



**California Energy Commission
October 18, 2023 Business Meeting
Backup Materials for Agenda Item No 7:
Equitable Building Decarbonization Direct Install Program Guidelines**

The following backup materials for the above-referenced agenda item are available as described below:

1. Proposed Resolution, attached below.
2. Proposed Commission Guidelines, as published on October 17, 2023, available at
<https://efiling.energy.ca.gov/GetDocument.aspx?tn=252609&DocumentContentId=87700>.
3. CEQA Memo, attached below.

For the complete record, please visit: [California Energy Commission: Docket Log: 22-DECARB-03](#).

To stay informed about this project and receive documents as they are filed, please subscribe to Decarbonization Topics, which can be accessed here:
<https://www.energy.ca.gov/subscriptions>. Decarbonization Topics sends out email notifications and direct links when documents are filed in the proceeding docket.

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

**RESOLUTION: ADOPTION OF EQUITABLE BUILDING DECARBONIZATION
DIRECT INSTALL PROGRAM GUIDELINES**

(22-DECARB-03)

WHEREAS, Assembly Bill 209 (AB 209, Chapter 251, Statutes of 2022) directed the California Energy Commission (CEC) to develop and implement the Equitable Building Decarbonization Program, to include two components: a direct install program and a statewide incentive program for low-carbon building technologies; and

WHEREAS, AB 209 provides that the CEC may adopt guidelines or other standards for the program, and that the Administrative Procedure Act (commencing with Government Code section 11340) does not apply to guidelines or other standards for the program adopted at a CEC business meeting; and

WHEREAS, CEC staff released a Request for Information on December 9, 2022, and held a public workshop on December 13, 2022, to solicit input to inform the development of the Equitable Building Decarbonization Program; and

WHEREAS, CEC staff released draft guidelines for the Equitable Building Decarbonization Direct Install Program on May 7, 2023, hosted several public workshops to solicit input on the draft guidelines, and accepted written comments on the draft guidelines through June 30, 2023; and

WHEREAS, having considered public comments on the draft guidelines, CEC staff published the proposed Equitable Building Decarbonization Direct Install Program Guidelines to the CEC website and the program docket (22-DECARB-03); and

WHEREAS, the proposed Equitable Building Decarbonization Direct Install Program Guidelines establish a framework to provide energy efficiency, decarbonization, or load flexible solutions directly to consumers at minimal or no cost through a third-party implementer, as directed by AB 209; and

WHEREAS, the CEC's legal office considered the application of the California Environmental Quality Act (CEQA) to the CEC's adoption of the Equitable Building Decarbonization Direct Install Program Guidelines and concludes that the CEC's adoption of these Guidelines is exempt from CEQA under California Code of Regulations, title 14, sections 15307, 15308, and 15061(b)(3).

THEREFORE, BE IT RESOLVED, the CEC finds the Equitable Building Decarbonization Direct Install Program Guidelines are based on substantial evidence in the record and advance the legislative directive in AB 209; and

FURTHER BE IT RESOLVED, the CEC finds the adoption of the Equitable Building Decarbonization Direct Install Program Guidelines is exempt from CEQA under California Code of Regulations, title 14, sections 15307 and 15308 (Class 7 and 8 exemptions) and section 15061(b)(3) (common sense exemption); and

FURTHER BE IT RESOLVED, the CEC hereby adopts the Equitable Building Decarbonization Direct Install Program Guidelines, incorporating any changes presented and adopted today along with any non-substantive changes, such as typographical corrections; and

FURTHER BE IT RESOLVED, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to implement the Equitable Building Decarbonization Direct Install Program as specified in the Guidelines.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on October 18, 2023.

AYE:

NAY:

ABSENT:

ABSTAIN:

Dated:

Kristine Banaag
Secretariat

Memorandum

To: Docket 22-DECARB-03

Date: October 6, 2023

From: **Michael Murza, Counsel**
Office of Chief Counsel
California Energy Commission
715 P Street,
Sacramento, California 95814

Subject: Basis for Finding the Approval of the Equitable Building Decarbonization (EBD) Direct Install Program Guidelines is Not a “Project” or Otherwise Exempt Under the California Environmental Quality Act

I. Introduction.

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies assess and prepare environmental documents disclosing any significant adverse environmental impacts of discretionary project approvals. However, discretionary approvals that do not fit the definition of a “project” are not subject to CEQA requirements. Additionally, CEQA designates certain project exemptions. As discussed below, the adoption of the EBD Direct Install Program Guidelines (the EBD Guidelines) do not constitute a “project” because they are administrative acts and because they do not commit the commission to fund or construct any particular project with significant environmental effects (Cal. Code Regs., tit. 14, § 15378(b)(2) & (4)). If, however, the EBD Guidelines are a “project,” then CEQA class 7 and 8 exemptions (Cal. Code Regs., tit. 14, §§ 15307 and 15308) and the common-sense exemption (Cal. Code Regs., tit. 14, § 15061(b)(3)) would apply to the EBD Guidelines.

II. The EBD Guidelines will reduce greenhouse gas emissions and advance energy equity in California.

The EBD Program is a building decarbonization initiative established by Assembly Bill 209 (Committee on Budget, Chapter 251, Statutes of 2022) (AB 209) that facilitates building retrofits for low-income and moderate-income residents of single-family, multifamily, and manufactured homes in under-resourced and Tribal communities. The CEC’s guidelines for the EBD Direct Install Program establish the initial rules and requirements for the program, including funding allocations, household and property

eligibility requirements, and eligible measures. These program guidelines are adopted under Public Resources Code Division 15, Chapter 7.6, which was added by AB 209.

The State of California has set ambitious goals to reduce or eliminate greenhouse gas (GHG) emissions within the building sector to mitigate the impacts of climate change. The burning of fossil fuels in gas-powered appliances in California's buildings significantly contribute to changes in the Earth's climate by releasing GHGs, such as carbon dioxide and methane. Specifically, existing residential and commercial buildings make up 25% of the state's GHG emissions alone, thus the retrofitting of existing building's appliances with energy efficient and low-emission technologies is vital to meeting the state's ambitious goals. AB 209 aligns the State's aggressive policies targeting GHG mitigation and decarbonization with a commitment to prioritize under-resourced communities that tend to have the highest energy burdens.

III. The EBD Guidelines are not a project.

CEQA applies to discretionary project approvals, and although a vote to approve the EBD Guidelines would be a discretionary act, adopting the EBD Guidelines does not meet the definition of a "project" under CEQA (See Cal. Code Regs., tit. 14, § 15378). The definition of "[p]roject does not include . . . [c]ontinuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, [or] *general policy and procedure making*" (Cal. Code Regs. tit. 14, § 15378(b)(2)). The EBD Guidelines set the initial rules and requirements for the program, including funding allocations, household and property eligibility requirements, and eligible measures. The EBD Guidelines fill procedural and administrative gaps in the implementation framework set by AB 209 and Public Resources Code section 25665 et seq. The EBD Guidelines constitute a general policy and procedure making document for the EBD program, and do not require any entities to undertake any specific action.

Under CEQA, the definition of project also does not include the "creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment" (Cal. Code Regs. tit. 14, § 15378(b)(4)). The EBD Direct Install Program facilitates payment by the CEC, through administrators, for the installation of eligible near-zero-emission building technologies into eligible low-income household retrofit projects. However, these program Guidelines do not commit the CEC to provide money to any specific administrator or to any specific project, and they are not being adopted with any specific project proposed or in mind. The EBD Guidelines position the CEC to administer funding and provide potential administrators and applicants clarity about what is required to participate in the program. Any future projects participating in the EBD Program will still be required to comply with applicable local permitting and project-specific environmental review requirements.

Finally, the EBD Guidelines do not meet the definition of a project because they do not have the potential for resulting in either a direct physical change in the environment, or

a reasonably foreseeable indirect physical change in the environment (Cal. Code Regs. tit. 14, § 15378(a)). As a guidance document, it is self-evident that the EBD Guidelines do not directly result in any physical change in the environment. Any indirect impacts derived from the Program would not be reasonably foreseeable because the EBD Guidelines do not commit funding to any specific site or future project. There is simply not enough information about the location, design, and specific technologies that will be incorporated into future projects that receive EBD funding at this time to conduct a meaningful review and public disclosure of indirect physical changes in the environment that could eventually be—at least in part—supported by the implementation of the EBD Guidelines.

IV. Even if the EBD Guidelines were a project, the Class 7 and 8 exemptions and the common-sense exemption would apply.

California Code of Regulations, title 14, sections 15307 and 15308 exempt actions taken by a regulatory agency pursuant to state law “to assure the maintenance, restoration, or enhancement of a natural resource” and actions taken to “assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment”, respectively. The EBD Guidelines will have no significant adverse effect on the environment and fall within the categorical exemption sections 15307 and 15308. As discussed above in Section II, the Guidelines establish a framework for furthering AB 209’s mandate to achieve deep reductions of GHGs and other air pollutant emissions from existing buildings in low- and moderate-income households across under-resourced areas of California. This action is taken for the express purpose of supporting the EBD Program to protect natural resources and the environment from energy waste and GHGs associated with burning fossil fuels in gas-powered appliances in buildings.

The EBD Guidelines squarely address these issues and qualify as an action taken by the CEC, as authorized by state law, “to assure the maintenance, restoration, enhancement, or protection of the environment” (Class 8), and as action “to assure the maintenance, restoration or enhancement of a natural resource” (Class 7) (Cal. Code Regs., tit. 14, § 15307 & 15308). Furthermore, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply to this project. Additionally, there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. For these reasons, this project is exempt from CEQA.

The EBD Guidelines are also exempt from CEQA under the common-sense exemption (Cal. Code Regs., tit. 14, § 15061(b)(3)). As noted above in Section III, CEQA only applies to projects that have the potential for causing a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself or beneficial changes to the environment (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382). The EBD Guidelines seek to provide

administrators with direction on how to participate in the program in order to retrofit existing low-income buildings in California. To the extent the EBD Guidelines attain the goal of reducing GHG emissions this outcome will be environmentally beneficial. It can therefore be seen with certainty that there is no possibility that approving the EBD Guidelines may have a significant effect on the environment.

V. Conclusion.

As shown above, approval of the EBD Guidelines is a regulatory action that does not meet the definition of a project under CEQA in accordance with section 15378. If, however, the EBD Guidelines are a project, they would protect natural resources and the environment, consistent with the categorical exemptions to CEQA review under sections 15307 and 15308 of the CEQA Guidelines. Finally, the EBD Guidelines are consistent with the common-sense exemption under section 15061(b)(3) of the CEQA Guidelines.