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| Docket Number: | 18-OIR-02 |
| Project Title: | Proposal to repeal the outdated Energy Conservation Assistance Act (ECAA) regulations |
| TN #: | 228936 |
| Document Title: | Notice of Proposed Action |
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| Filer: | Corrine Fishman |
| Organization: | California Energy Commission |
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CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

Main website: www.energy.ca.gov
CEC-57 (Revised 1/19)



NOTICE OF PROPOSED ACTION

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.

PUBLIC HEARING

Energy Commission staff will hold a public hearing for the proposed regulations on the following date and time. Interested persons, or his or her authorized representative, may present oral and written statements, arguments, or contentions relevant to the proposed regulations at the hearing. The record for this hearing will be kept open until 12:00 p.m. (Pacific Time) or until every person present who indicates a desire to speak has had an opportunity to do so.

Thursday, August 29, 2019

10:00 a.m.–12:00 p.m. (Pacific Time)

California Energy Commission

1516 9th Street

Sacramento, CA 95814

First Floor, Imbrecht Hearing Room

(Wheelchair accessible)

Audio for the hearing will be broadcast over the internet. Details regarding the Energy Commission's webcast can be found at www.energy.ca.gov/webcast.

If you have a disability and require assistance to participate in the hearing, please contact Yolanda Rushin at Yolanda.Rushin@energy.ca.gov, or (916) 654-4310, at least five days in advance.

WRITTEN COMMENT PERIOD

You may submit written comments to the Energy Commission for consideration on or prior to August 26, 2019. The Energy Commission appreciates receiving written comments at the earliest possible date.

Please submit comments using the Energy Commission's e-commenting feature by going to the Energy Commission's ECAA webpage at <https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=18-OIR-02>, Docket Number 18-OIR-02, then select the "Submit e-comment" link. A full name, e-mail address, comment title, and either a comment or an attached document (.doc, .docx, or .pdf format) is mandatory. After a challenge-response test used by the system to ensure that responses are generated by a human user, click on "Agree & Submit Your Comment" to submit the comment to the California Energy Commission's Docket Unit.

Please note that written comments, attachments, and associated contact information included within the written comments and attachments (e.g., your address, phone number, email address, etc.) become part of the viewable public record. You are encouraged to use the electronic filing system described above to submit comments. All written comments submitted prior to the hearing must be submitted to the docket. If you are unable to submit electronically, a paper copy of your comments may be sent to:

Docket Unit
California Energy Commission
Docket No. 18-OIR-02
1516 9th Street, MS-4
Sacramento, CA 95814
Telephone: (916) 654-5076
Or by email to docket@energy.ca.gov
Or fax them to the Docket Unit at (916) 654-4354

PUBLIC ADVISER

The Energy Commission's Acting Public Adviser Jennifer Martin-Gallardo, is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228, or contact publicadviser@energy.ca.gov.

NEWS MEDIA INQUIRIES

News media inquiries should be directed to the Media and Public Communications Office at (916) 654-4989, or by email at mediaoffice@energy.ca.gov.

STATUTORY AUTHORITY AND REFERENCE

Public Resources Code Section 25218(e) authorizes the Energy Commission to adopt rules or regulations, as necessary, to implement Public Resources Code Sections 25412, 25413, 25415(a), and 25419.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 designs 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 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.

Difference from existing comparable federal regulation or statute

The Energy Commission has determined that there are no existing comparable federal regulations or statutes related to the ECAA regulations. These regulations are limited to a very specific state funding program.

Broad objectives of the regulations and the specific benefits anticipated by the proposed amendments

The broad objective 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.

Repealing the ECAA regulations will not in any way affect how the ECAA program is currently implemented and will not impact the time or resources needed to apply for an ECAA loan.

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 created, the ECAA statute now provides sufficient authority and guidance to administer the ECAA program without the need for additional regulations.

Determination of inconsistency or incompatibility with existing state regulations

The Energy Commission has conducted an evaluation for other regulations in this area and has concluded that the proposed repeal of the ECAA regulations is neither inconsistent nor incompatible with other existing state regulations. These are the only regulations that involve the disbursement of funds under ECAA.

DOCUMENTS INCORPORATED BY REFERENCE

The Energy Commission does not propose to incorporate any documents by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

None

OTHER STATUTORY REQUIREMENTS

None

FISCAL IMPACTS

The Energy Commission has made the following initial determinations:

- Mandate on local agencies and school districts: None. Local agencies and school districts are eligible, but not required, to apply for ECAA funding.
- Cost to any local agency or school district requiring reimbursement pursuant to 17500 et seq.: None. Local agencies and school districts are eligible, but not required, to apply for ECAA funding.
- Cost or savings to any state agency: None. State agencies with certain facilities such as a school or hospital are eligible, but not required, to apply for ECAA funding.
- Non-discretionary cost or savings imposed upon local agencies: None. Local agencies such as cities and counties, are eligible, but not required, to apply for ECAA funding.
- Cost or savings in federal funding to the state: None. Funding for the ECAA program does not involve any federal funds.

SIGNIFICANT EFFECT ON HOUSING COSTS

The proposed repeal of the ECAA regulations is not related to the permitting, building, repair, or other activity related to housing and therefore will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

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 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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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.

Benefit of the Proposed Action: The benefit of the proposed 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.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Businesses are not eligible to apply for ECAA funding, the existing regulations do not impose any requirements upon businesses, and the proposed repeal does not make any changes affecting businesses.

BUSINESS REPORT

No report is required.

SMALL BUSINESS

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Energy Commission must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed; 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 Energy Commission invites interested persons to present statements or arguments concerning alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON

Please direct inquiries concerning all aspects of the rulemaking process including requests for copies of the proposed text (express terms), the initial statement of reasons (ISOR), any modified version of the regulations, the substance of the proposed regulations, or any other information upon which the rulemaking is based to:

Corrine Fishman
Regulations Manager, Efficiency Division
1516 Ninth Street
Sacramento, CA 95814-5512
(916) 654-4976
corrine.fishman@energy.ca.gov

If Corrine Fishman is unavailable, you may contact Hally Cahssai at (916) 654-4652 or hally.cahssai@energy.ca.gov.

COPIES OF THE INITIAL STATEMENT OF REASONS, THE EXPRESS TERMS, AND RULEMAKING FILE

The Energy Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date

this notice is published in the Notice Register, the rulemaking file consists of this notice, the express terms, and the ISOR. Copies may be obtained by contacting Corrine Fishman at the address or phone number above or accessed through the Energy Commission's website at <https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=18-OIR-02>.

AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the Energy Commission considers changes to the proposed regulations pursuant to Government Code Section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Energy Commission adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the Final Statement of Reasons (FSOR), once it has been prepared, by visiting the Energy Commission's website at <https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=18-OIR-02> or contacting the contact person above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Energy Commission maintains a website to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Energy Commission for this rulemaking, including this Notice of Proposed Action, the express terms, and the ISOR have been posted at <https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=18-OIR-02>.