

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Request to Approve Regulations for the Sales and Use Tax Exclusion Program

Tuesday, July 18, 2017

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REQUEST

CAEATFA staff are requesting approval of modifications to the Sales and Use Tax Exclusion (“STE”) Program (the “Program”) regulations currently undergoing the regular rulemaking process. See Attachment A for the full text of the proposed modified regulations.

SUMMARY

At the July 18, 2016 Board meeting, the CAEATFA Board approved emergency regulations modifying the STE Program to incorporate recycled feedstock projects eligible under the newly enacted Assembly Bill (“AB”) 199 (Eggman, Chapter 768, Statutes of 2015) and to enhance and streamline Program administrative processes. Specifically, the emergency regulations:

- Incorporated recycled feedstock projects into the STE Program by establishing eligibility and evaluation criteria;
- Addressed Program oversubscription by instituting a per project cap of \$20 million in STE, creating competitive criteria by which applications are ranked in the event of oversubscription, and establishing a readiness requirement that applicants make at least 15% of their equipment purchases within a year of approval;
- Streamlined the application process by eliminating redundant or unnecessary application questions;
- Established a compliance mechanism enabling the Executive Director to suspend STE awards for participants that are in violation of Program requirements; and
- Created a fee schedule for post-approval requests that must be brought before the Board for consideration.

The staff summary prepared for the initial adoption of the STE Program emergency regulations can be found in Attachment B.

The emergency regulations were originally approved by the Office of Administrative Law (“OAL”) and became effective on August 9, 2016, and were readopted on February 7, 2017, and on May 9, 2017. During this time, CAEATFA staff has also been completing the regular rulemaking process. A Notice of Proposed Rulemaking and proposed regulation text was published in the California Notice Register on May 12, 2017, beginning the 45-day public comment period. The public comment period ended on June 26, 2017; CAEATFA did not

receive any public comments. CAEATFA staff also held a public workshop discussing the proposed regulations on June 27, 2017.

Proposed Modifications

After the emergency regulations became effective, CAEATFA staff continued to evaluate program implementation and identified two modifications to incorporate in the proposed regulation text. Below is an explanation of the two proposed modifications. The full text of the proposed modified regulations can be found in Attachment B.

Definition of Recycled Resource Extraction Project

The initial emergency regulations limited recycled feedstock projects to those not eligible for an STE as an Alternative Source, Advanced Transportation, or Advanced Manufacturing Project. Some recycled feedstock projects may be eligible under multiple pathways. For example, a biofuel project that converts organic waste to energy would fit the definition of both recycled feedstock project and Alternative Source project since it both processes recycled feedstock and creates an Alternative Source product. The emergency regulations sought to clarify this issue because, at the time the regulations went into effect, the Board had implemented a STE set-aside for recycled feedstock projects in light of the Program’s oversubscription; therefore, to best effectuate the purpose of the set-aside, the regulations limited recycled feedstock project eligibility to those that did not previously have the opportunity to be considered for an STE award.

Because there is no longer a set-aside for recycled feedstock projects, limiting the pathways by which a project can apply is not necessary. The proposed modification to the regulations remove this limitation from the definition of Recycled Resource Extraction Project:

§10031. Definitions.

(aa) “Recycled Resource Extraction Project” is a project that converts Recycled feedstock into materials that are used in subsequent manufacturing processes. ~~Recycled Resource Extraction Project includes projects that are not eligible to apply for a sales and use tax exclusion as an Alternative Source, Advanced Transportation, or Advanced Manufacturing Project and that are eligible for a sales and use tax exclusion under the Recycled feedstock provisions of 26011.8(b)(1).~~

\$20 Million Cap

To help address the STE Program’s unprecedented oversubscription, the prior approved regulations instituted a project cap of \$20 million in STE, with the possibility of receiving additional STE if any of the \$100 million annual statutory cap remained at the end of the year. CAEATFA staff subsequently identified a loophole created by defining the cap as per project: applicants could split projects into multiple applications or projects and take up all or significant portion of a year’s STE allocation. Therefore, the proposed modified regulations limit

applications to \$20 million in STE per applicant per calendar year. Additionally, if an applicant has a parent company with greater than 50% ownership interest, the \$20 million cap applies to that parent company and its subsidiaries or affiliates. Because the cap now applies to applicants, the proposed 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 million in STE remains at the end of the calendar year.

§10032. Application Requirements.

(a) Timing of Application submissions.

....

(4) Except as provided in subparagraph (A) below, Applications shall be capped at \$20 million of sales and use tax exclusions (STEs) per ~~Project Applicant, per~~ calendar year, based on the average statewide sales tax rate at time of Application. For any Applicant which has a parent company with an ownership interest greater than 50%, the \$20 million cap also applies to the Applicant’s parent company and the parent company’s subsidiaries or affiliates.

(A) If STE will be available at the last Authority board meeting of the calendar year, the Authority may provide additional STE to ~~Projects-Applicants~~ that qualified for additional STE but were capped at \$20 million of STE. Applicants wishing to exceed the \$20 million cap ~~for their Project~~ shall bring a revised Project Application or new Application before the Authority for consideration in December of the same calendar year in which the original Application was approved. The revised or new Application shall include updated information requested in Section 10032 and will be evaluated pursuant to Section 10033. The Authority will announce end of the year availability no later than 28 days prior to the December Authority meeting.

i. The amount of additional STE available to each Applicant shall be determined by the Executive Director, and shall be the amount of the ~~Project’s Applicant’s~~ Project’s Applicant’s approved award, plus an amount calculated by taking the unawarded STE for that calendar year and dividing it evenly between all ~~Projects-Applicants~~ that wish to exceed the \$20 million Project cap, but not to exceed the requested STE for any Applicant. Applicants seeking additional STE beyond the Project cap shall not be eligible to receive STE from the subsequent calendar year pursuant to the provisions of Section 10032(a)(7)(A).

Regular Rulemaking Process and Tentative Timeline.

As mentioned previously, CAEATFA staff is currently undergoing the regular rulemaking process. The emergency regulations that first became effective on August 9, 2016, and were

readopted on February 7, 2017, and on May 9, 2017, are set to expire on August 8, 2017, by which time a Certificate of Compliance demonstrating CAEATFA has completed the regular rulemaking process is due to OAL.

All of the future dates below are tentative and subject to change.

July 18, 2016	Board approves regulations incorporating AB 199 projects and modifying program administration
August 9, 2016	OAL approves the proposed emergency regulations; regulations become effective for 180 days
February 7, 2017	Emergency regulations readopted for an additional 90 days to continue evaluating program modifications and begin regular rulemaking process
May 9, 2017	Emergency regulations readopted for a final 90 days to complete regular rulemaking process
May 12, 2017	Notice of Proposed Rulemaking and proposed regulation text published in California Notice Register, beginning 45-day public comment period
June 26, 2017	45-day public comment period ends
June 27, 2017	CAEATFA staff holds public hearing on proposed regulations
July 18, 2017	Board considers modifications to the proposed regulations
July 19, 2017	CAEATFA staff submits Certificate of Compliance to OAL for review

Recommendation.

Staff recommends adoption of a resolution to approve the proposed modifications to regulations for the Sales and Use Tax Exclusion Program.

Attachments:

- Attachment A Proposed Modified Regulations: Modifications for consideration by the Board are in underline and strikethrough red text.
- Attachment B July 18, 2016 Staff summary on proposed STE Program regulations, including regulation text in its Attachment A.

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED
TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS FOR
THE SALES AND USE TAX EXCLUSION PROGRAM AND OTHER ACTIONS
RELATED THERETO**

July 18, 2017

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009, and 26011.8 to adopt regulations to further implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the Sales and Use Tax Exclusion Program ("STE Program"), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to implement the STE Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval