

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

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Executive Director

January 21, 2025

California Pollution Control Financing Authority Bond Program Notice of Emergency Regulations

The California Pollution Control Financing Authority (“CPCFA” or the “Authority”), organized and operating pursuant to Sections 44500 through 44563 of the Health and Safety Code, proposes to adopt emergency regulations after considering all comments, including objections and recommendations, regarding the proposed 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 (“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 OAL, the OAL 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, the OAL will have ten (10) calendar days to review and decide whether to approve the proposed emergency regulations. If approved by the OAL, the emergency regulations will become effective immediately upon filing with the Secretary of State 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 the regular rulemaking action.

CPCFA proposes to adopt the emergency regulations in accordance with its authority under Health and Safety Code Section 44520(b). The proposed emergency regulations amend Sections **8034 and 8035** of Title 4, Division 11, Article 3 of the California Code of Regulations concerning General Fees and Small Business Assistance Fund Fees.

Attached to this notice are the Finding of Emergency and proposed text of the emergency regulations. You may also review the Finding of Emergency and proposed text of the emergency regulations on CPCFA’s website at: <https://www.treasurer.ca.gov/cpcfafa/regulations/index.asp>

If you prefer to receive a hard copy of the proposed emergency regulations, please contact Morgan Matz at (916) 654-6061.

Sincerely,

Shela Tobias-Daniel

Shela Tobias-Daniel
Executive Director

Enclosures: Finding of Emergency
Proposed Text of Regulations

cc: Theodore "Ted" Ballmer, CPCFA Legal Counsel
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ST: mm

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 3 of the California Pollution Control Financing Authority Act (the "Act")¹. The proposed amendments to the regulations are to clarify and revise the Authority's fee schedule as it relates to the Authority's Small Business Assistance Fund (SBAF) and refunding transactions.

Authority and Reference

Authority: Sections 44520(a), 44520(b), and 44526(c), 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, and general welfare." Sections 44520(a) and 44526(c) of the Act authorize the Authority to fix and revise from time to time fees and charges for the loan of moneys to finance pollution control facilities.

Reference: Section 44526 of the Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by amending Sections 8034 and 8035 of Title 4, Division 11, Article 3 of the California Code of Regulations.

Informative Digest

Existing law authorizes the Authority to issue bonds, notes, bond anticipation notes, and other obligations (Health and Safety Code, §44526(b)) and to fix fees and charges, as well as revise those fees and charges, for the loan of moneys to finance pollution control facilities.

The proposed amendment to the regulations will clarify and revise fees charged to both large businesses and small businesses in order to make the Authority more competitive in the bond market.

The Authority has performed a search of existing regulations and has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

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

§ 8034. General Fees

Section 8034 (b). Lowers the administrative fee on qualified small business refundings by 50% to .001.

¹The Act is codified at Health and Safety Code sections 44500 through 44563 and Article 3 is codified at Health and Safety Code section 44548.

Necessity. The proposed amendments are necessary to provide more assistance to small businesses and allow small businesses additional flexibility when considering financing options and responding to market conditions.

Section 8034 (d). Removes the Authority's ability to charge certain discretionary fees.

Necessity. Eliminates ambiguous language and potential for confusion related to CPCFA's ability to adjust fees at its discretion.

§ 8035. Small Business Assistance Fund Fees

Section 8035 (a). Lowers the SBAF fee for large businesses to 33 basis points (bps). Eliminates the collection or recalculation of SBAF fee for large businesses on refunding transactions.

Necessity. Increases CPCFA's competitiveness with large businesses and promotes the purchase by large businesses of modern equipment for more positive environmental impacts.

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 6603, 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 6600-6616. There will be no cost or savings to any State Agency pursuant to Government Code Section 11346.1(b) or 11346.5(a)(6).

"Section 48" Statement

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 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.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority
Article 3. General Provisions Relating to Authority Actions

Text of Modified Regulations

§ 8034. General Fees.

- (a) Where the financing requested is not eligible for allocation of volume cap pursuant to 26 U.S.C. Section 146, the Authority charges a fee for reasonable and necessary administrative and program expenses connected with the sale of the bonds. For an applicant who is not a small business as defined in Section 8020, the fee shall be one tenth of one percent (.001) of the face value of the bonds issued. In addition, the Authority will charge an annual fee each year for the life of the financial assistance in the amount of five one-hundredths of one percent (.0005) of the remaining balance of the financial assistance, with a minimum annual fee of \$1,000 and a maximum annual fee of \$75,000.
- (b) In all other financings, the fee shall be ~~two tenths of one percent (.002)~~ one tenth of one percent (.001) of the face value of the bonds issued.
- (c) The applicant shall also reimburse the Authority for all reasonable and necessary out of pocket expenses which the Authority may incur at the applicant's request and all other expenses direct or indirect, properly allocable to the proposed financing. Unless paid out of the proceeds of the bonds issued, all fees for a particular proposed financing shall be paid by the applicant and deposited in the Authority Fund. The Authority shall be authorized to use general fees deposited in the Authority Fund to support Authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 7 of this Division 11.
- ~~(d) Notwithstanding subsection (a) and (b), for applications received after July 1, 2016, where the financing requested by a small business applicant is a refunding of a prior sale of bonds previously issued by the Authority and the refunding is included as part of an application which also requests new financing that is greater than the amount refunded by the small business applicant for a new proposed project, the Authority shall have the discretion to charge the small business applicant the Authority's reasonable and necessary expenses allocable to the refunding request in lieu of the fee described in subsection (b) normally applicable to refundings.~~

§ 8035. Small Business Assistance Fund Fees.

- (a) The Authority shall charge an applicant who is not a public agency or a small business as defined in Section 8020 a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance Fund (SBAF). The amount of the fee shall be ~~sixty-six one-hundredths of one percent (.0066)~~ thirty-three one-hundredths of one percent (.0033) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided, that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are ~~refinanced with or~~ converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of thirty-six one-hundredths of one percent (.0036) of the face value of such taxable bonds. In the case of ~~refunding or~~ conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to ~~refundings or conversions~~. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged.

- (b) The Authority shall refund a portion of the fee charged pursuant to subdivision (a) of this section if the occurrence of a subsequent event causes the original fee to exceed the amount allowed by federal tax law provisions, causing the bonds to lose their tax-exempt status. The refund shall be the difference between the original fee charged and the maximum fee subsequently determined to be chargeable by bond counsel approved by the Authority.
- (c) The Authority shall refund a portion of the fee charged if, in the judgment of the Authority, the amount in the Small Business Assistance Fund account exceeds the amount needed to operate the Small Business Assistance Fund program and to assist small businesses obtain financing. If the Authority makes a refund pursuant to this subdivision, the amount of the refund payable to each applicant shall be computed by multiplying the total amount to be refunded by the percentage each applicant contributed in fees to the total fees collected pursuant to this section.
- (d) If an applicant refinances existing bonds with the issuance of new bonds, it shall receive a credit against the fee charged pursuant to this section in an amount equal to the net Small Business Assistance Fund fees paid on the earlier bonds.
- (e) The assessment of the fee provided for in subsection (a) is waived on all financing transactions closing on or before December 31, 2026.

Authority cited: Section 44520 and 44548, Health and Safety Code.

Reference: Section 44548, Health and Safety Code.