

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

The California Pollution Control Financing Authority (CPCFA and the "Authority"), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code, proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Proposed Regulatory Action

The Authority proposes to amend Section 8070 and 8072 of Title 4 of the California Code of Regulations concerning the administration of the California Capital Access Program for Small Businesses (the "Program" and CalCAP). These regulations were adopted on an emergency basis in December 2013. The current rulemaking action would make these changes permanent.

Authority and Reference

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the California Capital Access Loan Program (CalCAP) established by the Act.

Reference: Sections 44559-44559.12 of the Health and Safety Code. These amended regulations implement, interpret, and make specific Sections of the Act by amending Sections 8070 and 8072 of Title 4, Division 11, Article 7 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

CalCAP was established in 1994 using the fees from tax exempt bond sales for its contributions to loan loss reserve accounts. CalCAP is designed to encourage lending to small businesses throughout California. To accomplish this, CalCAP establishes loan loss reserve accounts in which borrowers and lenders or an Independent Contributor are required to deposit a percentage based on the loan enrollment to help insure against losses. This program is a way to encourage banks to lend money to many small businesses. Over the years, CalCAP has attracted other funding sources, including the injection of \$6 million in State funds in 2010 and \$84 million of Federal funds in 2011, plus significant funding from other Independent Contributors.

Federal tax laws prohibit use of tax exempt bond funds for a variety of items including a "...store whose principal business is the sale of alcoholic beverages for consumption off premises..." For that reason, this language was included in the CalCAP regulations when CalCAP was originally established. However, a major current funding source for CalCAP, the Federal State Small Business Credit Initiative (SSBCI) Act of 2010, does not prohibit a "...store whose principal business is the sale of alcoholic beverages for consumption off premises..." Nor do other funding sources, including CPCFA's State funds which support additional loan loss reserve contributions for borrowers located in severely affected communities. Therefore, the blanket prohibition in the present CalCAP regulations has an adverse effect on wineries and breweries.

The proposed amendment to the regulations will expand lending assistance and increase injections of private capital into this important economic sector in California when it is not prohibited by the funding source.

The second proposed amendment will replace the mandatory prequalification requirement with a procedure offering a voluntary prequalification to enable lenders to confirm the eligibility of a potential loan enrollment. The change to the regulation will improve the efficiency of the Program by eliminating the requirement of pre-qualifications.

The proposed amendments to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

After conducting a review for any related regulations on this area, the Authority has concluded that these are the only regulations dealing with qualified loans and pre-qualifications, and therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The objective is as follows:

Section 8070(s)(4)(A) & (B). *Update the definition of “Qualified Loan” by moving “store whose principal business is the sale of alcoholic beverages for consumption off premises” from A to B, and adding “liquor store” to A.* This modification to the regulations will encourage lending to wineries and breweries using other unrestricted funds.

Section 8072(f). *Eliminate the requirement for Lenders to submit a pre-qualification.* In an effort to simplify the Program for lenders and CalCAP staff, this regulation change will eliminate the requirement. Lenders will have the opportunity to submit a pre-qualification if they choose.

Disclosures Regarding the Proposed Action

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations.

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative, private person, or business would necessarily incur with reasonable compliance with the proposed action.

Small Business: The amended CalCAP Regulations will not have an adverse impact on small business in California. The proposed regulations will not significantly affect small businesses because they do not impose additional costs on small businesses.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the amended CalCAP Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

Assessment regarding effect on jobs/businesses: The amended CalCAP Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

Benefits of the health and welfare of California residents, worker safety, and the state's environment: The amended CalCAP Regulations will benefit the health and welfare of California residents by increasing economic opportunities and therefore, improving their quality of life. The Authority is not aware of any benefits to California worker safety or the state's environment.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the amended CalCAP Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the amended CalCAP Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested persons to present statements with respect to alternatives to the amended CalCAP Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries and any questions regarding the substance of the amended CalCAP Regulations shall be submitted or directed to:

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the amended CalCAP Regulations to the Authority. The written comment period on the amended CalCAP Regulations ends at **5:00 p.m. on April 28, 2014**. All comments must be submitted in writing to the Agency contact person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the amended CalCAP Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified amended CalCAP Regulations for fifteen (15) calendar days pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

Availability of Initial Statement of Reasons and Text of the Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the amended CalCAP Regulations. Copies of these items are available upon request from the Agency contact person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

Public Hearing

CalCAP has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it received a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the amended CalCAP Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed amended CalCAP Regulations, as modified. The modified text of the regulations will be made available to: 1) persons who submitted written comments during the written comment period; 2) persons who submitted written or oral testimony during the public hearing, if one is held; and 3) persons who specifically requested notification of modified changes. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency contact person designated in this Notice or found at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.