



CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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Reneé Webster-Hawkins

March 11, 2015

California Pollution Control Financing Authority Electric Vehicle Charging Station Financing Program Notice of Emergency Regulations

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

CPCFA proposes to adopt Article 7 Sections §8078.3-8078.7, of Title 4 of the California Code of Regulations (the "Proposed Regulations") concerning the establishment of an Electric Vehicle Charging Station Financing Program, in partnership with the California Energy Commission, and to be administered by the California Pollution Control Financing Authority's Capital Access Program (the "Program"). These regulations are anticipated to be approved by the Office of Administrative Law on an emergency basis no later than March 28, 2015.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency regulation action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five (5) calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, CPCFA will proceed with regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

In accordance with its authority under Health and Safety Code Section 44520(b), the California Pollution Control Financing Authority is proposing to adopt the regulations as emergency regulations. Attached to this Notice is the specific regulatory language of CPCFA's proposed emergency action and Finding of Emergency. You may also review the

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proposed regulatory language and Finding of Emergency on CPCFA's website at the following address: <http://www.treasurer.ca.gov/cpcfai/index.asp>. If you prefer to receive a hard copy of the proposed emergency regulation please contact Ethan Wieser at (916) 651-3712 and a copy will be provided at no cost.

The regulations will be presented to the CPCFA Board for approval at a public meeting to be held on March 17, 2015 at 10:30 A.M. in Rm. 587 of the Jesse M. Unruh Building, 915 Capitol Mall, Sacramento, CA 95814.

Sincerely,



Renee Webster-Hawkins
Executive Director

Enclosure(s): Proposed Text of Regulations
Finding of Emergency

cc: Robert Hedrick, CPCFA Legal Counsel
Patricia Tanous, Treasury Program Manager II
Jason L. Bradley, CALReUSE Program Manager

RWH: ew

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 8 of the California Pollution Control Financing Authority Act (the “Act”).¹ The Authority’s Capital Access Program (“CalCAP”) has partnered with the California Energy Commission (“Energy Commission”) to create a new independent contributor program that requires alternate provisions to be written into regulation as authorized in Section 44559.11(b) of the Act.

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.” Section 44520(a) and 44559.5(f) of the Act authorizes the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Authority: Sections 44559.11(a) and 44559.11(b), and 44559.5(f), Health and Safety Code. Section 44559.11(a) of the Act authorizes the Authority to receive funding from any federal or state agency whose goals may be advanced by contributing funding to the Capital Access Program. Section 44559.11(b) of the Act authorizes the Authority, when the sole source of funding is from outside the Authority, to adopt alternate regulations as necessary to accommodate the needs of the outside funding source, notwithstanding any other provision of this article.

Authority: Sections 44559.1(m) of the Health and Safety Code. Section 44559.1(m) of the Act defines small business concern as “the same meaning as in Section 632 of Title 15” of the US Code, and authorizes the Authority to further define a small business concern if the definition is provided in the regulations of Authority.

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.

Reference: Sections 44559-44559.9 of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by adopting Sections 8078.3, 8078.4, 8078.5, 8078.6, and 8078.7 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)

The proposed additions to the regulations allow the Authority to include alternate provisions specific to the Electric Vehicle Charging Station Financing Program (“EVCS Financing Program”) with in CalCAP’s existing Small Business Loan and Independent Contributor Programs.

The Proposed Amendments and Objectives for Each Section are as Follows:

§ 8078.3 Definitions.

This section defines terms commonly used throughout the regulations to avoid ambiguity or misunderstanding.

Necessity. The proposed amendments are necessary to include definitions specific to the EVCS Financing Program.

§ 8078.4. Application by Financial Institution.

This section describes how financial institutions may apply to participate in the EVCS Financing Program.

Necessity. The proposed regulation is necessary to provide clarification on how a financial institution may participate in the EVCS Financing Program.

§ 8078.5. Loan Enrollment.

This section describes the contents of a completed application, contribution amounts, and term of the enrollment. For an application to be deemed complete the lender must submit information concerning the borrower and project, and submit a lender certification that the application meets the EVCS Financing Program’s policies and regulations. In addition the borrower must self-certify on several aspects of the project as well as provide specific requested information regarding the electric vehicle charging station equipment.

Necessity. A description of the application information is necessary to specify the application contents that must be provided in order for the Authority to evaluate whether the loan is qualified for enrollment in the EVCS Financing Program.

§ 8078.6. Loan Loss Reserve Accounts.

This section describes the establishment of loan loss reserve accounts for participating financial institutions, and guidelines governing use of funds deposited in the loan loss reserve accounts.

Necessity. A description of how loan loss reserve funds are to be utilized and managed is necessary to ensure accountability and transparency.

§ 8078.7. Borrower Rebate.

This section describes the EVCS Financing Program Rebate.

Necessity. A description of the Program rebate is necessary to identify eligibility criteria, and to define the process for EVCS Financing Program participating financial institutions and borrowers to follow to meet the rebate requirement.

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.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations Division 11. California Pollution Control Financing Authority Article 7. Capital Access Program for Small Businesses

8078.3. Definitions. In addition to the definitions in Section 8070, the following shall apply only to the Electric Vehicle Charging Station Financing Program.

- (a) "Borrower Rebate" means a payment made to a Borrower from the Participating Financial Institution's Loan Loss Reserve Account upon a valid claim made pursuant to section 8078.7.
- (b) "CEC" and "Energy Commission" means the California Energy Commission.
- (c) "Disadvantaged Communities" means the top twenty five (25) percent of communities that are disproportionately affected by environmental pollution and socioeconomic characteristics as described by CalEnviroScreen 2.0 Tool¹.
- (d) "Electric Vehicle Charging Station" or "EVCS" means an element in an infrastructure that supplies electric energy for the recharging of plug-in electric vehicles.
- (e) "EVCS supply equipment" means equipment which meets the minimum technical requirements set by the Energy Commission as follows:
 - (1) Direct current fast chargers shall utilize:
 - i. Either the CHAdeMO standard, or SAE combination standard, or a combination of both; and
 - ii. An open standard protocol for purposes of network interoperability.
 - (2) Level 2 charging equipment shall utilize
 - i. The SAE J1772 standard; and
 - ii. An open standard protocol for purposes of network interoperability.
 - (3) Open standard protocol is waived for medium-and heavy-duty EVCS supply equipment.
- (f) "Eligible Project Costs" means the amount to pay for acquisitions and services necessary and allocable to the installation and operation of one or more EVCSs as allowed by the Energy Commission, including:
 - (1) The design and development of EVCS in locations accessible to either the Borrower's employees, the Borrower's tenants if in an Multi-Unit Dwelling (MUD), or the public generally;
 - (2) The acquisition of EVCS supply equipment, electric panel or grid improvements, materials and supplies (including conduit and construction materials), signage, and hardware and software necessary and allocable for fully operational charging station(s); and
 - (3) Labor necessary and allocable to install fully operational charging station(s).
 - (4) The costs for operating, servicing and maintaining the EVCS during the term of the loan, if the Borrower's primary business is not EVCS installation, operation or manufacturing.
- (g) "Multi-Unit Dwelling" or "MUD" means a classification of housing where multiple housing units are contained within one building or multiple buildings within a complex or community. Common types of MUDs include duplexes, townhomes, and apartments, mobile homes and manufactured-home parks.

¹ <http://www.oehha.ca.gov/ej/ces2.html>

- (h) "Program" means the Electric Vehicle Charging Station Financing Program established pursuant to the Interagency Agreement between the Authority and the Energy Commission.
- (i) "Qualified Business" means any entity eligible under section 8070(r) that together with its affiliates has 1,000 or fewer employees.
- (j) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business where the loan proceeds are for Eligible Project Costs for the installation and operation of one or more EVCS. "Qualified Loan" does not include any of the following:
 - (1) Any loan, the proceeds of which will be used to install EVCS at any of the facilities described in section 8074(s)(4);
 - (2) Any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program; and
 - (3) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$500,000.
- (k) "Trustee" means a bank or trust company, or the State Treasurer, chosen by CPCFA from time to time to hold or administer some or all of the Program Accounts.

8078.4 Application by Financial Institution. Financial Institutions shall follow the procedures set forth in Section 8071 in making application to become Participating Financial Institutions in the Electric Vehicle Charging Station Financing Program.

8078.5 Loan Enrollment.

- (a) A Participating Financial Institution may enroll all or any portion of a Qualified Loan by submitting a EVCS Loan Enrollment Application which shall include the following information:
 - (1) The official business name of the Borrower, including a D/B/A if any, and the business address.
 - (2) The name and title of the individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower.
 - (3) Brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues over the last three years.
 - (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Project Costs.
 - (5) Location(s) of the project(s) to be installed.
 - (6) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled) and the Participating Financial Institution loan number.
 - (7) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
 - (8) Date of the Qualified Loan.
 - (9) Interest rate applicable to the Qualified Loan.
 - (10) Term or maturity date of the Qualified Loan.
 - (11) Whether the loan is for the installation of EVCS in a Disadvantaged Community.
 - (12) Whether the loan is for the installation of EVCS at a Multi-Unit Dwelling.
 - (13) Number of persons currently employed by the Borrower, and number of jobs expected to be created or retained by the Qualified Loan.
 - (14) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.

- (15) The Participating Financial Institution's certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (16) The certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Contribution.
- (17) The Participating Financial Institution's certification that the total amount of loans enrolled by the Borrower in the Program does not exceed \$500,000.
- (18) The Participating Financial Institution's certification that the Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS.
- (19) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.
- (20) The Participating Financial Institution shall be authorized to base the information requested by subsections (14) and (19) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.
- (21) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.
- (22) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form including project information.
- (23) Certification from the Participating Financial Institution that it has provided the Borrower CPCFA's Privacy Notice for the EVCS Financing Program.
- (f) Upon enrollment of a Qualified Loan, CPCFA shall direct the Trustee to transfer a Contribution for deposit in the Participating Financial Institution's established Loan Loss Reserve Account, and the Trustee shall notify the Participating Financial Institution of the transfer.
- (g) The Contribution for each Qualified Loan shall be calculated as follows:
- (1) All Qualified Loans shall receive a Contribution in the amount of 20 percent of the enrolled loan amount.
 - (2) All Qualified Loans that support installation of Electric Vehicle Charging Stations in Disadvantaged Communities or in a Multi-Unit Dwelling shall receive an additional Contribution in the amount of 10 percent of the enrolled loan amount (total Contribution of 30 percent).
- (h) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed forty-eight (48) months from the Date of the Qualified Loan.

8078.6 Loan Loss Reserve Accounts

- (a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loan Loss Reserve Trust Account for that Participating Financial Institution for the following purposes:
- (1) To receive all Contributions deposited from the EVCS Financing Program;
 - (2) To pay claims in accordance with the Claim for Reimbursement section 8074; and
 - (3) To pay Borrower Rebates in accordance with section 8078.7.
- (d) All moneys in a Loan Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided in the Interagency

Agreement with the Energy Commission and these regulations. Interest or income earned on moneys credited to the Loan Loss Reserve Account shall be deemed to be part of the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loan Loss Reserve Trust Account all interest and income that has been credited to the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw contributions improperly deposited in a Loan Loss Reserve Account. The Executive Director shall be authorized to direct that funds be withdrawn from Loan Loss Reserve Accounts to fund qualifying Borrower Rebates.

(e) Moneys in a Participating Financing Institution's Loan Loss Reserve Account shall not exceed the outstanding principal of its enrolled loans. From time to time, the Executive Director may withdraw from the Loan Loss Reserve Account all Loan Loss Reserve contributions that exceed the amount of outstanding principal.

(f) If any Loan Loss Reserve Account is held at a Participating Financial Institution, the Participating Financial Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loan Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.

(g) The Participating Financial Institution shall provide reports on the quarterly basis to CPCFA no later than the 15 days after the end of the quarter, listing all enrolled loans which are in default whether or not the Participating Financial Institution has filed a claim with CPCFA.

8078.7. Borrower Rebate

(a) A Borrower shall be eligible for a Borrower Rebate of up to fifty (50) percent of the Contribution if the following conditions are met:

- (1) The Borrower provides the Participating Financial Institution with a copy of an Electric Vehicle Charging Station Certificate of Commissioning relative to the EVCS financed;
- (2) The Borrower has no more than one 30-day late payment on the Qualified Loan;
- (3) The Qualified Loan has been paid off or forty-eight months has elapsed from the Date of the Qualified Loan, whichever is sooner; and
- (4) The Borrower certifies that any outstanding balance of the loan repaid at the time of application for the Borrower Rebate was not refinanced into another credit structure with any Participating Financial Institution.

(b) A Participating Financial Institution shall make the request for a Borrower Rebate as specified in subdivision (c) of this section to CPCFA within 90 calendar days after the conditions in subdivision (a) of this section have been satisfied.

(c) To make a request for a Borrower Rebate, the Participating Financial Institution shall submit a Request for Borrower Rebate form to CPCFA which shall include at least the following information:

- (1) Name of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person for the Participating Financial Institution.
- (3) Name, telephone number and address of the Qualified Business requesting the Borrower Rebate.
- (4) Amount, date of first disbursement of the Qualified Loan and loan number.

- (5) Amount of Contribution.
- (6) Amount of Borrower Rebate.
- (7) Date Borrower qualified for Borrower Rebate.
- (8) Participating Financial Institution certification of other evidence that the conditions in subdivision (a) of this section have been satisfied.

(d) CPCFA shall authorize the payment of a Borrower Rebate within 30 calendar days of receipt of a completed request for Borrower Rebate; provided, however, that the Executive Director shall be authorized to reject a request for Borrower Rebate if he or she determines that the certifications provided by the Participating Financial Institution and Borrower at the time of enrolling the Qualified Loan were false or unsubstantiated. CPCFA shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of a Borrower Rebate up to an additional 30 calendar days if CPCFA requires more information in order to validate the payment of the Borrower Rebate.

(e) Upon approval of a claim for Borrower Rebate, CPCFA shall instruct the Trustee to withdraw the appropriate amount from the Loan Loss Reserve Account and disburse the Borrower Rebate to the Borrower.

(f) CPCFA may, in its sole determination, authorize a Borrower Rebate upon independent verification that the Borrower has satisfied the requirements of subdivision (a) of this section in the event the Participating Financial Institution is unable or unwilling to supply the documentation needed for Borrower Rebate authorization.