

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 businesses assistance and the immediate preservation of the public peace, health and safety, and general welfare.

Proposed Regulatory Action

The Authority proposes to amend Section 8035 of Title 4 of the California Code of Regulations (the "Amended Regulations") concerning the administration of the California Pollution Control Financing Authority's Bond Program. These Amended Regulations are necessary to implement, interpret and make specific Articles 3 and 4 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 7, Health and Safety Code. These proposed regulations implement, interpret and make specific Sections of the Act by amending section (e) and add section (f) to Section 8035 of Title 4, Division 11, Article 3 of the California Code of Regulations. Specifically, the regulations address the fee authorized pursuant to Health and Safety Code Section 44548.

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.

The Small Business Assistance Fund (SBAF) was established in 1985 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. Large businesses began paying a fee into SBAF to support CPCFA programs. 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. In addition, SBAF funds have also supported small businesses through other CPCFA programs, including the California Capital Access Program.

CPCFA staff recommended that the SBAF fee be waived in early 2013 when staff noted that business investment in California using tax-exempt bonds had declined noticeably and as a result, Private Activity Bond (PAB) allocation had gone unused and CPCFA received unused allocation as Carryforward Allocation. Business investment in using tax-exempt bonds had declined because interest rates for conventional lending had lowered and therefore there was no longer an advantage in using tax-exempt bonds to obtain a lower interest rate. CPCFA staff anticipated that temporarily waiving the SBAF fee was a way to incentivize large businesses to finance their qualified private activities utilizing tax-exempt bonds by lowering the cost of bond issuance. The waiver adopted by the Authority expires on June 30, 2015.

The intent of this rulemaking is to temporarily extend the waiver of the fees that large businesses pay into SBAF for one year until June 30, 2016, followed by six months during which the SBAF fee will be half of the fee as originally set. As of January 1, 2017, the SBAF fee will be fully restored.

As of June 30, 2015, the SBAF fund has a balance of approximately \$15,268,334. The extension and modification of the fee waiver for large businesses will not affect the SBAF assistance given to small businesses, because ample funds exist to cover the benefit to small businesses that qualify for SBAF support based on projected volume. During the last two years since the SBAF fee waiver originally became effective, five large businesses have benefited from the waiver and all small businesses requesting SBAF assistance have received it.

This amendment is the result of periodic evaluation of the regulations and issues encountered during specific bond financing transactions. The proposed amendment and objective for the sections is as follows:

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 fee reduction could also 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.

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

The proposed amendment to the regulations will temporarily extend and modify the waiver of the fee that large businesses pay into the Small Businesses Assistance Fund. The proposed amendments and objectives for each section are as follows:

Section 8035(e). *Amend section (e) to temporarily extend the waiver of the fees that large businesses pay into the Small Business Assistance Fund (SBAF).*

The assessment of the fee provided for in subsection (a) on all new financing transactions is waived until 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 June 30, 2016.

Section 8035(f). *Add section (f) to waive half of the fees that large businesses pay into the SBAF fund.*

The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions from July 1, 2016 to December 31, 2016.

Disclosure Regarding the Proposed Action

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended 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 Authority is not aware of any benefits of the health and welfare of California residents, worker safety or the state’s environment with the proposed adoption to the Regulations. The temporary SBAF fee waiver will noticeably reduce a portion of the cost of issuance for large businesses seeking tax-exempt bond financing and therefore

could serve as an incentive for national companies to focus investment in California by issuing private activity bonds.

Consideration of Alternatives

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the proposed 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 Amended 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 Amended Regulations during the written comment period.

Agency Contact Person

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

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Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Authority. The written comment period on the Adopted Regulations ends at **5:00 p.m. on September 7, 2015**. All the comments must be submitted in writing to the Agency Contact Person identified in this 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 915 Capitol Mall, Room 457, 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 does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

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>.

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

TITLE 4, DIVISION 11, ARTICLE 7

INITIAL STATEMENT OF REASONS

Introduction

Health and Safety Code section 44548(a)(3) allows the California Pollution Control Financing Authority (the "Authority") to amend regulations that provide for differential Small Business Assistance Fund ("SBAF") fees from participating parties based upon factors determined by the Authority.

The Small Business Assistance Fund (SBAF) was established in 1985 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. Large businesses began paying a fee into SBAF to support CPCFA programs. 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. In addition, SBAF funds have also supported small businesses through other CPCFA programs, including the California Capital Access Program.

CPCFA staff recommended that the SBAF fee be waived in early 2013 when staff noted that business investment in California using tax-exempt bonds had declined noticeably and as a result, Private Activity Bond (PAB) allocation had gone unused and CPCFA received unused allocation as Carryforward Allocation. Business investment in using tax-exempt bonds had declined because interest rates for conventional lending had lowered and therefore there was no longer an advantage in using tax-exempt bonds to obtain a lower interest rate. CPCFA staff anticipated that temporarily waiving the SBAF fee was a way to incentivize large businesses to finance their qualified private activities utilizing tax-exempt bonds by lowering the cost of bond issuance. The waiver adopted by the Authority expires on June 30, 2015.

The intent of this rulemaking is to temporarily extend the waiver of the fees that large businesses pay into SBAF for one year until June 30, 2016, followed by six months during which the SBAF fee will be half of the fee as originally set. As of January 1, 2017, the SBAF fee will be fully restored.

As of June 30, 2015, the SBAF fund has a balance of approximately \$15,268,334. The extension and modification of the fee waiver for large businesses will not affect the SBAF assistance given to small businesses, because ample funds exist to cover the benefit to small businesses that qualify for SBAF support based on projected volume. During the last two years since the SBAF fee waiver originally became effective, five large businesses have benefited from the waiver and all small businesses requesting SBAF assistance have received it.

Statement of Benefits

The proposed regulations will temporarily exempt large business applicants from paying a SBAF fee, while continuing to preserve the original intent to support CPCFA programs that benefit

small businesses. The temporary waiver of the SBAF fee will not affect the SBAF assistance given to small businesses.

The Authority is not aware of any benefits of the health and welfare of California residents, worker safety or the state's environment with the proposed amendment to the CPCFA Regulations.

Section Analysis

The proposed objective is as follows:

Section 8035(e). *Amend section (e) to temporarily extend the waiver of the fees that large businesses pay into the Small Business Assistance Fund (SBAF).*

The assessment of the fee provided for in subsection (a) on all new financing transactions is waived until 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 June 30, 2016.

Section 8035(f). *Add section (f) to waive half of the fees that large businesses pay into the SBAF fund.*

The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions from July 1, 2016 to December 31, 2016.

Reliance

These amendments are the result of periodic evaluation of the regulation and feedback from applicants.

Alternatives Considered

The CPCFA Executive Director has determined that no alternatives are more effective, or as effective and less burdensome to affect persons or small businesses, than the proposed Amended Regulations.

Mandated Technology or Equipment

The CPCFA Executive Director has determined the revisions do not mandate the use of specific technologies or equipment.

Economic Impact Statement

The CPCFA Executive Director has determined that the revisions will have no significant adverse economic impact on small businesses, other businesses directly affected, or private persons. Furthermore, the CPCFA Executive Director has determined that the Amended Regulations do not impose any additional costs 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 6680, a Fiscal Impact Statement (Form STD 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 the State Administrative Manual Sections 6600-6670.

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

The creation or elimination of jobs within California: The amendments to section 8035 of the CPCFA Regulation are not expected to have a direct impact on the creation or elimination of jobs within the State of California.

The creation of new businesses or the elimination of existing businesses within the State of California: The proposed language in section 8035 of the CPCFA Regulation is not expected to have a direct impact on the creating of new businesses or the elimination of new businesses.

The expansion of businesses currently doing business within the State of California: The amendments to section 8035 of the CPCFA Regulations regarding the Small Business Assistance Fund Fees are not expected to have any direct impact on the expansion of businesses currently doing business within the State of California because these amendments will only temporarily waive the SBAF fee that large businesses pay.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The proposed language in section 8035 of the CPCFA Regulations are not expected to have a direct impact on the health and welfare of California residents, worker safety, or the state's environment.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 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) on all new financing transactions is waived until ~~June 30, 2015~~ 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 ~~June 30, 2015~~ June 30, 2016.
- (f) The Authority shall waive half of the fee assessed in subsection (a) on all new financing transactions from July 1, 2016 to December 31, 2016.