

**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: 8130, 8131, 8134, 8138

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

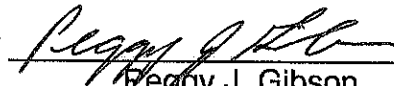
OAL Matter Number: 2020-0219-02

OAL Matter Type: Nonsubstantive (N)

The California Pollution Control Financing Authority is making changes in response to AB 305 (Statutes of 2019, Chapter 225). AB 305 made changes regarding Rate Reduction Bonds and this action without regulatory effect makes corresponding text changes.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: March 19, 2020



Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Renee Webster-Hawkins,
Executive Director

Copy: Alison French-Tubo

NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2020-0219-02 N	
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

MAR 19 2020

1:55 p.m.

2020 FEB 19 P 12:08
OFFICE OF ADMINISTRATIVE LAW

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		NOTICE REGISTER NUMBER	PUBLICATION DATE
		<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Rate Reduction Bonds for Water or Wastewater		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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	
TITLE(S)		AMEND	
Title 4		Sections 8130, 8131, 8134, 8138	
3. TYPE OF FILING		REPEAL	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	
		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	
		<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	
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 type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
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 Alison French-Tubo		TELEPHONE NUMBER (916) 657-5051	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) alison.french-tubo@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
[Signature]
DATE
2-13-20
TYPED NAME AND TITLE OF SIGNATORY
Renee Webster-Hawkins, Executive Director

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
MAR 19 2020
Office of Administrative Law

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)(REVERSE)

**INSTRUCTIONS FOR PUBLICATION OF NOTICE
AND SUBMISSION OF REGULATIONS**

Use the form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

ALL FILINGS

Enter the name of the agency with the rulemaking authority and agency's file number, if any.

NOTICES

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations and the statement of reasons. Upon receipt of the notice, OAL will place a number in the box marked "Notice File Number." If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

REGULATIONS

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Gov. Code § 11347.3 for rulemaking file contents.)

RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the OAL file number(s) of all previously disapproved or withdrawn filings in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). Submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Gov. Code §§ 11349.4 and 11347.3 for more specific requirements.)

EMERGENCY REGULATIONS

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Gov. Code § 11346.1 for other requirements.)

NOTICE FOLLOWING EMERGENCY ACTION

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A and insert the OAL file number(s) for the original emergency filing(s) in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

CERTIFICATE OF COMPLIANCE

When filing the certificate of compliance for emergency regulations, fill out Part B, including the signed certification, on the form that was previously submitted with the notice. If a new STD. 400 is used, fill in Part B including the signed certification, and enter the previously assigned notice file number in the box marked "Notice File Number" at the top of the form. The materials indicated in these instructions for "REGULATIONS" must also be submitted.

EMERGENCY REGULATIONS - READOPTION

When submitting previously approved emergency regulations for readoption, use a new STD. 400 and fill out Part B, including the signed certification, and insert the OAL file number(s) related to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

CHANGES WITHOUT REGULATORY EFFECT

When submitting changes without regulatory effect pursuant to California Code of Regulations, Title 1, section 100, complete Part B, including marking the appropriate box in both B.3. and B.5.

ABBREVIATIONS

Cal. Code Regs. - California Code of Regulations
Gov. Code - Government Code
SAM - State Administrative Manual

For questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law Reference Attorney at (916) 323-6815.

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority
Article 12. Rate Reduction Bonds

Proposed Text of Regulations

All proposed changes are to align with Assembly Bill 305 (Nazarian, Statutes of 2019, Chapter 225), effective January 1, 2020.

§ 8130. Applicability.

This Article 12 shall apply to the Authority's review of the issuance of Rate Reduction Bonds pursuant to Section 6588.7 of the Government Code. The Authority's review of the issuance of Rate Reduction Bonds shall not apply if the determinations of a Local Agency are subject to review by a ratepayer advocate or similar entity whose function is to provide public independent analysis of a Publicly Owned Utility's actions as they relate to water or wastewater rates.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.
Reference: Sections 6588.7(b)(3) and 6588.7(b)(9), Government Code.

§ 8131. Definitions.

The following definitions shall govern construction of this Article 12.

- (a) "Application" means an application submitted by an Issuer Applicant to the Authority for review of its proposed Rate Reduction Bonds issuance.
- (b) "Authority" means the California Pollution Control Financing Authority.
- (c) "Conservation or Reclamation Purposes" is defined in Section 6585(d) of the Government Code.
- (d) "Financing Costs" is defined in Section 6585(g) of the Government Code.
- (e) "Issuer Applicant" means an entity created pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code (commencing with Section 6500) whose financing activities are limited to financing or refinancing Utility Projects and projects for the use or benefit of public water or wastewater agencies and which applies to the Authority for review and approval of an issuance of Rate Reduction Bonds.
- (f) "Legislative Body" is defined in Section 6585(i) of the Government Code.
- (g) "Local Agency" is defined in Section 6585(j) of the Government Code.
- (h) "Local Agency Applicant" means a Local Agency that owns and operates a Publicly Owned Utility and which applies to an Issuer Applicant to finance or refinance costs of a

Utility Project for the Publicly Owned Utility with the proceeds of Rate Reduction Bonds and whose senior lien unenhanced revenue bonds payable from revenues of the Publicly Owned Utility are, or upon issuance would be, rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings, Inc.

- (i) "Mandate" is defined in Section 6585(k) of the Government Code.
- (j) "Mandating Entity" is defined in Section 6585(l) of the Government Code.
- (k) "Publicly Owned Utility" is defined in Section 6585(o) of the Government Code.
- (l) "Rate Reduction Bonds" mean bonds that are issued by an Issuer Applicant, the proceeds of which are used directly or indirectly to pay or reimburse a Local Agency or its Publicly Owned Utility for the payment of the costs of a Utility Project, to refund rate reduction bonds, or to refinance water or wastewater revenue bonds of a Local Agency or Publicly Owned Utility issued to finance a Utility Project, (6585(p)) and that are secured by a pledge of, and are payable from, Utility Project Property as provided in Government Code Section 6588.7.
- (m) "Utility Project" is defined in Section 6585(r) of the Government Code.
- (n) "Utility Project Charge" is defined in Section 6585(s) of the Government Code.
- (o) "Utility Project Property" is defined in Section 6585(t) of the Government Code.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.
Reference: Sections 6585 and 6588.7, Government Code.

§ 8134. Application Content.

The Application shall contain all of the following.

- (a) Information concerning the Issuer Applicant:
 - (1) Name, address, phone number and email address of contact person for Issuer Applicant.
 - (2) Copies of the following documents:
 - (i) Issuer Applicant's joint exercise of powers agreement indicating the provisions therein which qualify the Issuer Applicant to issue Rate Reduction Bonds and certified by the chair, executive director, secretary or other authorized officer of the Issuer Applicant;

- (ii) Issuer Applicant's by-laws, rules or other similar document certified by the chair, executive director, secretary or other authorized officer of the Issuer Applicant; and
 - (iii) Issuer Applicant's Notice of Agreement and any Notice of Amendment filed with the Secretary of State.
 - (3) Certificate from the chair, executive director or other authorized officer of the Issuer Applicant to the effect that the Issuer Applicant's joint exercise of powers agreement limits the financing activities of the Issuer Applicant to financing or refinancing -Utility Projects and projects for the use or benefit of public water or wastewater agencies.
- (b) Information concerning the Local Agency Applicant:
- (1) Name, address, phone number and email address of contact person for Local Agency Applicant.
 - (2) Evidence the Local Agency Applicant is, or owns and operates, a Publicly Owned Utility. Such evidence may consist of:
 - (i) Certificate from the chair, mayor, chief executive officer, general manager, assistant general manager, executive director or other authorized officer of the Local Agency Applicant to the effect that the Local Agency Applicant is, or owns and operates, a Publicly Owned Utility furnishing water or wastewater service to not less than 25,000 retail customers; or
 - (ii) Copy of charter documents establishing that the utility is a Publicly Owned Utility owned and operated by, or is a department or other subdivision of, the Local Agency Applicant certified by the chair, mayor, chief executive officer, general manager, assistant general manager, executive director or other authorized officer of the Local Agency Applicant, as well as the certification of such officer to the effect that such Publicly Owned Utility is furnishing water or wastewater service to not less than 25,000 retail customers.
 - (3) Evidence that senior lien unenhanced revenue bonds payable from the revenues of the Publicly Owned Utility owned or operated by Local Agency Applicant are, or upon issuance would be, rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings, Inc. Such evidence may consist of:
 - (i) Current rating reports from one or more of the aforementioned rating agencies; or
 - (ii) A report of an independent investment banker or financial consultant concluding, based on an analysis of other Publicly Owned Utilities of comparable size, financial metrics, debt service coverage ratios, management experience and credit quality, that senior lien unenhanced bonds payable from

the revenues of the Publicly Owned Utility upon issuance would be rated not lower than Baa3 by Moody's Investors Service, BBB- by Standard & Poor's Ratings Services, or BBB- by Fitch Ratings Inc.

- (4) Resolutions, ordinances or other official actions of the Legislative Body of the Local Agency Applicant, adopted at public meetings held with all proper notice and at which a quorum was present and acting throughout, certified by the chair, president or other presiding officer of such Legislative Body and evidencing the determination by the Legislative Body of the Local Agency Applicant that:
- (i) The project to be financed or refinanced with the proceeds of the sale of Rate Reduction Bonds is a Utility Project;
 - (ii) The Local Agency Applicant is electing to finance or refinance costs of the Utility Project pursuant to Section 6588.7 of the Government Code and the Financing Costs associated with the financing or refinancing are to be paid from Utility Project Property, including the Utility Project Charge for the Rate Reduction Bonds issued for the Utility Project in accordance with Section 6588.7 of the Government Code; and
 - (iii) Based on information available to, and projections used by, the Legislative Body of the Local Agency Applicant, the rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing or refinancing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed or refinanced with bonds payable from the revenues of the Publicly Owned Utility.
 - (iv) A Local Agency Applicant with a Public Utility having 500,000 or more retail customers may, in lieu of providing the evidence described in paragraph (iii), provide evidence that the use of Rate Reduction Bonds to finance or refinance Utility Projects provides substantial benefits to the Public Utility. These benefits may include, but are not limited to, lower interest rates on Rate Reduction Bonds and more favorable capitalization and debt service coverage ratio treatment that results in gross or present value lifetime savings for the Public Utility. (6588.7(c)(4))
- ~~(5) Evidence that the Legislative Body of the Local Agency Applicant had a reasonable basis on which to make the findings and determinations set forth in Section (b)(4) above. Such evidence may consist of:~~
- ~~(i) A report of an independent certified consulting engineer setting forth the principal facts, assumptions, projections, variables and calculations and concluding that:
 - ~~a. The Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project; and~~~~

b. ~~The rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility; or~~

~~(ii) A report of the chief engineer of the Publicly Owned Utility setting forth the principal facts, assumptions, projections, variables and calculations and concluding that:~~

a. ~~The Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project; and~~

b. ~~The rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility; or~~

~~(iii) Such other documents, reports, analyses and other materials which, in the event the Project is a Utility Project because it is in response to a Mandate, may include legal memoranda or opinions, setting forth the principal facts, assumptions, projections, variables and calculations and concluding that:~~

a. ~~The Project to be financed with the proceeds of the sale of Rate Reduction Bonds is a Utility Project; and~~

b. ~~The rates of the Publicly Owned Utility plus the Utility Project Charge resulting from the financing of the Utility Project with Rate Reduction Bonds are expected to be lower than the rates of the Publicly Owned Utility if the Utility Project was financed with bonds payable from the revenues of the Publicly Owned Utility.~~

(c) Information concerning the Utility Project:

(1) In support of the conclusion that the Project to be financed or refinanced with the proceeds of the sale of Rate Reduction Bonds is a Utility Project, the reports and materials referred to in Sections 8134(b)(5)(i), (ii) and (iii) must establish that:

(i) The items to be financed or refinanced with the proceeds of the sale of Rate Reduction Bonds consist of the acquisition, construction, installation, retrofitting, rebuilding, or other addition to, or improvement of, any equipment, device, structure, improvement, process, facility, technology, rights or property, located either within or outside of, the State of California, and that is used, or to be used, in connection with the operations of a Publicly Owned Utility for Conservation or Reclamation Purposes or in response to a Mandate; and

(ii) The use of the items to be financed with the proceeds of the sale of Rate Reduction Bonds will either:

- a. Be designed to reduce the amount of potable water to be supplied by a Publicly Owned Utility, ~~or~~ reduce the amount of water imported by ~~the~~ a Publicly Owned Utility, or facilitate the use of wastewater by a Publicly Owned Utility for conservation purposes, including, without limitation, storm water recapture and treatment, water and wastewater recycling, development of local groundwater resources, groundwater recharging, and water reclamation; or
- b. Respond to a requirement, imposed by a Mandating Entity by any means, including without limitation, a statute, rule, regulation, an administrative or judicial order, a building, operating, or licensing requirement or condition, or an agreement with, or license or permit from, the Mandating Entity, on a facility of a Publicly Owned Utility or a facility operated in whole or in part for the benefit of a Publicly Owned Utility, or on the operations of a Publicly Owned Utility, or on the water or wastewater pumped, acquired, ~~or~~ supplied, or treated by the Publicly Owned Utility.

(d) Information concerning the projected Financing Costs for the proposed Rate Reduction Bond financing:

(1) The Application shall provide the Financing Costs projected to be incurred in connection with the proposed Rate Reduction Bond financing, including:

(i) Anticipated Rate Reduction Bond Scale

- a. Not to exceed principal amount
- b. Maturities
- c. Interest rates
 - (A) Fixed or variable
 - (B) Current interest or capital appreciation bonds
- d. Redemption provisions

(ii) Anticipated Professional Fees

- a. Bond counsel fee
- b. Financial advisor fee
- c. Underwriters counsel fee
- d. Trustee counsel fee
- e. Accounting fee
- f. Engineering fee
- g. Other legal fees
- h. Other consultants fees

(iii) Issuance Fees

- a. Underwriting or placement fees
- b. Trustee fee
- c. Rating agency fees

(iv) Credit or Liquidity Enhancement Fees

- a. Bond insurance fee
- b. Bank letter of credit or standby bond purchase agreement fees
- c. Debt service reserve amount or surety fees
- d. Other credit or liquidity enhancement fees

(v) Servicing and Administrative fees

- a. Publicly Owned Utility servicing fee (bill and collect the Utility Project Charge)
- b. Annual trustee fees
- c. Interest rate swap
- d. Other servicing and administrative fees

- (2) Certificate from an independent financial advisor to the effect that based on information available to them, the projected Financing Costs fall within the normal range of financing costs for comparable types of debt issuance.

Note: Authority cited: Sections 6588.7(b)(3) and 6588.7(b)(7), Government Code.
Reference: Sections ~~6585 and 6588.7~~6588.7(b) and 6588.7(e), Government Code.

§ 8138. Sunset.

With the exception of Section 8137, these regulations shall expire upon the termination of the authority to issue Rate Reduction Bonds under Section 6588.7 of the Government Code. Section 8137 of these regulations shall expire upon the Authority's submission of its final report to the Legislature thereunder.

Note: Authority cited: Sections 6588.7(b)(3), 6588.7(b)(7), 6588.7(b)(8) and 6588.7(k), Government Code.
Reference: Sections ~~6588.7(b)(8) and 6588.7(b)(9)~~, Government Code.