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STATE OF CALIFORNIA — NATURAL RESOURCES AGENCY Gavin Newsom, *Governor*

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INITIAL STATEMENT OF REASONS

Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
Chapter 4. Energy Conservation
Article 6. Energy Conservation Assistance Act
California Energy Commission
Energy Conservation Assistance Act Regulations
Docket No. 18-OIR-02
Notice Published on July 12, 2019

INTRODUCTION

The California Energy Commission proposes to repeal the Energy Conservation Assistance Act (ECAA) regulations after considering all comments, objections, and recommendations regarding the proposed action.

PROBLEM STATEMENT

The ECAA program is a low-interest and no-interest loan program administered by the Energy Commission to provide loans to local governments and public schools to fund energy efficiency and renewable energy projects including, but not limited to, energy efficient lighting, high efficiency heating, ventilating and air conditioning (HVAC) systems, and most recently, solar photovoltaic installations. The simplicity of the program design and Energy Commission staff's technical assistance have made ECAA loans in high demand by local governments and public schools.

The ECAA statute requires that the costs of the project, plus interest on state funds to be loaned, be recovered through energy cost savings during the repayment period of the loan. The repayment period cannot exceed the useful life of the equipment funded by the loan and the repayment period cannot exceed 20 years. The ECAA program is a revolving loan program, so is perpetual.

The ECAA program was established in 1979 pursuant to Public Resources Code Section 25410 et seq., and the ECAA regulations were adopted in 1983. Since 1979, the ECAA statute has been revised and updated numerous times as the ECAA program has evolved. Most recently, Senate Bill 110 (Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2017) was signed into law and made further changes to the way the ECAA program is implemented. However, the 1983 ECAA regulations have never been revised and have not kept up with the changes in statute. The current regulations are out-of-date, no longer relevant, or unnecessary for the administration of the ECAA program.

Therefore, the Energy Commission is proposing to repeal the ECAA regulations and use statutory authority and guidance found in Public Resources Code Section 25410 et seq. to implement the ECAA program. The ECAA statute has been revised and updated numerous times and now contains the material aspects of the ECAA program. Repealing the ECAA regulations will not affect how the ECAA program is currently implemented and will not impact the time or resources needed to apply for an ECAA loan.

PURPOSE

The purpose of this rulemaking is to repeal the ECAA regulations. The ECAA regulations have not been updated since their original adoption in 1983 and have not kept up with the changes in statute. As such, the current regulatory provisions are outdated, unnecessary or no longer relevant. The ECAA statute has been revised and updated numerous times and now contains the material aspects of the ECAA program. Given the numerous statutory amendments since the ECAA program was originally created, the ECAA statute now provides sufficient authority and guidance to administer the ECAA program without the need for additional regulations.

BENEFITS

Repealing the ECAA regulations will benefit the public by eliminating outdated and irrelevant information which confuses applicants. The current ECAA Program can be implemented proficiently under the existing ECAA Statute.

STATEMENT OF SPECIFIC PURPOSE AND NECESSITY

SECTION 1650. PURPOSE
SPECIFIC PURPOSE

The specific purpose is to delete Section 1650 of Article 6. Energy Conservation Assistance Act (Article) related to the purpose of the ECAA regulations.

NECESSITY

The ECAA regulations have not been revised since their implementation in 1983 and have not kept up with the changes in statute. Therefore, it is necessary to delete the purpose of the regulations as it is no longer accurate or necessary. The purpose can be found in statute under Public Resources Code Section 25410.6 and does not need further clarification in regulation.

SECTION 1651. DEFINITIONS
SPECIFIC PURPOSE

The specific purpose is to delete Section 1651 of this Article related to definitions.

NECESSITY

Definitions are necessary to ensure that the terms used within regulations will have clear and unambiguous meaning to readers, including the public, and particularly to the persons and organizations affected by the regulations. The ECAA regulations have not been revised since their implementation in 1983 and the definitions provided are outdated and/or no longer relevant or necessary.

Deleting this section is necessary as the definitions are outdated, irrelevant and in some cases refer to loan programs no longer administered by the Energy Commission. Further, the definitions relevant to the ECAA program are provided in statute under Public Resources Code Section 25411 and do not need further clarification in regulation.

SECTION 1652. LOAN CYCLES
SPECIFIC PURPOSE

The specific purpose is to delete Section 1652 of this Article related to loan cycles.

NECESSITY

Deleting this section is necessary as there are no loan cycles, the Energy Commission no longer uses a committee structure, and the Energy Commission has an existing regulatory process to have a loan disapproval investigated.

It is necessary to delete subsections (a) and (b) as there are no loan cycles. New ECAA program loans are funded through the repayments of existing loans, making loan cycles unnecessary.

It is necessary to delete subsections (c) and (d) as the Energy Commission no longer uses a committee structure for the approval or disapproval of loans. Loans are considered at a publicly noticed meeting pursuant to Public Resources Code Section 25214, which includes the opportunity for any person to be heard on the subject of the meeting.

It is necessary to delete subsection (e) as this process is no longer relevant. California Code of Regulations (CCR), Title 20, Section 1231, provides a process for a person to request an investigation of a violation of statute, regulation, order, program or decision adopted, administered or enforced by the Energy Commission. This section provides the ability to request that the Energy Commission investigate issues related to loan disapproval. However, Section 1231, unlike Section 1652(e), does not guarantee that a loan disapproval will be considered at an Energy Commission business meeting.

SECTION 1653. ENERGY AUDIT AND ENERGY AUDIT/TECHNICAL AUDIT LOANS
SPECIFIC PURPOSE

The specific purpose is to delete Section 1653 from this Article related to Energy Audit and Energy Audit/Technical Audit loans.

NECESSITY

Deleting this section is necessary to remove reference to a loan program that no longer exists. The Energy Commission no longer makes energy audit and energy audit/technical audit loans. Therefore, it is necessary to remove this section from regulations.

SECTION 1654. ENERGY CONSERVATION MEASURE LOANS

SPECIFIC PURPOSE

The specific purpose is to delete Section 1654 of this Article related to Energy Conservation Measure Loans.

NECESSITY

Deleting subsection (a) is necessary because the application requirements of this section are outdated and no longer relevant. Application requirements are instead drawn from statute and specified in each loan application on a case-by-case basis. Given the numerous statutory amendments since the ECAA program was originally created, the ECAA statute now provides sufficient authority and guidance to administer the ECAA program without the need for additional regulations.

Deleting subsection (b) is necessary because scoring criteria, if used, are developed and implemented through individual solicitations. The Energy Commission evaluates applications pursuant to the statutory requirement of Public Resources Code Section 25413, which describes the standard of approval based on recovery of project costs through energy savings, and which vary depending on whether the program is competitive or first-come, first-served.

Deleting subsection (c) is necessary as there is not a separate evaluation practice for central plants. The Energy Commission evaluates a central plant the same way as any other applicant, pursuant to the statutory requirements of Public Resources Code Section 25413, which describes the standard of approval based on recovery of project costs through energy savings.

Deleting subsection (d) is necessary because the Energy Commission does not designate or identify preferred energy conservation measures. This is an optional practice the Energy Commission does not use. Therefore, this language is irrelevant and unnecessary.

Deleting subsection (e) is necessary as the Energy Commission is already granted this authority in statute under Public Resources Code Section 25412 making this duplicative and unnecessary. Public Resources Code Section 25412 states that an application may be for the purpose of financing the applicant’s share of costs jointly funded through a state, local, or federal-local program. In addition, applicants are able to seek private financing to supplement an ECAA loan.

SECTION 1655. STREETLIGHT CONVERSION PROJECT LOANS
SPECIFIC PURPOSE

The specific purpose is to delete Section 1655 of this Article related to streetlight conversion project loans.

NECESSITY

Deleting this section is necessary to remove reference to a program that no longer exists. This loan program was authorized by an old version of Public Resources Code Section 25412.5, which was repealed in 2002. Therefore, it’s necessary to remove this loan program from regulations.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS.

No studies or reports were relied upon.

CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

No reasonable alternatives to the proposed regulations have been proposed that would lessen any adverse impact on small businesses or that would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that achieves the purposes of the statute being implemented.

Small businesses are not eligible to apply for ECAA funding. Therefore, the proposed repeal of the ECAA regulations will not have an impact on small businesses. Small businesses may indirectly benefit from the ECAA funding by contracting with local governments and public institutions to install energy efficiency and renewable energy projects funded by the program. However, because no changes to the underlying program are expected as a result of the proposed repeal, no impacts to small businesses are expected.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Creation or Elimination of Jobs within the State of California

Businesses are not eligible to apply for ECAA funding, and the proposed regulations do not impose any requirements upon businesses. Businesses may indirectly benefit from the ECAA funding by contracting with local governments and public institutions to install energy efficiency and renewable energy projects funded by the program. However, because no changes to the underlying program are expected as a result of the proposed repeal, no impacts to businesses are expected. Therefore, the Energy Commission has determined the proposed repeal of the ECAA regulations will not create or eliminate jobs in California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

Businesses are not eligible to apply for ECAA funding, and the proposed regulations do not impose any requirements upon businesses. Businesses may indirectly benefit from the ECAA funding by contracting with local governments and public institutions to install energy efficiency and renewable energy projects funded by the program. However, because no changes to the underlying program are expected as a result of the proposed repeal, no impacts to businesses are expected. Therefore, the Energy Commission has determined the proposed repeal of the ECAA regulations will not create or eliminate any new or existing businesses in California.

The Expansion of Businesses Currently Doing Business within the State of California

Businesses are not eligible to apply for ECAA funding, and the proposed regulations do not impose any requirements upon businesses. Businesses may indirectly benefit from the ECAA funding by contracting with local governments and public institutions to install energy efficiency and renewable energy projects funded by the program. However, because no changes to the underlying program are expected as a result of the proposed repeal, no impacts to businesses are expected. Therefore, the Energy Commission has determined that businesses doing business in California will not be expanded.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The specific benefit of this rulemaking action is to eliminate outdated and irrelevant ECAA program requirements which confuse program applicants. Given the numerous statutory amendments since the ECAA program was originally created, the ECAA statute now provides sufficient authority and guidance to administer the ECAA program without the need for additional regulations. Repealing the regulations will not impact the health and welfare of California residents, worker safety, or the state's environment.

Results of the Economic Impact Assessment/Analysis

The Energy Commission concludes that: (1) the proposal will not create jobs within California; (2) the proposal will not eliminate jobs within California; (3) the proposal will not create new businesses in California; (4) the proposal will not eliminate existing businesses within California; and (5) the proposal will not result in the expansion of businesses currently doing business within California. Because no changes are proposed to the underlying ECAA program, the proposed repeal would not have any economic impact on California.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

These proposed regulations do not duplicate or conflict with any federal regulations contained in the Code of Federal Regulations. These regulations are limited to a very specific state funding program.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS

Businesses are not eligible to apply for ECAA funding, and the proposed regulations do not impose any requirements upon businesses. Businesses may indirectly benefit from the ECAA funding by contracting with local governments and public institutions to install energy efficiency and renewable energy projects funded by the program. However, because no changes to the underlying program are expected as a result of the proposed repeal, no impacts to businesses are expected.

Therefore, the Energy Commission has made an initial determination that the proposed regulations will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

FOR FURTHER INFORMATION

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations or any other information upon which the rulemaking is based, should be directed to Corrine Fishman at Corrine.Fishman@energy.ca.gov or (916) 654-4976. If Corrine Fishman is unavailable, you may contact Hally Cahssai at (916) 654-4652 or hally.cahssai@energy.ca.gov.