

DOCKETED

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3103 Draft Regulatory Language

- a) A project shall not be eligible for funding if it is mandated by any local, regional, state, or federal law, rule, or regulation.
- b) If a project is one that helps the ~~proposing entity~~ applicant meet a performance requirement mandated by local, regional, state, or federal law, rule, or regulation, the project shall not be eligible for funding.
- c) To the extent a project exceeds what is required for compliance with a legally enforceable requirement, it may receive funding for that part of the project that the applicant demonstrates is not mandated to meet the requirement. Credits generated by the excess, however, may not be used or sold by the ~~proposing entity~~ applicant to offset a legally enforceable requirement, ~~except to the extent allowed by subsection (d)(b).~~
- d) For purposes of this section, a legally enforceable requirement refers to any requirement enforceable by a local, regional, state, or federal agency for the purpose of reducing the emission of one or more criteria pollutants, toxic air contaminants, or any greenhouse gas.
- e) For purposes of this section, the following are not subject to the restrictions contained in subdivisions (a)- and (c):
1. A project that produces opt-in fuels under the Low Carbon Fuel Standard (California Code of Regulations, title 17, section 95480.1, subdivision (b));
 2. A project that produces biofuel that meets or falls below the average carbon intensity requirements set forth in the Low Carbon Fuel Standard (California Code of Regulations, title 17, section 95482, subdivisions (b) and (c)) for the year in which the credits are generated;
 3. A project under which the applicant has voluntarily opted-in to an emission reduction credit generating program for the purpose of participating in the program's credit market; and
 4. A project that had been awarded funding under Health and Safety Code section 44272 prior to the effective date of this section as amended and also satisfies at least one of the requirements listed in subdivisions (e)(1)-(3).

~~(b) A project that generates credits that the applicant plans to claim based on the reduction of criteria pollutants, toxic air contaminants, or greenhouse gases may not be eligible for funding unless all of the following occur:~~

- ~~(1) the applicant seeks funding for only a portion of the project;~~
- ~~(2) the applicant agrees in the funding agreement to discount emission credits at least in proportion to the amount of funding received;~~
- ~~(3) the project satisfies one or more of the criteria in sections 3101 and 3101.5, as appropriate.~~