~Non-metered~~ values as the basis of this proration these credits to Large IOUs and Large POUs that are eligible to receive base credits.

3. *For Metered Residential EV Charging.* The EDU may demonstrate the quantity of electricity for the purposes of calculating the base credits for metered charging at residences through timely submission of Quarterly Fuel Transaction Reports based on meter records.

\* \* \* \*

NOTE: Authority cited: Sections 38510, 38560, 38560.5, 38571, 38580, 39600, 39601, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516 and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

\* \* \* \*

**§ 95487. Credit Transactions.**

(a) *General.* LCFS credits shall not constitute instruments, securities, or any other form of property.

(1) A regulated entity may:

- (A) Retain LCFS credits without expiration for use within the LCFS market; and
- (B) Acquire or transfer LCFS credits. A third-party, which is not a regulated entity or acting on behalf of a regulated entity, may not hold, purchase, sell, or trade LCFS credits, except as otherwise specified in section 95483.

(2) A regulated entity may not:

- (A) Use credits in the LCFS program that are generated outside the LCFS program, including credits generated in other tradeable emission credit programs administered by the California Air Resources Board.
- (B) Borrow or use credits from anticipated future carbon intensity reductions to demonstrate compliance pursuant to section 95485(a). This does not preclude contracting for future delivery of LCFS credits as described in section 95487(b)(1)(B), nor participation in the credit clearance market described in section 95485(c).
- (C) Generate LCFS credits from fuels exempted from the LCFS under section 95482(d) or are otherwise not eligible pursuant to section 95482.
- (D) Sell or transfer credits at a price that exceeds the Maximum Price for credits in the Clearance Market which is set in the section 95485(c)(3)(D).

\* \* \* \*

NOTE: Authority cited: Sections 38510, 38560, 38560.5, 38571, 38580, 39600, 39601, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516 and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

\* \* \* \*

**§ 95491. Fuel Transactions and Compliance Reporting.**

\* \* \* \*

**Table 12. Annual Compliance Calendar.**

February 14	Upload all Q4 fuel transactions data in the LRT-CBTS and begin any needed reconciliation with business partners; Electrical Distribution Utility (EDU) that has opted into LCFS provide the data relevant to the calculation of base credits for non-metered EV charging for the prior quarter
March 31	Submit final Q4 fuel transactions report; Submit Q4 Crude Oil Reports (MCON Reports)
March 31	Annual Fuel Pathway Reports are due to the Executive Officer
April 30	Submit final Annual Compliance Report for preceding year; demonstrate compliance; voluntary pledge of credits for sale into Credit Clearance Market (CCM)
<u>April 30</u>	<u>Compliance Plan Implementation Report Due if entity has an Approved Compliance Plan</u>
April 30	Annual Crude Oil Reports (MCON Reports) are due to the Executive Officer
May 15	Upload all Q1 fuel transactions data in the LRT-CBTS and begin any needed reconciliation with business partners; EDU that has opted into LCFS provide the data relevant to the calculation of base credits for non-metered EV charging for the prior quarter
May 15	Executive Officer announces whether CCM will occur
June 1	Executive Officer posts list of CCM buyers and sellers
June 1	CCM opens and in effect for June and July
June 30	Submit final Q1 fuel transactions report; Submit Q1 Crude Oil Reports (MCON Reports)
July 31	CCM for prior year closes
August 14	Upload all Q2 fuel transactions data in the LRT-CBTS and begin any needed reconciliation with business partners; EDU that has opted into LCFS provide the data relevant to the calculation of base credits for non-metered EV charging for the prior quarter

August 31	Entities that bought and sold credits in the CCM submit amended Annual Compliance Report
<u>August 31</u>	<u>Entities that participated in two consecutive CCMs submit a Compliance Plan</u>
August 31	Verification Statements for Fuel Pathway Reports, Quarterly Fuel Transactions Reports, and Quarterly and Annual Crude Oil Reports are due to the Executive Officer
September 30	Submit final Q2 fuel transactions report; Submit Q2 Crude Oil Reports (MCON Reports)
November 14	Upload all Q3 fuel transactions data in the LRT-CBTS and begin any needed reconciliation with business partners; EDU that has opted into LCFS provide the data relevant to the calculation of base credits for non-metered EV charging for the prior quarter
December 31	Submit final Q3 fuel transactions report; Submit Q3 Crude Oil Reports (MCON Reports)

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, 41510, 41511, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516, 41510, 41511 and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

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**§ 95495. Authority to Suspend, Revoke, Modify, or Invalidate.**

\* \* \* \*

(b) *Determination that a Credit, Deficit Calculation, or Certified CI is Invalid.*

\* \* \* \*

(5) *Adjustment of Invalidated Credits or Miscalculated Deficits.* The Executive Officer will seek the following options to address any invalid credits or miscalculated deficits in the program:

- (A) First, the Executive Officer may remove the invalid credits from, or add miscalculated deficits to, the account of the credit or deficit generator, or other entity deemed responsible for the invalidation or miscalculation in the final determination pursuant to section 95486. The entity is responsible for returning its account to compliance.
- (B) Next, the Executive Officer may choose to retire credits from the Buffer Account to address invalidated credits or uncovered deficits.
- (C) After exercising options in subsection (A) and (B) above, the Executive Officer may remove remaining invalid credits from an entity's account that holds or previously held invalid credits. The entity is responsible for returning its account to compliance.
- (D) The Executive Officer will not remove invalid credits from entities that purchased those credits in the Credit Clearance Market, pursuant to section 95485(c).

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, 41510, 41511, and 43018 Health and Safety Code; 42 U.S.C. section 7545, and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 38501, 38510, 39515, 39516, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516, 41510, 41511 and 43000, Health and Safety Code; Section 25000.5, Public Resources Code; and *Western Oil and Gas Ass'n v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).