

# Handout 4

## Credit Transactions

DRAFT

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

Subarticle 7. Low Carbon Fuel Standard

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§ 95481. Definitions and Acronyms. [from 95481, page 10]

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(15) “Broker” is a third party user registered in the LRT-CBTS specifically to facilitate the transfer of credits between regulated parties.

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(17-1) “Credit Facilitator (CF)” is a user account role in the LRT-CBTS for regulated parties to assign to those personnel that initiate and complete LCFS credit transfers on behalf of their registered organization.

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(b) *Acronyms.* For the purposes of sections 95480 through \_\_\_\_\_, the following acronyms apply.

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(23) “LRT-CBTS” means LCFS Reporting Tool and Credit Bank & Transfer System.”“LRT” means LCFS reporting tool.

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§ 95487. Credit Transactions. [from 95485(d) & (c), page 52 & 95488(d), page 103 & 95488(c), page 101, 95488(e), page 104]

(a) *General.* [from 95485(d) Nature of Credits, page 52]

LCFS credits shall not constitute instruments, securities, or any other form of property.

(1) [from 95485(c)(1), page 52] A regulated party may:

- (A) retain LCFS credits without expiration for use within the LCFS market;
  - (B) acquire or transfer LCFS credits. A third-party entity, which is not a regulated party or acting on behalf of a regulated party, may not hold, purchase, sell, or trade LCFS credits, except as otherwise specified in (C) below; and
  - (C) export credits for compliance with other greenhouse gas reduction initiatives including, but not limited to, programs established pursuant to AB 32 (Nunez, Stats. 2006, ch. 488), subject to the authorities and requirements of those programs.
- (2) A regulated party may not:
- (A) use credits in the LCFS program that are generated outside the LCFS program, including, but not limited to, credits generated in other AB 32 programs.
  - (B) borrow or use credits from anticipated future carbon intensity reductions.
  - (C) generate LCFS credits from fuels exempted from the LCFS under section 95480.1(d) or are otherwise not one of the transportation fuels specified in section 95480.1(a).
- (b) *Mandatory Retirement of Credits for the Purpose of Compliance.* **[from 95488(d), page 103]**
- (1) At the end of a compliance period, a regulated party that possesses credits and has also has incurred deficits must retire a sufficient number of credits so that:
    - (A) Enough credits are retired to completely meet the regulated party's compliance obligation for that compliance period, or
    - (B) If the total number of credits is less than the total number of deficits, the regulated party must retire all credits within its possession, and
    - (C) For A<sub>a</sub> regulated party that has not retired sufficient credits to meet 100 percent of its compliance obligation at the end of a compliance year ~~must the LRT-CBTS will~~ calculate the ratio of all credits retired to the remaining deficits for the annual compliance period credits to outstanding deficits as specified in section 95485 [formerly 95488(a)(3)].

(2) Credit Retirement Hierarchy. The process developed in the LRT-CBTS to retire credits for purposes of meeting a compliance obligation will use the following default hierarchy.

(A) Credits acquired during the extended credit carryback purchase period of January 1 to March 31 following the prior compliance period and designated for carryback will be retired first;

(B) Credits acquired during a previous compliance period (in order of earliest completed transfer “recording date” first) will be retired next;

(C) Credits generated in a previous compliance year (in order of the earliest quarter first in which the credits were generated) will be retired last.

~~A regulated party may specify which credits are to be retired to meet its annual compliance obligation.~~

~~(A) Once a credit retirement specification has been submitted by a regulated party in its annual report, it is final and may not be altered.~~

~~(B) A regulated party not electing a credit retirement hierarchy will be assigned the default hierarchy provided by the Executive Officer.~~

(c) *Credit Transfers Between Parties.* **[from 95488(c) Credit Transfers, page 101]**

(1) A regulated party who wishes to sell or transfer credits (“the Seller”) and a regulated party who wishes to purchase or acquire a credit (“the Buyer”) may enter into an agreement to transfer credits.

(A) *Requirements for the Transfer of Credits.* The Seller may transfer credits provided the number of credits to be transferred by the Seller does not exceed the number of total credits in the Seller’s credit account defined as follows:

$$\text{Total Credits} = \text{Credits}^{\text{Gen}} + \text{Credits}^{\text{Acquired}} - \text{Sum of } (\text{Credits}^{\text{Retired}} + \text{Credits}^{\text{Sold}} + \text{Credits}^{\text{Exported}})$$

where:

$\text{Credits}^{\text{Gen}}$ ,  $\text{Credits}^{\text{Acquired}}$ ,  $\text{Credits}^{\text{Retired}}$ ,  $\text{Credits}^{\text{Sold}}$ , and  $\text{Credits}^{\text{Exported}}$  have the same meaning as those in section 95485(b) [formerly 95488(a)].

(B) *Requirements for Documenting a Proposed Credit Transfer.* When a credit transfer agreement is desired, the Seller shall provide the

~~Buyer a Credit Transfer Form 10282011-v1, which is hereby incorporated by reference and available at [http://www.arb.ca.gov/fuels/lcfs/regamend/20111014\\_LCFS\\_Credit\\_Transfer\\_Form\(2\).pdf](http://www.arb.ca.gov/fuels/lcfs/regamend/20111014_LCFS_Credit_Transfer_Form(2).pdf), containing the Seller's signature, date when the signature was entered, and the following information: initiate the credit transfer using an online Credit Transfer Form (CTF) provided in the LRT-CBTS containing the information fields shown below. The LRT CBTS will capture the electronic signatures from the Seller and Buyer in the CTF and archive the completed CTF.~~

- ~~1. Date of the proposed Credit transfer agreement. Initial agreement date of the proposed credit transfer by the Seller and the credit completion date on which the Buyer accepted/rejected the transfer.~~
- ~~2. Names of the Seller and Buyer's Company as registered in the LCFS Reporting Tool LRT-CBTS.~~
- ~~3. The Federal Employer Identification Numbers (FEIN) of the Seller and Buyer's Companies ies as registered in the LCFS Reporting Tool LRT-CBTS.~~
- ~~4. The first name and last name of the person who performed the transaction on behalf of the Seller's Company.~~
- ~~5. The phone number and email Contact information of the person who performed the transaction on behalf of the Seller's Company.~~
- ~~6. The first name and last name of the person who performed the transaction on behalf of the Buyer's Company.~~
- ~~7. The phone number and email Contact information of the person who performed the transaction on behalf of the Buyer's Company.~~
- ~~8. The number of credits proposed to be transferred and the credit identification numbers, if any, assigned to the credits by the board.~~
- ~~9. The price or equivalent value of the consideration (in U.S. dollars) to be paid per metric ton of credit proposed for transfer, excluding any fees.~~

Except as provided in section 95487(e) [formerly 95487(e)] below, the Executive Officer will treat information submitted in the online Credit Transfer Forms as Confidential Business Information.

(C) *Requirements for the Purchase of a Credit.*

- 1. Confirmation of Agreement for Credit Transfer. After receiving the Credit Transfer Form from the Seller, it is the Buyer must confirm the accuracy of the information contained in the Credit Transfer Form by signing and dating*

the Credit Transfer Form. The Buyer has 15 days to complete the credit transfer transaction from the date it is posted in the LRT-CBTS by the Seller.

2. *Reporting to the Executive Officer.* The Buyer shall submit the Credit Transfer Form with all of the required information to the Executive Officer by electronic mail or another submission method as instructed by the Executive Officer.
  3. *Recording of a Credit Transfer.* The Executive Officer will record the transfer request, and will update the account balance of the Seller and Buyer to reflect the proposed transfer. Within 5 business days of receiving a Credit Transfer Form, the Executive Officer shall, either:
    - a. Process and approve the transfer request and update the account balances of the Seller and Buyer to reflect the proposed, provided the Executive Officer determines all required information was submitted and it accurately reflects the parties' positions at the time of the proposed transfer; or
    - b. Notify the parties that the proposed is infeasible and identify the reasons for rejecting the transfer.
- (2) *Frequency of Credit Transfer.* Credits may be transferred between a Seller and Buyer on a frequency that is agreed upon between the two parties.
- (3) *Facilitation of Credit Transfer.* A Seller or Buyer may elect to use a third party Broker as defined in section 95481 (a "credit facilitator") to facilitate the transfer of credits for the Seller, the Buyer or both. A credit facilitator-broker cannot own or otherwise exercise control over credits. A broker who will document transfers in LRT-CBTS must register in the LRT-CBTS, and the buyer, seller or both must document using the LRT-CBTS, authorization for broker to act on their behalf. A broker may, with the consent of the parties, conduct a "blind transaction" where the Buyer of the credit does not know the identity of the Seller, and/or the Seller of the credit does not know the identity of the Buyer. The credit facilitator/broker may include, but is not limited to, a credit transfer service agency or broker who assists in arranging the transfer of credits. However, a credit-facilitator cannot own or otherwise exercise control over the credit. If the credit facilitator acts on the behalf of the buyer, seller or both to document the proposed transfer pursuant to the requirements of subsections (c)(1)(B) and (C) the credit facilitator must concurrently submit to the

~~Executive Officer documentation showing that the credit facilitator has been authorized to act on behalf of the buyer, seller or both.~~

- (4) *Correcting Credit Transfer Errors.* A regulated party is responsible for the accuracy of information submitted to the Executive Officer. If a regulated party discovers an error in the information reported to the Executive Officer or recorded by the Executive Officer, the regulated party must inform the Executive Officer in writing within five (5) business days of the discovery. If the Executive Officer determines that the regulated party was responsible for the error, the regulated party must submit a corrected Credit Transfer Form. If the Executive Officer determines that the error occurred during the recording of the credit by board staff, the Executive Officer will make the correction and no additional re-submissions are required.
- (e) *Public Disclosure of Credit and Deficit Balances and Credit Transfer Information.*  
**[from 95488(e), page 104]**
  - (1) The Executive Officer shall, no less frequently than quarterly, provide to the public a report containing a summary of credit generation and transfer information including, but not limited to:
    - (A) Total deficits and credits generated or incurred in the most recent quarter for which data are available, including information on the types and quantities of fuels used to generate credits.
    - (B) Total deficits and credits generated or incurred in all previous quarters of the most recent year for which data are available, including information on the types and quantities of fuels used to generate credits.
    - (C) Total credits in possession of regulated parties and the total number of outstanding deficits carried over by regulated parties from a previous compliance year.
    - (D) Information on the credits transferred during the most recent quarter for which data is available including, but not limited to, the total number of credits transferred, the number transfers, the number of parties making transfers and the monthly average credit price for transfers that reported a price.
    - (E) Total credits transferred and used as carry-back credits during the first quarter of the current compliance period.
  - (2) The Executive Officer shall provide reports, no less frequently than monthly, to regulated parties and the public containing information

necessary or helpful to the functioning of a credit market. Such reports may include recent information on credit transfer volumes, credit prices and price trends and other information determined by the Executive Officer to be of value to market participants and the public. The Executive Officer shall establish, and may periodically modify, a schedule for the routine release of these reports.

(f) Prohibited Transactions . [NEW]

A trade involving, related to, or associated with any of the following are prohibited:

- (1) Any manipulative or deceptive device;
- (2) A corner or an attempt to corner the market for a credit;
- (3) Fraud, or an attempt to defraud any other entity;
- (4) A false, misleading or inaccurate report concerning information or conditions that affects or tends to affect the price of a credit;
- (5) An application, report, statement, or document required to be filed pursuant to this article which is false or misleading with respect to a material fact, or which omits to state a material fact necessary to make the contents therein not misleading; or
- (6) Any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made by or provided to an entity through which transactions in credits are settled, or are cleared.
- (7) A fact is material if it is reasonably likely to influence a decision by a counterparty, the Executive Officer, the Board, or the Board's staff.

NOTE: Authority cited: Sections 38510, 38560, 38560.5, 38571, 38580, 39600, 39601, 41510 and 41511, Health and Safety Code; 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, 38560, 38560.5, 38571, 38580, 39000, 39001, 39002, 39003, 39515, 39516, 41510, 41511, Health and Safety 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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