



# SALES AND USE TAX EXCLUSION PROGRAM

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## **STE Program Regulations Workshop** **Tuesday, June 27, 2017**

State Personnel Board Building  
801 Capitol Mall, Room 150  
Sacramento, CA 95814

Or via Webinar

Live Captioning is available at:

<https://www.streamtext.net/player?event=CAEATFA>

Slides and webinar information is available at:

<http://treasurer.ca.gov/caeatfa/ste/regulations/index.asp>

# Welcome



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- Hearing is being recorded
- Public comment:
  - In Person: Please come to the front to speak in the microphone
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  - We will take public comment from those in person first
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# Purpose of Today's Workshop



- Complete the regular rulemaking process for regulations adopted as emergency regulations
  - Initially adopted August 9, 2016
  - First readopted on February 7, 2017
  - Final readoption on May 9, 2017
  - Set to expire on August 8, 2017
- Regular Rulemaking Process:
  - Notice of Proposed Rulemaking and proposed text published in California Regulatory Notice Register – May 12, 2017
  - 45-Day Public Comment Period – May 12<sup>th</sup> through June 26<sup>th</sup>
  - Public Hearing – June 27<sup>th</sup>
  - CAEATFA Board consider adoption of Regulations – July 18<sup>th</sup>
  - Submit rulemaking file to Office of Administrative Law for 30 business-day review period

# Agenda



- Summary of Regulation Changes by Issue Area
  - Incorporating AB 199 Projects
  - Addressing Oversubscription
  - Program Streamlining
  - Compliance and Fees
- Next Steps
- Public Comment

# Overview of Regulations



1. **Incorporating Recycling Projects:** The regulations incorporate Recycled Resource Extraction Projects into the STE Program following the passage of AB 199.
2. **Addressing Oversubscription:** The regulations address historic oversubscription of the STE Program.
3. **Program Streamlining:** The regulations incorporate lessons learned from early program administration, streamlining the application process and adding Program administration tools to be used by CAEATFA staff.

# Incorporating AB 199 Projects



- **Eligibility**

- To be eligible for the STE Program under AB 199, applicants must satisfy the definitions of “Project” and “Recycled feedstock” (RF) as listed in Public Resources Code Sections 26011.8(b)(1) and (2). (§10033(a))
  - Added definitions for “Recycled feedstock” and “Recycled Resource Extraction Project” (§§ 10031(z), 10031(aa))

- **Evaluation**

- RF applicants are subject to a net benefits test – application must demonstrate both fiscal and environmental benefits
  - Must score at least 1,000 total points
  - Must score at least 20 environmental points
    - To provide a consistent threshold for all eligible projects, the regulations reduce the 100 point threshold for all types of projects to 20 points

(§10034(c)(6))

# Incorporating AB 199 Projects: Net Benefits



- **Fiscal benefits** based on marginal increase in economic activity attributable to STE
  - Estimated from information provided by the applicant, including, but not limited to:
    - Projected revenue
    - Labor and capital costs
    - Number of full time equivalent facility and construction jobs.(§10033(c)(1))
- **Environmental benefits** based on increase in amount of recycled materials produced.
  - Estimated by taking applicant-provided information about total production costs, tons of materials processed, and amount of recycled materials to be produced and calculating:
    - Change in production costs due to the STE,
    - Resulting increase in recycling due to the incentive effect of the STE based on supply and demand characteristics of the relevant recycling market,
    - Reduction in GHG emissions from the EPA WARM model (or ARB), and
    - Economic benefit from the reduction in GHGs.(§10033(b)(3)(E))

# Incorporating AB 199 Projects: Proposed Modification



- Regulations originally defined RF projects (Recycled Resource Extract Project) as those projects that are eligible under AB 199, but are not eligible to apply for an STE as an AS, AM, or AT project
  - Included because CAEATFA Board had created an initial set-aside for AB 199 applicants – to limit this set-aside for those projects that could not previously apply, definition was limited those projects that could not apply as an AS, AM, or AT project
- Proposed regulations remove this from definition of Recycled Resource Extraction Project (§10031(aa))



# Addressing Oversubscription: \$20 Million Cap



- CAEATFA is limited to awarding \$100MM in STE each calendar year
- Historically, program was underutilized, and regulations placed no limit on amount of STE that could be requested
- Program became oversubscribed in 2015 and 2016, primarily because of a few very large projects
- Initial emergency regulations established a project cap of \$20 MM of STE, with possibility to receive additional award if STE remains at the end of the year
  - Provides projects with a meaningful award amount.
  - Can likely accommodate all projects with funding.
  - Reduces chances of oversubscription.

# Addressing Oversubscription: \$20 Million Cap--Modification



- Previously: Applications capped at \$20 MM per project
- Created a loophole – applicants could split projects into multiple applications
- Proposed Modification:
  - Applications capped at \$20 MM per applicant
  - If Applicant has a parent company with greater than 50% ownership interest, the \$20 MM cap applies to that parent company and its subsidiaries or affiliates
  - Because cap now applies to applicants, regulations also clarify that an applicant may submit a revised application (for a previously approved project), or a new application (for a separate project) if any of the \$100 MM in STE remains at the end of the calendar year

(§10032(a)(4))

# Addressing Oversubscription: Competitive Criteria



- CAEATFA evaluates applications on a first-come-first-served basis
- However, in light of the Program's oversubscription, questions were raised as to whether this method of provides the greatest possible benefit to the state

## Competitive Criteria:

- Regulations instituted a competitive process when the program cap is reached that ranks projects by objective criteria verifiable at the time of application, rather than by order of submission, to help maximize the effectiveness of the program in achieving its goals  
(§10032(a)(7))

# Addressing Oversubscription: Competitive Criteria



County  
Unemployment  
Rate

Corporate HQ  
in California

Small Business

New Applicant  
to Program

- Comes into play only at the point the program becomes oversubscribed
  - Each criterion is worth between one and five points, with a maximum of 12 points
  - The application with the greatest point score shall be advanced first.
- In the event of a tie, the project with the smaller STE request will advance first.
    - If STE amounts are equal, order will be determined by the time and date received
  - Additional applications will advance in the order of their rank
  - The application that exceeds the Program cap will be the last application to be considered, with the portion of the award in excess of the cap being awarded from the next calendar year allocation
  - All subsequent applications will be placed on a waiting list and considered in the following calendar year. This waiting list will also be subject to the ranking process if the total amount on the waiting list exceeds the available STE for a given year.

# Addressing Oversubscription: 15% Purchase Requirement



- Some projects do not end up moving forward, or move forward on a much slower timeline than originally anticipated
  - Sometimes due to market fluctuation, but also due to the fact that the program offer little disincentive to apply before the project is ready
  - This compounds the issue with program oversubscription

## 15% Purchase Requirement

- The proposed regulations require 15% of qualified purchases are made within one year of Board approval (§10035(b)(1))
  - If purchase requirement is not met, the award is subject to termination
  - Increases the likelihood that award will be used, thereby increasing efficacy of STE allocated.
- The Board does not have the ability to waive this purchase requirement.
  - Encourages projects that are close to breaking ground and discourages applicants from “sitting on” an award.

# Program Streamlining: Challenge of Balancing Accessibility and Rigor



- By law, CAEATFA is required to assess the extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the applicant from the STE.
- Analysis results in estimated fiscal and environmental benefits based on the applicant's assumptions.
- Assumptions should be as reliable as possible without putting undue burden on applicants with fewer resources.

## Key Data Requested

Qualified property (\$) (i.e., purchases)

FTEs, construction FTEs

Annual tax liability

Units produced

Sales price per unit

Total facility sales

Per unit labor costs

Production costs from CA suppliers

Percent of product sales in CA

Useful lifespan of equipment and project

Energy generation capacity (AS/AT)

Process improvements (AM)

# Program Streamlining: Application



- Remove questions that:
  - Can be estimated by other applicant-provided information
  - Are unnecessary for project evaluation or CAEATFA's reporting requirements
  - Are never used by applicants
- Proposed regulations eliminate the following questions for all applicant types:
  - “Brief Description of Qualified Property to be purchased” (formerly C1). A description is already provided in the application narrative and on the Qualified Property Tab.
  - “Estimated Cost of Qualified Property” (formerly C2). The amount of QP is already calculated on the Qualified Property Tab.
  - “Estimated Useful Lifespan of the Qualified Property” (formerly C3). This information is already provided on the QP tab.
  - “Estimated percent of time the QP will be used” (formerly C4). This information is already provided on the QP tab.
  - “Estimated annual California Corporation or Income Tax Liability” (formerly D4). Many applicants struggled with this question, and we have determined that we can prepare a reasonably accurate estimate, similar to the methodology used to estimate personal income taxes paid by facility employees.
  - “NAICS Code” (formerly E2). This information is inconsistently entered by Applicants and is not used by CAEATFA.
  - “Total facility sales in dollars” (formerly E5). This value is simply the product of per unit price and number of units and can therefore be calculated automatically.
  - All questions in section G ii (Manufacturing Process Improvements). No applicants have been approved based on their scores in this section and it is therefore not needed.

(§10032(c)(4))

# Program Streamlining: Application



- Regulations also eliminate the following questions for BioFuels and Advanced Manufacturing Applicants:
  - “Expected useful life of product, in years” (formerly E9). This value is always 1 for Biofuels applicants and is not relevant for Advanced Manufacturing Applicants.
  - “Is the product a sub-component of a Qualified Product?” (formerly E11). Biofuels are always end of supply chain products and this question is not relevant for Advanced Manufacturing Applicants.
  - “What is the total value of the efficiency or energy generation component of the end of supply chain product?” (formerly E12). Biofuels are always end of supply chain products and this question is not relevant for Advanced Manufacturing Applicants.
  - “Estimated percent of total end of supply chain product sales in California?” (Formerly E14). Biofuels are always end of supply chain products and this question is not relevant for Advanced Manufacturing Applicants.
  - In addition, we replaced all former Environmental Benefits questions (Sections F and G) for BioFuels applicants with two questions: “Type of Biofuel produced (select from list)” and “Units of Energy Produced (select from list).”
- Eliminating these questions does not alter the calculation of net benefits. The questions listed above were either redundant (for certain applicant types) or asked applicants to enter values that we are able to estimate or calculate on their behalf.

(§10032(c)(4))



# Program Streamlining: Application - Biofuels



- Regulations revise the evaluation criteria for Biofuel projects to simplify the application process and more accurately estimate fiscal benefits.
- Because Biofuels will be distinguished from other AS applicants, the proposed regulations now define Biofuels, which will include biodiesel and biogas as defined in Sections 95481(a)(6) and 95481(a)(9) of Division 3 of Title 17 of the California Code of Regulations. (§10031(i))
- Fiscal Benefits (§10033(c)(1)(G)(i)a)
  - Fiscal benefits analysis estimates sales tax paid by consumers of the product produced by the project.
  - However, some biofuels applicants use the product produced directly, and therefore are not paying a sales tax on a purchase that would otherwise be made externally.
  - The proposed regulations include modifications to the application, data items, and scoring adjustments to more accurately estimate sales tax revenue from this type of project.
- Environmental Benefits (§10033(c)(3)(B); §10033(c)(3)(C)(ii)b)
  - Biofuel applicants provide the type of biofuel produced and units of energy produced, and the application will use ARB estimates and other relevant sources to calculate the net difference in GHG emissions between the various Biofuels and the corresponding fossil fuel that the fuel is replacing and assign a dollar value to the reduction in pollution based on available research and analysis.

# Compliance & Fees



## Compliance:

- Previously, CAEATFA had limited recourse for non-compliant participants beyond rescinding or terminating the award
- Regulations now provide that STE award may be temporarily suspended while participants are in non-compliance with reporting requirements. (§10035(b)(8))
  - Motivates program participants to remain compliant without going to the extreme of revoking the award.

## Fees:

- Previous fee structure did not cover additional expense of bringing an approved applicant back before the Board for modifications to an existing Master Agreement.
- Proposed regulations add two fee provisions to address this issue (§10036(c)):
  - \$500 fee for any applicant that requests a modification of its existing Master Agreement requiring approval by the Authority. The fee is intended to offset standard costs for staff and materials necessary to bring a resolution before the Board.
  - Fee of 0.005% of QP in the approved resolution for any applicant that requests a modification to its Master Agreement or authorizing resolution that requires a revised application to be considered by the Authority.
    - \$500 minimum and a \$2,000 maximum.

# Next Steps: Regular Rulemaking Process Timeline



May 12: Notice of Proposed Rulemaking and proposed text published in Notice Register

May 12 – June 26: 45-day public comment period

June 27: Public hearing

July 18\*: Board considers adoption of regulations

July 19\*: Certificate of Compliance filed with OAL for review

August 30\*: OAL review deadline

- CAEATFA will also continue research and outreach to address scoring/evaluation of composting projects
- Anticipate bringing a separate rulemaking package in the future

\* Tentative dates



# Public Comment



# CONTACT INFORMATION

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