

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 December of 2013: The Authority’s California Capital Access Program (CalCAP) will modify the regulations to update the definition of a “Qualified Loan,” allowing a “...store whose principal business is the sale of alcoholic beverages for consumption off premises...” to be enrolled in CalCAP where the source of funds is other than fees from the issuance of tax-exempt bond sales. In addition, the regulations will be amended to eliminate the requirement of Pre-Qualifications. To ensure clarity for CalCAP’s Participating Financial Institutions, this change must be reflected in the Program regulations.

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 Sections 8070 and 8072 of Title 4, Division 11, Article 7 of the California Code of Regulations.

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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.

¹ The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 8 is codified at Health and Safety Code section 44559 through 44559.12.

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. Today these industries have a broad positive impact on state, local, and rural communities in California. According to the Wine Institute, California is America's top wine producer and has over \$60 billion in state economic impact. While creating jobs and revenue for rural and urban communities, these businesses also generate tourism supporting local retailers, restaurateurs, and hotels. California Craft Brewers Association notes that a majority of craft breweries are small and independently owned businesses that direct their resources into their products, employees, and communities allowing the industry to grow by 20% in 2012. Over the past 3 years, CPCFA has received many applications for SSBCI-funded small business loan enhancements from wineries and breweries, which do not qualify for CalCAP assistance due to the current language in CalCAP regulations. Staff is recommending the proposed change to the regulations to 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.

In addition, the current CalCAP regulations state that "The Participating Financial Institution shall pre-qualify with the Authority any qualified loan with a principal amount of \$500,000 or more..." This requirement was put in place to protect limited funds when CalCAP's sole funding source was fees from tax exempt bond sales and to add comfort to a lender's faith that larger loans would be safe to submit for enrollment. With the injection of additional funds, the mandatory pre-qualification process has become inefficient and unnecessary. As the CalCAP programs mature, lenders are more comfortable with enrolling larger loans. Staff is recommending the change to the regulation to improve the efficiency of the Program by eliminating the requirement of pre-qualifications. Staff proposes to replace the mandatory prequalification requirement with a procedure offering a voluntary prequalification to enable lenders to confirm the eligibility of a potential loan enrollment.

This proposed amendment to the CalCAP Regulations is consistent and compatible with the existing state regulations. The proposed amendments and objectives are stated below.

The proposed amendments to the regulations modify the definition of a Qualified Loan and eliminate the requirement of Pre-Qualifications. The proposed amendments and objectives for each section are as follows:

Section 8070(s)(4)(A). *Update the definition of "Qualified Loan" by removing "store whose principal business is the sale of alcoholic beverages for consumption off premises", and adding "liquor store".* Since the Program regulations were adopted in 1994 the definition of a qualified loan prohibited a "store whose principal business is the sale of alcoholic beverages for consumption off premises." The State Small Business Credit Initiative (SSBCI) Act of 2010 and other funding sources do not prohibit these types of businesses. Modifying the rules to encourage lending to wineries and breweries using other, unrestricted funds will stimulate California's economy and create and retain jobs.

Section 8070(s)(4)(B). *Amending the definition of a “Qualified Loan” by adding “a store whose principal business is the sale of alcoholic beverages for consumption off premises”.* CalCAP loans being supported by fees from the issuance of tax exempt bonds prohibits the sale of alcohol. CalCAP staff agrees that this prohibition should remain in effect when these funds are being used.

Section 8072(f). *Eliminate the requirement for Lenders to submit a pre-qualification.* Currently lenders are required to submit a pre-qualification for any loan \$500,000 or greater. 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.

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.