

NOTICE OF PROPOSED EMERGENCY ACTION

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, 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 the submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

If you have any questions or comments regarding this proposed emergency action, please contact Kevin Nakano at kevin.nakano@treasurer.ca.gov or (916) 653-0015, with the California Alternative Energy and Advanced Transportation Financing Authority.

FINDING OF EMERGENCY

CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY

Article 6 (commencing with Section 10092.1), Division 13, Title 4 of the California Code of Regulations

Pursuant to Section 26009 of the Public Resources Code, the regulations are being readopted for a second time with no additional modifications by the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) as emergency regulations are expressly deemed in statute to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. CAEATFA is incorporating by reference OAL file numbers 2024-0501-01E and 2024-1023-02EE to this Finding of Emergency.

Authority and Reference

Authority: Public Resources Code Sections 26006 and 26009. Section 26009 of the Public Resources Code authorizes CAEATFA to adopt emergency regulations necessary for the immediate preservation of the public peace, health, safety, or general welfare in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Reference: Public Resources Code Sections 26002, 26002.5, 26003(a)(3)(A), 26003(a)(6), 26003(a)(7)(A), 26003(a)(8)(A), 26006, 26011, and 26040. CAEATFA’s purpose is to advance the State's goals to reduce the levels of greenhouse gas emissions, increase the deployment of sustainable and renewable energy sources, implement measures that increase the efficiency of the use of energy, create high quality employment opportunities, and lessen the State's dependence on fossil fuels. CAEATFA’s authorizing statutes enable it to provide financial assistance to various participating parties that carry out eligible projects.

Informative Digest

The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) and requires CAEATFA to establish programs to provide financial assistance to participating parties for projects related to alternative energy sources and advanced transportation projects. Existing law authorizes CAEATFA to receive and utilize grants or loans from the federal government, a public agency, or any other source for carrying out the purposes of the Act.

Pursuant to this statutory authority, CAEATFA is the administrator of the California Hub for Energy Efficiency Financing (“CHEEF”) under a Memorandum of Agreement with the Public Utilities Commission (“CPUC”), and the Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs, Decision 13-09-044 (“Decision”). The Commercial Energy Efficiency Financing Program (the “Program”) is one of several energy efficiency financing programs administered by CAEATFA through the CHEEF.

The Program launched in July 2019, the second of the CHEEF pilot programs developed by CAEATFA, and targets the small business sector. The Program offers finance companies a credit enhancement in the form of a loss reserve contribution for every enrolled financing agreement.

Under Decision 23-08-026, published in the summer of 2023, the CPUC authorized CAEATFA to begin using its current funding source, IOU energy efficiency ratepayer funds, to credit enhance financing for comprehensive clean energy measures. This marks a significant expansion of the Program to encompass a broader range of clean energy measures in addition to energy efficiency measures. This expansion is in line with State goals, and supports Californians seeking to more fully decarbonize or electrify.

In the emergency modifications to regulations adopted in May of 2024, CAEATFA made substantial changes to incorporate the key modifications into the Program. The amendments being readopted for a second time in these emergency regulations respond to the challenges and lessons learned from implementing the Program, as well as the Program’s expansion to include comprehensive clean energy measures. Since the initial emergency action was approved by OAL in file number 2024-0501-01E and the first readopt was approved by OAL in file number 2024-1023-02EE, CAEATFA has worked diligently to implement these amendments.

Given the time-intensive nature of the amendments and unanticipated staff vacancies, it is necessary to readopt for a second time the emergency regulations, with no additional modifications from the initial emergency action, to allow CAEATFA enough time to complete the Certificate of Compliance.

Key Modifications:

Other proposed regulation amendments respond to challenges, lessons learned, and extensive stakeholder feedback received while implementing the GoGreen Business Program. It is CAEATFA’s intention to expand the opportunity for Eligible Commercial Financing Customers to access the Program, streamline processes, and facilitate energy upgrades. The

amendments to the regulations:

1. Add new clean energy generation and storage measures to the pre-qualified list including Solar PV, battery storage, wind turbines, anaerobic digesters, and microgrid components;
2. Add new energy efficiency measures to the pre-qualified list including refrigeration, food processing, solar water heating and electric vehicle charging;
3. Expand criteria for custom clean energy projects to be qualified via certification of a Professional Engineer or Certified Energy Manager;
4. Create a formal process by which Contractors can be removed from GoGreen Business's online, public-facing search tool, and eventually the program, for lack of active participation over one to three years; this ensures that prospective borrowers are only shown active participating contractors in GoGreen Business's public-facing list;
5. Create a customer type for deed-restricted multifamily and allow an increased loss reserve contribution for installations at these properties;
6. Extend the period of claim eligibility to fifteen years and increase claim eligibility and participation in On-Bill Repayment to twenty years for projects with solar PV and battery storage;
7. Allow for Program expansion through the availability of non-IOU ratepayer sources of funding; and
8. Allow Interest Rate Buy-Downs to be offered to customers through the Program, contingent on funding availability.

CAEATFA has reviewed existing regulations on this topic and has concluded that the proposed regulations are not inconsistent nor incompatible with existing state regulations. During this regulation amendment process, CAEATFA surveyed and engaged key stakeholders for feedback, and conducted a public workshop on March 25, 2024, followed by a five-day public comment period. Stakeholder feedback is represented in these proposed modifications.

Universal Changes in Multiple Sections

- *Throughout the regulations, the term “Energy-Saving Measure” or “ESM” was amended to “Eligible Energy Measure” or “EEM.” References to “energy efficiency” were changed to read “energy impact” or “energy.”*

Necessity: These changes were made to be more accurate as the Program is expanding to offer generation, storage, and other forms of clean energy.

- *Throughout the regulations, references to “IOU/REN/CCA energy efficiency or demand response programs” were changed to read “IOU/REN/CCA demand-side energy management programs.”*

Necessity: This change was made to expand the references to utility energy efficiency and demand response programs to include other types of programs which address clean energy generation and storage.

Non-Substantive Changes in Multiple Sections

- *Throughout the regulations, CAEATFA made non-substantive changes that improve readability, bring consistency, correct grammar, and reorder provisions. Section references and details of these non-substantive changes are not included in the section that lists substantive changes and establishes necessity.*

Substantive amendments and necessity for each section of the regulations

§10092.1: Definitions.

- *§10092.1(a): “Ancillary Elements” removed*

Necessity: This definition is no longer needed for regulations and was removed for simplicity.

- *§10092.1(a): “Affordable Multifamily Customer” added*

Necessity: A definition of Affordable Multifamily Customer was added to allow for a larger loss reserve contribution for this customer type. A larger loss reserve contribution was indicated by lenders to incentivize better terms and more approvals for deed-restricted multifamily.

- *§10092.1(c): “Battery Storage” added*

Necessity: Battery storage is being newly added as clean energy measure. This has a different definition than other forms of storage previously included, and adding this definition provides clarity for qualification through the certification of a Professional Engineer or Certified Energy Manager.

- *§10092.1(h): “Claim-Eligible Financed Amount” modified*

Necessity: This change clarifies the limits of the 70% of eligible energy measures and the 30% of eligible non-energy improvements which can receive a loss reserve contribution. Distributed generation is now a qualifying measure so was removed from the amount that must be deducted from the claim-eligible amount. Adding a definition of the energy-related portion of the claim-eligible finance amount, which is required to be at least 70%, clarifies for the purposes of alternate sources of funding what portion of the project must be qualifying energy measures.

- *§10092.1(o): “Distributed Generation” modified*

Necessity: "Solar thermal" is being removed from the definition of Distributed Generation. Producing heated water through solar warming is not a form of generation, it is a form of

efficiency because it reduces the burden on gas or electric water heaters.

- *§10092.1(p): “Eligible Commercial Financing Customer” modified*

Necessity: This term was modified to include references to Affordable Multifamily Customer and Eligible Small business Financing Customer in this definition to improve readability throughout regulations.

- *§10092.1(r): “Eligible Energy Measure” (EEM) added*

Necessity: This term is being renamed from “Energy-Saving Measure” (ESM) to more broadly cover energy generation and storage as well as energy savings. The term is being added alphabetize the Definitions section.

- *§10092.1 (s): Eligible Energy Measure Identifier” or “EEM ID: added:*

Necessity: This term is being renamed from “Eligible Energy-Saving Measure Identifier” in line with the name change to eligible energy measures to more broadly cover energy generation and storage as well as energy savings. The term is being added alphabetize the Definitions section.

- *§10092.1 (t): “Eligible Energy Measure List” or “EEM List” added:*

Necessity: This term is being renamed from “Energy-Saving Measure List” to more broadly cover energy generation and storage as well as energy savings. The term is being added alphabetize the Definitions section.

- *§10092.1 (u): “Eligible Financing Agreement” modified*

Necessity: This term is being modified to remove the language requiring that installations must be in an existing building. Some installations such as agricultural pumps, drip irrigation, and many clean energy measures such as stand-alone solar components will not be installed in a building.

- *§10092.1(y): “Eligible Property” modified*

Necessity: This term was modified to remove the reference to IOU service. The definition of Eligible Energy Measure requires an IOU fuel source. 10092.16 adds an exception to that for non-IOU ratepayer funding.

- *§10092.1(aa): “Eligible Service Agreement” modified*

Necessity: This term was modified to remove the language that title does not transfer at the end of the agreement. This language is unnecessary and might or might not be true depending on the finance company.

- *§10092.1(bb): “Eligible Small Business Financing Customer” modified*

Necessity: This term was modified to simplify regulations language for readability. The definition of Eligible Commercial Financing Customer now explicitly references small/medium business customers and affordable multifamily customers.

The language "on average over the past 3 years" was removed to avoid prohibiting customers who have not been in business for three years from qualifying for the Program, which was not the intent.

The definition of Small Business relying on annual revenue was updated to \$16 million to stay current with the definition from California's Department of General Services.

- *§10092.1(cc): "Energy Efficiency" modified*

Necessity: This term was modified to change the definition of Energy Efficiency from "grid-supplied" to "utility-supplied" because energy efficiency can also save gas, while the word "grid" is specific to the electric grid.

- *§10092.1(aa), (bb), (cc): "Energy Saving Measure," "Energy Saving Measure Identifier," "Energy Saving Measure List" removed*

Necessity: These terms are being renamed in accordance with the change to Eligible Energy Measure as a defined term. They are being deleted to alphabetize this section.

- *§10092.1(ll): "GoGreen Business Energy Financing" modified*

Necessity: This term was modified to add clarification that this program name is for commercial customers, as opposed to multifamily customers.

- *§10092.1(mm): "GoGreen Multifamily Energy Financing" added*

Necessity: This term was added as a separate public-facing name from GoGreen Business Energy Financing which will help with marketing to multifamily owners.

- *§10092.1(ww): "Non-Energy Components" modified*

Necessity: Project Developer fees were removed from the definition of Non-Energy Components, so they may be included in the claim-eligible amount.

- *§10092.1(mmm): "Project" modified*

Necessity: This term was modified to clarify and simplify language by removing an unnecessary defined term, Ancillary Elements. That definition has now been combined into this term.

§10092.4. Contractor and Project Developer Participation

- *§10092.4(b)(1)(D): Contractor/Project Developer employee requirement removed*

Necessity: The requirement that the contractor or project developer "must not be employee of the Eligible Commercial Customer" was removed to allow for financing structures in which the contractor or project developer is the borrower allows the program to meet different types of financing models while keeping the program requirement to serve small/medium businesses.

- *§10092.4(b)(1): Ability of the Authority to remove contractors from the Program website added*

Necessity: Language was added to give CAEATFA authority to remove inactive contractors from the Program website. Existing regulations require CAEATFA to list contractors on the Program website but have no provisions for removal.

§10092.5. Eligible Financing Products

- *§10092.5(b)(6): Exception for security interest requirement for Affordable Multifamily added*

Necessity: This section is being modified to make an exception that requires participating lenders to take a security interest in Total Financed Amounts greater than \$50,000 so that this requirement does not apply to an Affordable Multifamily Customer. The purpose of the security interest is to protect ratepayer funds. This change allows greater flexibility to qualify this type of customer for credit.

§10092.6. Eligible Financing Customers

- *§10092.7(c)(2): Project Developer requirement for Self-Installers updated*

Necessity: This section was modified to add an exception for Affordable Multifamily Customers to the requirement that a customer show positive taxable income. This requirement is not very relevant to how finance companies evaluate multifamily projects for creditworthiness.

- *§10092.7(d): Mortgage review requirement for Affordable Multifamily Customers added*

Necessity: A new section was added to require that a Finance Provider Entity must review the mortgage of an Affordable Multifamily Customer.

§10092.7 Project Eligibility.

- *§10092.7(b)(1): Requirement of IOU fuel savings removed*

Necessity: The requirement that measures fuel savings type correspond to IOU service was removed.

- *§10092.7(b)(3): Professionally Certified Measures requirements modified*

Necessity: This section was modified to bring energy measure certification requirements in

line with the expanded types of clean energy described in §10092.7(b)(3)(A)-(E). The requirements described below were determined by CAEATFA to protect the greenhouse gas emissions reduction goals of the Program.

- *§10092.7(b)(3)(A): Professionally Certified Measures requirements for Energy Efficiency added*

Necessity: The requirement was added that Energy Efficiency installations must save energy.

- *§10092.7(b)(3)(B): Professionally Certified Measures requirements for Demand Response added*

Necessity: The requirement was added that Demand Response installations must save gas or electricity during peak periods.

- *§10092.7(b)(3)(C): Professionally Certified Measures requirements for Distributed Generation added*

Necessity: The requirement was added that Distributed Generation installations must reduce GHG emissions compared to existing conditions.

- *§10092.7(b)(3)(D): Professionally Certified Measures requirements for Battery Storage added*

Necessity: The requirement was added that Battery Storage installations must be for load shifting, virtual power plants, or energy arbitrage. This is to require the use of batteries for purposes that can help reduce climate change impacts, rather than simply for backup power.

- *§10092.7(b)(3)(E): Professionally Certified Measures requirements for Hydrogen production added*

Necessity: The requirement was added that hydrogen production must be produced by electrolysis and that the electricity must be from green sources such as solar PV, rather than sources that increase GHG emissions.

§10092.8. Financing Submittal and Enrollment.

- *§10092.8(b)(1)(D): Requirement to provide a copy of deed restriction or covenant added for Affordable Multifamily Customers*

Necessity: A requirement was added to require that Affordable Multifamily Customers provide a copy of the deed restriction or covenant, in alignment with the definition. This requirement was incorporated from GoGreen Multifamily regulations as a way of confirming low-income housing status.

- *§10092.8(b)(1)(D): Requirement that a Participating Contractor provide an invoice*

removed

Necessity: This requirement was intended to help with the Quality Assurance process described in §10092.7(d). However, documentation varies so widely that it is simpler to rely on the requirement that a Participating Contractor retain all relevant documentation as described in §10092.4(d)(5).

- *§10092.8(b)(2)(C): Affordable Multifamily Customer status added as an alternative to requirement to provide method of qualification as an Eligible Small Business Financing Customer*

Necessity: The definitions of Eligible Small Business Financing Customer do not apply to an Affordable Multifamily Customer.

- *§10092.8(b)(2)(JJ)-(LL): Separate data points for Distributed Generation removed*

Necessity: These sections were removed as the data requirements for Eligible Energy Measures now include Distributed Generation.

- *§10092.8(b)(2)(JJ)-(LL): Data points for Energy Efficiency and Demand Response qualifying through the Professionally Certified Method modified*

Necessity: Language was added to clarify that these data points are specific to Energy Efficiency and Demand Response.

- *§10092.8(b)(2)(NN): Separate data point for Distributed Generation added*

Necessity: An Energy Professional must provide estimates of the capacity of generation for new DG installations.

- *§10092.8(b)(2)(OO): Separate data point for GHG reduction added*

Necessity: An Energy Professional must provide estimates of GHG emissions avoided, as required by §10092.7(b)(3)(C) and (D).

- *§10092.8(b)(2)(BBB): Separate data point interest rate without the loss reserve added*

Necessity: A new data point was added to allow participating lenders to inform the program what the customer's interest rate would have been without the benefit of the loss reserve. This allows greater program tracking of borrower benefits while also simplifying verification of those benefits.

- *§10092.8(b)(3)(A)(v): Requirement of contractor certification of Distributed Generation removed*

Necessity: A separate requirement for reporting of DG is no longer needed as DG is part of Eligible Energy Measures requirements.

- *§10092.8(b)(3)(D)(i): Customer certification of installation completion modified*

Necessity: This requirement has been modified to allow a customer who is self-installing a project to complete the customer certification in advance, rather than after the project has been installed.

- *§10092.8(b)(3)(E): Energy Professional certification requirements modified*

Necessity: The requirements of this section were modified to bring the Energy Professional Certification in line with clean energy installation requirements of §10092.7(b)(3).

§10092.10. Claims.

- *§10092.10(a)(1): Claim eligibility threshold modified*

Necessity: This section is being modified to allow claims against the loss reserve to be submitted fifteen years after the enrollment date, or twenty years for projects including solar PV and battery storage.

§10092.14. Energy Saving Measure List.

- *This section lists pre-qualified Eligible Energy Measures (“EEMs”) by category, including requirements, fuel type, and whether the measure is eligible for self-installation. This section is separate from requirements for the Professionally Certified Measure Method described in 10092.7(b)(3), but this List also serves to indicate to stakeholders the types of installations that may qualify for the program.*

A new category of six clean energy measures is being added, along with seventeen new energy efficiency measures. Clarifications to the language of one measure are being added, along with a new Energy Star requirement for another existing measure.

Necessity: These modifications to add and modify eligible measures allows broader options for program participants to install energy upgrades while also further Program goals of reducing greenhouse gas emissions.

§10092.15. On-Bill Repayment.

- *§10092.15(d)(2), (h)(1)(C): OBR participation threshold modified*

Necessity: The allowed fifteen-year threshold for repayment through OBR was modified to allow twenty years for projects including solar PV and battery storage as this is more in line with the expected useful life of this type of equipment.

§10092.16. Conditional Eligibility Expansion.

- *This new section details the process and rules around the potential future availability of non-IOU-ratepayer funding to fund credit enhancements when measures do not save IOU fuel or there is a fuel substitute to a non-IOU source.*

Necessity: This will allow alternate sources of funding to expand program participation beyond IOU territories.

- *§10092.17(a)(1): Interested parties list added*

Necessity: This section describes the process by which CAEATFA will keep the public and stakeholders informed of the availability of alternate sources of funding.

- *§10092.17(a)(2): Terms of eligibility under alternate sources of funding added*

Necessity: This section links the use of funds to the Claim-Eligible Financed amount so that projects are required to be for clean energy installations in line with the goals of the Program, while expanding beyond the IOU fuel source requirement by creating an exception for fuel source eligibility as defined in 10092.1(r). Subsections define the types of sources of funding.

- *§10092.17(a)(3): Time frame for publication of funding sources added*

Necessity: This defines CAEATFA's timeframe for making information on the source of funding available to the public.

§10092.17. Interest Rate Buy Down (IRBD) Disbursement

This new section was added to describe what CAEATFA will do if CAEATFA secures funding from an external source to buy down the interest rate (an "interest rate buy-down" or "IRBD") of Eligible GoGreen Business financing agreements.

- *§10091.17(a): Establishing IRBD to allow CAEATFA the ability to direct funding from external funders to be used for IRBDs to help lower interest rates for borrowers participating in the GoGreen Business Program. Further, establishing the fund's relationship to the other data points collected by the program.*

Necessity: This section allows different sources of funding for IRBDs in the Program, each potentially with their own requirements. An IRBD funder's requirements will never supersede or amend, and instead will only be layered on top of, GoGreen Business's existing eligibility criteria and requirements.

- *§10091.17(b): Establishing IRBD pathway/process*

Necessity: This section defines eligibility criteria for participating financing companies and creates a process by which they can apply for the funding. Subpoints define the information that will be included in the term sheet if applicable. Different IRBD funders are likely to have different restrictions and CAEATFA will need to explain the details and eligibility criteria of each IRBD campaign on a case-by-case basis.

- *§10091.17(c): Oversight and public review of IRBD funding details*

Necessity: This section establishes a process whereby the terms of accessing the funding can

be transparently reviewed by the public and interested parties made aware.

- *§10091.17(d): Lender certification requirements for compliance*

Necessity: This section establishes that a Finance Provider Entity must agree to any requirements of an individual IRBD funder and that their participation in that funding is contingent upon CAEATFA's approval.

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 any specific regulation or class of regulations pursuant to Section 11346.1(b) or 11346.5(a)(4) of the Government Code pertaining to the Emergency Regulation 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 (pursuant to Government Code Section 11346.5(a)(5)).

Fiscal Impact

The Executive Director of the Authority has determined that the Emergency Regulations do not impose any additional mandated cost or savings requiring reimbursement under Section 17500 et. seq. of the Government Code, or 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 Sections 6601-6616, 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. There will be no cost or savings to any State Agency or effect on Federal funding to the State.

Progress Toward Permanent Rulemaking

CAEATFA adopted emergency regulations in May of 2024 to allow financing of clean energy installations and has continued to work toward permanent rulemaking. Staff are currently engaging with stakeholders to refine the program's approach in preparation for the regular rulemaking process. Staff began the 45-day public comment period on December 6, 2024 and will attend the January meeting of CAEATFA's Board at which time these regulations will be submitted for approval as part of the permanent rulemaking process.

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