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Executive Director

February 25, 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 readopt 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 readoption of the proposed emergency regulations. If approved by the OAL, the emergency regulations will become effective immediately upon filing with the Secretary of State for ninety (90) days. Within the 90-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/cpcfa/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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Deanna Hamelin, Section Manager

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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 administrative fees in bond 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 Section 8034 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.

Among other changes which are not affected by this action, the initial emergency rulemaking action, which this action seeks to correct, reduced the Authority's Administrative Fee for all financings, with the exception of financings not eligible for volume cap allocation, from two-tenths of one percent of the face value of the bonds issued to one-tenth of one percent.

This action will correct that error by specifying that only refunding transactions for small businesses will be subject to the reduced Administrative Fee. The Administrative Fee for all other transactions affected by the previous emergency rulemaking action will be restored to two-tenths of one percent of the face value of the bonds issued.

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.

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

Statement of New Emergency Circumstances

On February 10, 2025, emergency regulations affecting Sections 8034 and 8035 of Title 4, Division 11, Article 3 of the California Code of Regulations took effect; however, shortly afterward the Authority identified language in Section 8034 of the emergency regulations that did not accomplish the stated goal of reducing the Administrative Fee only for small business refunding transactions to one-tenth of one percent (.001). This readoption of the emergency regulations seeks to correct that error through the addition of subsection (b), which specifies that the reduced Administrative Fee will only apply to small business refunding transactions, and restoration of language in subsection (c) specifying that all other financings eligible for volume cap allocation will be subject to an Administrative Fee of two-tenths of one percent (.002).

The Authority also identified a misplaced hyphen in Section 8035(b) of the emergency regulations. This emergency readoption removes that hyphen.

Statement of Progress Toward Making Emergency Regulations Permanent

Pursuant to Gov. Code 11346.1(h) and 1 CCR 52(b)(1), readoption of emergency regulations requires “a statement providing specific facts demonstrating by substantial evidence that the agency has made substantial progress and proceeded with diligence” toward making the emergency regulations permanent through the regular rulemaking process. In preparing to undertake steps toward making the emergency regulations permanent such as seeking stakeholder feedback, preparing a Notice of Proposed Action, preparing an Initial Statement of Reasons, etc., the Authority determined that the emergency regulations should be immediately corrected before moving forward, both to reflect the intended impact of the rulemaking before pursuing further efforts to make the regulations permanent and to minimize the potential financial impact of leaving the previous emergency regulations in place. As a result, the Authority has not made progress toward making the previous emergency regulations permanent; however, after the corrected regulation text is approved and takes effect, the Authority will immediately begin the regular rulemaking process to make the corrected regulation text permanent.

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.

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. This change also specifies that the lowered administrative fee exclusively applies to refunding transactions for small businesses, as was the Authority’s original intent. With this disambiguation, the Authority finds it appropriate to revert what is now subsection (c) to the pre-emergency text.

Section 8034 (c). Maintains the administrative fee on all financings not subject to the terms specified in subsections (a) and (b) at .002.

Necessity. Formerly subsection (b), the text of this subsection is restored to its original form to reflect the intent of the previous rulemaking effort.

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.

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) For small business applicants in refunding transactions, the fee shall be one tenth of one percent (.001) of the face value of the bonds issued.
- ~~(c)(b)~~ In all other financings, the fee shall be two tenths of one percent (.002) of the face value of the bonds issued.
- ~~(d)(e)~~ 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.~~

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)~~ 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.