

Handout 3

Enforcement Provisions

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Subchapter 10. Climate Change
Article 4. Regulations to Achieve Greenhouse Gas Emission Reductions

Subarticle 7. Low Carbon Fuel Standard

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§ 95483.3. Authority to Suspend, Revoke, or Modify.

- (a) If the Executive Officer determines that any basis for invalidation set forth in subparagraph (b)(1) below occurred, in addition to taking any enforcement action, he or she may: suspend, restrict, modify, or revoke an LRT-CBTS account; modify or delete an Approved CI; restrict, suspend, or invalidate credits; or recalculate the deficits in a regulated party's LRT-CBTS account. For purposes of this section, "Approved CI" includes any determination relating to carbon intensity made pursuant to section 95488, or relating to a credit-generating activity approved under section 95489.
- (b) Determination that a Credit, Deficit Calculation, or Approved CI is Invalid.
- (1) Basis for Invalidating. The Executive Officer may modify or delete an Approved CI and invalidate credits or recalculate deficits based on any of the following:
- (A) any of the information used to generate or support the Approved CI was incorrect for reasons including, but not limited to, the omission of material information or changes to the process following submission;
 - (B) any material information submitted in connection with any Approved CI or credit transaction was incorrect;
 - (C) fuel reported under a given pathway was produced or transported in a manner that varies in any way from the methods set forth in any corresponding pathway application documents submitted pursuant to section 95488 (or former section 95486, effective January 1, 2010);
 - (D) fuel transaction or other data reported into LRT-CBTS and used in calculating credits and deficits was incorrect or omitted material information;

- (E) credits or deficits were generated or transferred in violation of any provision of this subarticle or in violation of other laws, statutes or regulations;
- (F) a party obligated to provide records under this subarticle refused to provide such records or failed to produce them within the required time.
- (2) *Notice.* Upon making an initial determination that a credit, deficit calculation, or Approved CI may be subject to modification, deletion, recalculation, or invalidation under (b)(1), above, the Executive Officer will notify all potentially affected parties, including those who hold or generate credits or deficits based on an Approved CI that may be invalid, and may notify any linked program. The notice shall state the reason for the initial determination, and may be distributed using the LRT-CBTS. Any party receiving such notice may submit any information that it wants within 20 days the Executive Officer to consider. The Executive Officer may request information or documentation from any party likely to have information or records relevant to the validity of a credit, deficit calculation, or Approved CI. Within 20 days of any such request, a regulated party shall make records and personnel available to assist the Executive Officer in determining the validity of the credit, deficit calculation, or Approved CI.
- (3) *Interim Account Suspension.* When the Executive Officer makes an initial determination pursuant to the preceding paragraph, the Executive Officer may immediately take steps to suspend an account or an Approved CI as needed to prevent additional accrual of credits or deficits under the Approved CI and to prevent transfer of potentially invalid credits or deficits. Suspension of an account may include locking an account within the LRT-CBTS to prevent alteration of reports or credit transfers.
- (4) *Final Determination.* Within 50 days after making an initial determination under (b)(1) and (2), above, the Executive Officer shall make a final determination based on available information whether, in his or her judgment, any of the bases listed in subparagraph (b)(1) exists, and notify affected parties and any linked program. If the final determination invalidates credits or deficit calculations, the corresponding credits and deficits will be added to or subtracted from the appropriate LRT-CBTS accounts. Where such action creates a deficit in a past compliance period, the deficit holder has 60 days from the date of the final determination to purchase sufficient credits to eliminate the entire deficit. A return to compliance does not preclude further enforcement actions by the Executive Officer.
- (5) *Responsibility for Invalidated Credits or Miscalculated Deficits.* Any party that generated, previously held, or holds invalidated credits or whose

account reflects an invalid deficit calculation is responsible for returning its account to compliance without regard to fault.

NOTE: Authority cited: Sections 38510, 38530, 38560, 38560.5, 38571, 38580, 39600, 39601, 41510, 41511, 43000.5, 43013 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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