

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

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”) are, by legislative mandate, necessary for the implementation of small business financing assistance and the immediate preservation of the public peace, health and safety, and general welfare.

Proposed Regulatory Action

The Authority proposes to amend amending Section 8034(d) and Section 8035(e)-(f) of Title 4, Division 11, Article 3 of the California Code of Regulations (the “Amended Regulations”) concerning the administration of the California Pollution Control Financing Authority’s Bond Program. These Adopted Regulations are necessary to implement, interpret and make specific Article 3 of the California Pollution Control Financing Authority Act (the “Act”). The current rulemaking action would make these changes permanent.

Authority and Reference

Authority: Sections 44520(a) and 44520(b), 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 or general welfare.” Section 44520(a) of the Act authorizes the Authority to adopt necessary regulations to carry out its powers and duties under this division in administering applications for financing.

Reference: Section 44520, 44525, 44537.5 and 44548, Division 27, Health and Safety Code. These Emergency Regulations implement, interpret and make specific Sections of the Act by amending Section 8034(d) and Section 8035(e)-(f) of Title 4, Division 11, Article 3 of the California Code of Regulations.

Informative Digest/Policy Statement Overview

Existing law establishes the Authority to implement small business financing assistance programs pursuant to Section 44520(b) of the Health and Safety Code.

Background of Section 8034.

Under the Authority’s regulations, applicants seeking or receiving bond financing must pay fees for reasonable and necessary administrative and program expenses connected with the sale of bonds. CPCFA has previously adopted regulations pertaining to fees associated with the refunding of bond issuances to: require a new request for financing the refunding of bonds; charge a fee in conjunction with the refunding bond issue requested; and obtain reimbursement for costs and expenses associated with the refunding issue.

The fee charged for the refunding of a prior sale of bonds approved by the Authority is two tenths of one percent (.002) of the face value of the bonds issued. This fee is expected to cover staff administrative costs both during the review of the application for the refunding and for the life of the bonds including post-issuance compliance and monitoring.

In light of the sluggish recovery from the economic recession, in an effort to provide some cost savings to applicants, in 2013, the CPCFA Board approved staff's proposal to file emergency regulations to amend and add section (d) to section 8034 of the CPCFA regulations to provide the Authority the discretion in each case to charge the reasonable and necessary allocable expenses of reviewing the refunding request in lieu of the standard administrative fee when the refunding transaction was coupled with a new money issue. These amendments to the regulations were approved by OAL on December 26, 2013.

Background of Section 8035.

During the late 1970s and early 1980s, the U.S. Small Business Administration (SBA) administered a special pollution control loan guarantee program for small businesses. The program offered SBA loan guarantees for federally issued tax-exempt bonds. The SBA discontinued the program in 1981, which left small businesses inadequate resources for securing cost-effective tax-exempt financing.

In 1985, the State Legislature established the collection of SBAF fees from large businesses obtaining conduit bond financing from CPCFA, to fill a void from the discontinuation of the SBA program, and to offset certain costs of issuance and letter of credit fees associated with the issuance of tax-exempt bonds issued on behalf of small businesses. A small business is defined as 500 employees or less. Under this legislation, large businesses began paying into SBAF to support CPCFA programs that benefit small businesses.

The fee to large businesses is up to .0066 of the face value of the bonds issued. Small businesses can receive up to \$205,000 towards their costs of bond issuance, depending on the size of the transaction.

SBAF funds also have helped small businesses through other CPCFA programs. From 1994 to 2010 about \$35 million of the SBAF funds were used as the exclusive funding source for the California Capital Access Program (CalCAP) that benefits small businesses. Since 2011, CalCAP has not relied on SBAF funds because in 2011 the program received its first State General Fund allocation of \$6 million, plus \$84 million in federal funds under the State Small Business Credit Initiative (SSBCI).

Due to the economic downturn and the receipt of other program funds for CalCAP, the Authority implemented a temporary suspension of the collection of the SBAF fee from large businesses to reduce the costs of issuance. Under regulations adopted in April 2013, the SBAF fee for large businesses was temporarily waived until June 30, 2015 pursuant to Section 8035(e) of the CPCFA regulations. In 2015, when the interest rate on lending did not rise as soon as hoped, CPCFA extended the sunset of the temporary suspension for an additional twelve months until June 30, 2016, and further added a waiver of half the fee for another six months thereafter from July 1, 2016 to December 31, 2016.

Need for Amendments to Sections 8034 & 8035.

Business investment in California using tax-exempt bonds declined noticeably during the economic downturn beginning in 2008. Even as economic activity begins to rebound in California, the cost of financing remains prohibitive in many cases, particularly for small businesses which cannot absorb the transaction costs. In addition, the cost of conventional financing is currently very low, based on today's interest rates, rendering the Authority's bond issuances less attractive for many borrowers especially where the application costs exceed the benefits of the tax-exempt status. As a result, the Authority's Private Activity Bond (PAB) Allocation has gone underutilized. CPCFA currently has \$2.3 billion in Carryforward Allocation available. Available allocation is as follows:

Total 2013 – 2014 Available Carryforward Allocation Available	<u>\$2,387,528,562</u>
Solid Waste Disposal	\$1,152,575,000
Sewage Facilities	\$ 234,953,562
Water Furnishing	\$1,000,000,000

Section 8034

Since 2014, five companies have been charged actual costs of reviewing the refunding request in lieu of the standard refunding administrative fee. The table below outlines the savings that each company received from being charged actual costs for the refunding portion of each transaction.

Company	Business Type	New Money Amount	Refunding Amount	Standard Administrative Fee	Actual Costs Charged at Closing	Company Savings
Arakelian Enterprises, Inc. dba Athens Services	Large	\$55,000,000	\$83,525,000	\$167,050	\$10,000.00	\$157,050.00
Blue Line Transfer	Small	11,945,000	10,880,000	21,760	4,985.00	16,775.00
California Waste Solutions	Small	25,335,000	19,045,000	38,090	5,000.00	33,090.00
Alameda County Industries	Small	3,780,000	12,800,000	25,600	4,443.69	21,156.31
CR&R Incorporated	Large	7,145,000	54,215,000	108,430	15,332.00	93,089.00
Total:		<u>\$103,205,000</u>	<u>\$179,465,000</u>	<u>\$360,930</u>	<u>\$39,760.69</u>	<u>\$321,160.31</u>

Comparing the costs actually charged at closing with what CPCFA would have received under the standard fee, the companies in these transactions realized considerable savings. At the same time, the savings to the companies resulted in lost revenue to CPCFA. Thus, by limiting the

refunding fee to the expenses allocable to the review of the refunding request, CPCFA opted to forego revenue calculated to support the long-tail responsibilities of staff associated with post-issuance monitoring, compliance, and reporting for the life of the issuance, often up to thirty years.

Due to rising staff and operating costs to administer CPCFA’s Bond Program and other financing programs, staff proposes to modify the 2013 discretionary waiver of refunding fees by a) limiting it to small businesses for which the costs of issuance are disproportionate, and b) only where the amount of new money being sought exceeds the amount to be refunded. This will still provide a significant benefit and incentive to seek new money and refunding through CPCFA’s pollution control bonds, and will entice small businesses to analyze their current outstanding debt and structure through private activity bonds issued by CPCFA. At the same time, it will ensure that CPCFA’s Administrative Fund is adequately funded for sustainable operations into the foreseeable future.

Moreover, the proposed amendment to Section 8034 retains the discretionary nature of the waiver, thereby permitting the Authority to apply the standard formula for the refunding fee when warranted on a case-by-case basis. The proposed new refunding fee rule would be in effect for applications received after July 1, 2016.

Section 8035

CPCFA staff recommended that the SBAF fee be temporarily waived beginning in early 2013 when staff noted that business investment in California using tax-exempt bonds had declined noticeably and private activity bond allocation remained underutilized. During the last three years since the SBAF fee waiver became effective, eight (8) large businesses have benefited from the waiver and three (3) qualifying small businesses requesting SBAF assistance have received it. The table below outlines the number of companies affected and amounts paid into and out of the SBAF account over the past two years, as well as the amount that large businesses saved.

	2013	2014	2015	2016 (as of 6/01/2016)	Total
Qualifying small businesses that received SBAF assistance	0	3 companies received \$430,440	1 company received \$45,840	3 companies received \$513,070	7 companies received \$989,350
Large businesses that benefitted from the SBAF fee waiver	1 company saved \$250,800	5 companies saved \$933,042	2 companies saved \$29,667	1 company saved \$47,157	8 companies saved \$1,260,666

Anticipated Benefits from This Regulatory Action

The SBAF fund currently has a balance of approximately \$14.8 MM. To ensure that the SBAF remains a sustainable resource for CPCFA’s small business financings into the foreseeable future, it is appropriate that the fee waiver be limited in duration. At the same time, while the interest rate

remains stubbornly low, stakeholders have indicated that if the SBAF fee waiver for large businesses can be extended for a short time, it would represent a significant cost savings to specific applicants sufficient to incentivize seeking financing through CPCFA this calendar year. Staff has determined that, on balance, the SBAF fund would not be unnecessarily depleted if the SBAF fee waiver was extended for an additional six months. The proposed changes will also attract businesses involved with pollution control projects. These types of projects will benefit the environment, and the public health and safety.

The proposed amendment to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

After conducting an evaluation for any other regulations on this area, the Authority has concluded that these are the only regulations concerning CPCFA Small Business Assistance Fund Fees and Refunding Fees. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed amendment and objective for the sections is as follows:

Section 8034(d). Waiver of the refunding fee formula to small businesses where the new money amount issue is larger than the amount of bonds refunded. CPCFA staff anticipates that this amendment will continue to reduce transaction costs for small businesses to issue PABS, as well as insuring that the Authority's administrative fund continue to be adequately funded for sustainable operation in the future.

Section 8035(e). Temporary waiver of the Small Business Assistance Fund fee. CPCFA staff anticipates that the temporary fee waiver will entice large businesses to issue PABs by noticeably reducing a portion of the cost of issuance. The continuation of the fee reduction will continue to serve as an incentive for national companies to focus investment in California while their fees are lower.

Section 8035(f). Temporary waiver of half of the SBAF fee. After the fee waiver expires, CPCFA anticipates that temporarily waiving half of the SBAF fee will continue to entice large business to issue PABs by still reducing a portion of the cost of issuance and help in the transition to completely eliminate the waiver.

Disclosure Regarding the Proposed Action

The Executive Director of the Authority has made the following determinations regarding the effect of the Adopted Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500–17630: None.

Other non–discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business: The Amended Regulations will not have an adverse impact on small business in California and will not affect small business since they do not impose additional restrictions or cost on small business.

Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the Amended Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Analysis

Assessment regarding effect on jobs/businesses: The Amended Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment: The proposed amendments to sections 8034 and 8035 will open more financing opportunities to businesses involved in pollution control projects. These types of projects will benefit the environment and the public health and safety.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Amended Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Adopted Regulations are proposed or 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 Authority invites interested parties to present statements with respect to alternatives to the Adopted Regulations during the written comment period.

Agency Contact Person

Written comments, inquiries and any questions regarding the substance of the Amended Regulations shall be submitted or directed to:

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Sacramento, CA 95814
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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Adopted Regulations to the Authority. The written comment period on the Adopted Regulations ends at **5:00 p.m. on November 14, 2016**. All the comments must be submitted in writing to the Agency Contact Person identified in the Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

Availability of Initial Statement of Reasons And Text of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Room 266, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the

Initial Statement of Reasons and the proposed text of the Adopted Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

Public Hearing

CPCFA will hold a public hearing, consistent with requirement to the California Administrative Procedure Act, to receive comments, objections, and recommendations. The hearing will begin at 2:00pm on November 14, 2016 at the State Board Personnel building in room 150 located at 801 Capitol Mall, Sacramento, CA 95814. Room 150 is wheel chair accessible. At the hearings, any person may present comments orally or in writing, or both, relevant to the proposed action. The hearing will be closed when all persons present have had an opportunity to comment on the proposed action. Time limits may be placed on oral comments to ensure that all persons wishing to comment have an opportunity within the available time for the hearing. CPCFA requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

Availability of Final Statement of Reasons

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/index.asp>.

PROPOSED TEXT OF REGULATIONS

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

§ 8034. General Fees.

The Authority charges the following fees for reasonable and necessary administrative and program expenses connected with the sale of bonds:

- (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) 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 ~~same~~ 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.

NOTE: Authority cited: Section 44520, Division 27, Health and Safety Code.

Reference: Sections 44520, 44525 and 44537.5, Division 27, Health and Safety Code.

§ 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) 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 new financing transactions closing on or before ~~is waived until December 31, 2016-June 30, 2016~~. In the case of refunding bonds and conversion bonds, there will be no SBAF fee charged if the original bonds were issued after the effective date of this subsection and before December 31, 2016-June 30, 2016.
- (f) The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions closing on or after ~~from July 1, 2016-January 1, 2017 to December 31, 2016~~ and closing on or before June 30, 2017.

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