

**State of California
Office of Administrative Law**

In re:
**California Pollution Control Financing
Authority**

Regulatory Action:

Title 04, California Code of Regulations

Adopt sections:

Amend sections: 8034, 8035

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0621-02

OAL Matter Type: Emergency (E)

This action (1) waives the bond refunding fee formula to small businesses where new money amount issue is larger than the amount of the bonds refunded; (2) temporarily waives the Small Business Assistance Fund (SBAF) fee; and (3) temporarily waives half of the SBAF fee upon expiration of the SBAF fee waiver.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/29/2016 and will expire on 12/28/2016. The Certificate of Compliance for this action is due no later than 12/27/2016.

Date: June 29, 2016



**Mark Storm
Senior Attorney**

**For: Debra M. Cornez
Director**

Original: Renee Webster-Hawkins

Copy: Andrea Gonzalez

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|-------------------------------|--------------------|--------------------------|--|
| OAL FILE NUMBERS Z- | NOTICE FILE NUMBER | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2016-0621-02E |
|-------------------------------|--------------------|--------------------------|--|

For use by Office of Administrative Law (OAL) only

2016 JUN 21 P 3:00
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 29 2016
1:50PM

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| NOTICE | REGULATIONS |
|--------|-------------|

AGENCY WITH RULEMAKING AUTHORITY
California Pollution Control Financing Authority

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|---|--------------------------|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | NOTICE REGISTER NUMBER | PUBLICATION DATE | |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|---|--|
| 1a. SUBJECT OF REGULATION(S) CPCFA - Bond Program General Fees and SBAF Fee. | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
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|---|---|
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT |
| | AMEND |
| | REPEAL |
| TITLE(S) 4 | Title 4, Division 11, Section 8034(d) and 8035(e)-(f) per agency request |

| | | | |
|---|---|---|---|
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

| | | | |
|---|---|---|--|
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> 5100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) |

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| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|--------------------------------------|------------------------------------|-----------------------|---|
| 7. CONTACT PERSON Andrea Gonzalez | TELEPHONE NUMBER (916) 651-7284 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) agonzalez@treasurer.ca.gov |
|--------------------------------------|------------------------------------|-----------------------|---|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|--|-------------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE 6/21/2016 |
| TYPED NAME AND TITLE OF SIGNATORY Renee Webster-Hawkins, Executive Director | |

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JUN 29 2016
Office of Administrative Law

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.