

FINDING OF EMERGENCY

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Title 4, Division 11

Finding of Emergency

Pursuant to Section 44520(b) of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority (the “Authority”) as emergency regulations (the “Emergency Regulations”) are, by legislative mandate, necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Necessity

These Emergency Regulations are necessary to implement, interpret, and make specific Article 7 of the California Pollution Control Financing Authority (the “Authority”) Act (the “Act”).¹ The following is the reason for changes made in February of 2012: The Authority’s Capital Access Program (CalCAP) is the subject of new legislation passed allowing a new type of lender to be included in the Program. This new type of lender must be defined as it pertains to the Program to be clear about what entities are able to participate. This will allow more borrowers to receive funding throughout the State.

Authority and Reference

Authority: Sections 44520 (a), 44520(b) and 44559.5(f), Health and Safety Code. Section 44520(b) of the Act authorizes the Authority to adopt regulations relating to small business financing as Emergency Regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.” Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Program established by the Act (CalCAP).

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

Informative Digest

Existing law establishes the Capital Access Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that may have difficulty obtaining capital. (Health and Safety Code, § 44559)

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 7 is codified at Health and Safety Code section 44559 through 44559.12.

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender's loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid by the lender to the loss reserve account at 150 percent when State funds are used. When Federal funds are used to pay CalCAP's contribution, the Authority will match the borrower's and lender's fee at 100 percent. The funds held in the lender's loss reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.3.)

The proposed amendments to the regulations will clarify the statute and define a new qualified lender in the Program. The addition of new legislation will be addressed with these changes and funding will be made available to more borrowers throughout California. The proposed amendments and objectives for each section are as follows:

Section 8070(e). *Include a definition for Microbusiness Lender under the current definition for Financial Institution.* New legislation has added Microbusiness Lenders as an eligible financial institution in CalCAP. By defining these entities in the regulations, it will be made clear how microbusiness lenders pertain to CalCAP and how they will fit in the Program. Staff will also be able to easily identify a particular organization for eligibility in the Program.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulations or to the Authority.

Mandate on Local Agencies or School Districts

The Executive Director of the Authority has determined that the Emergency Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional cost or savings requiring reimbursement under Section 17500 et al of the Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant to Section 11346.1(b) or 11346.5(a)(6) Government Code.