

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

Discussion of Proposed Modifications to the Sales and Use Tax Exclusion Program

Tuesday, July 21, 2020

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BACKGROUND AND SUMMARY

CAEATFA staff (“Staff”) has been in the process of modifying the regulations of the Sales and Use Tax Exclusion (“STE”) Program to address the oversubscription over the last two years and the unprecedented economic impact of the COVID-19 pandemic.

In December 2019, CAEATFA adopted regulations that made incremental changes to address more immediate Program priorities at the time, while reserving some of the more complex issues for the regular rulemaking process after Staff could take more time to solicit input and thoughtfully consider the issues and policy trade-offs. However, since the regulations were adopted, several Program and market updates have influenced the Program landscape. The Program was oversubscribed for 2020 after one application round, and there is no current increase of the \$100 million Program cap in statute.¹ Additionally, perhaps the biggest unknown is the ultimate market impact of COVID-19, which we have seen has affected purchase timeframes, financing, feedstock supply, revenue, construction, and operations for previously approved Applicants.

Incorporating feedback from the Invitation for Comment soliciting initial input from stakeholders and the discussion of potential modifications at the June 2020 Board meeting, Staff has prepared a list of proposed modifications to discuss today, which are detailed below.

TENTATIVE REGULATION TIMELINE

Staff will prepare regulation text for consideration at the August Board meeting, and if approved, intends to file the Notice of Proposed Rulemaking package shortly thereafter for publication in the California Notice Register to begin the 45-day public comment period in September. Simultaneously, Staff will take the necessary steps to readopt the current emergency regulations before they expire on August 14, 2020. Staff intends to incorporate the modified regulations in the second readoption of the emergency regulations, which would become effective in November 2020 in advance of the 2021 award process.

Below is a tentative timeline for the emergency and regular rulemaking processes. The ultimate timeline of the regular rulemaking process is dependent on several factors, including the feedback received during the public comment period and whether an additional modifications are made.

¹ Approximately \$20 million of the 2020 allocation was awarded to Applicants that had been waitlisted in 2019 (without applying Competitive Criteria). In 2020, six Applicants requesting a total of \$10 million in STE remain on the waitlist. CAEATFA stopped accepting Applications for 2020 in January of that year.

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Additionally, during the COVID-19 pandemic, Governor Newsom has issued two Executive Orders extending some of the rulemaking deadlines related to the filing and review of regulations and emergency regulations, which, if further extended, may affect the ultimate regulation timeline.

Tentative Dates	Emergency Rulemaking Process	Regular Rulemaking Process
July 24, 2020	Notice First Readoption	
August 3, 2020	Submit First Readoption Package to OAL for Review	
August 14, 2020	Initial E-Regs Expire/First Readopt Effective	
August 18, 2020	Board Considers Modified Regulations for Approval	
August 31, 2020		Notice of Proposed Rulemaking Filed
September 11, 2020		Notice of Proposed Rulemaking Published in Notice Register, beginning 45-day Public Comment Period
October 22, 2020	Notice Second Readoption with Modified Regulations Approved in August	
October 26, 2020		45-day Public Comment Period Ends
October 30, 2020	Submit Second Readoption Package to OAL for Review	Potential modifications and additional 15-day comment period
November 11, 2020	Second Readoption Effective	
December 15, 2020		Board consider modified regulations
January 2020		Submit Certificate of Compliance to OAL for Review
February 8, 2021	Emergency Regulations Expire	

PROPOSED MODIFICATIONS

While reviewing the various options for modifying the Program regulations, Staff considered the following factors:

- User and business experience and industry needs;
- Balancing serving diverse industries and various policy goals;

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- Ensuring a broad distribution of awards, while supporting both small and larger scaling capital investments;
- Current economic uncertainty due to COVID-19;
- Existing Program limit and inherent uncertainty in future market activity;
- Flexibility to adjust to various future market conditions; and the
- Need for assistance toward California’s economic recovery.

For discussion and input, starting on the following page is a matrix detailing Staff’s more substantive proposed modifications, as well as the policy considerations that helped shape Staff’s proposals. After the discussion today, and additional input from stakeholders, CAEATFA Staff will draft specific regulation text for the Board’s consideration in August, and will begin the regular rulemaking process and comment period.

Topic	Policy Issue	Current Regulations	Proposed Change	Policy Goals of Change
<p>Annual Per Applicant Cap</p> <p>And</p> <p>Application Cycle</p>	<ul style="list-style-type: none"> • How do we ensure both a broad distribution of awards and the ability to support substantive private investment within the Program’s limited resources? • How do we ensure the Program is user friendly to effectively incent and support economic activity and the green economy? 	<ul style="list-style-type: none"> • Accept Applications on a rolling first-come-first-served until competitive. • \$10 MM annual per Applicant cap. • If any STE remains at the end of the year, it’s available to Projects requesting more STE. • Waitlisted Applicants shall be considered the following year. 	<ul style="list-style-type: none"> • Continue to accept Applications on a rolling first-come-first-served basis until competitive. • \$20 MM set-aside for Projects \$2 MM and under through September and then open to all Applicants, if any remains. • Retain \$10 MM annual per-Applicant cap, except: <ul style="list-style-type: none"> ○ \$15 MM available to allocate over \$10MM (up to \$20 MM per Applicant), awarded competitively in January each year. If unused, STE released to the pool. • If any STE remains at the end of the year, make available to Applicants on a competitive basis (1) in remaining pool and then (2) those requesting STE over \$10 MM. • Waitlist ends at end of the year. • Board may limit the amount of STE provided at specific meetings, if necessary (provides flexibility for potential funding rounds if needed). 	<ul style="list-style-type: none"> • Invest in the economic recovery quickly, while providing stability and certainty for end-users by promptly reviewing requests. • Set-aside STE for smaller projects to ensure that larger awards do not inadvertently absorb all of the STE allocation.² • Provide flexibility to support large investments and continued business investment in California, awarded based on Competitive Criteria. • Provide flexibility to the Board to adjust to changing market conditions and demand without requiring regulatory changes.

² Applications \$2 million and under account for 71% of the total number of awards under the Program to date, and 67% of the total number of awards since 2015.

Topic	Policy Issue	Current Regulations	Proposed Change	Policy Goals of Change
Fees	What is the best fee structure to support CAEATFA’s administrative costs of providing services under the Program without overly burdening Applicants?	\$500 administration fee for modifications to awards (e.g., name changes and award transfers, extensions of the 15% purchase requirement and three-year initial term to purchase all Qualified Property).	<ul style="list-style-type: none"> • Increase administration fee <ul style="list-style-type: none"> - To \$1,500 for requests to extend the 15% purchase requirement timeframe. - To \$2,000 for requests to extend the standard three-year initial term. 	Adjust fees to better reflect (1) the amount of time spent reviewing and processing requests for extensions and Board consideration, and (2) to account for the additional years of reporting and administration.
Competitive Criteria	<p>How do we ensure the Program’s Competitive Criteria maintain policy goals?</p> <p>How can we better incorporate policy and programmatic differences with the CDTFA exemption?</p>	<p><u>Environmental Benefits</u>: 100 points</p> <p><u>Job Creation</u>: Up to 75 points</p> <p><u>Unemployment</u>: Up to 50 points</p> <p><u>Natural Disaster Relief</u>: 50 points</p> <p><u>California Headquarters</u>: 15 points</p>	50 points for Applicants that do not qualify to use the CDTFA partial sales tax exemption (recyclers).	Help ensure this benefit is provided to qualified Applicants that are not eligible for the CDTFA partial SUT program, which can offset the Applicant’s costs of not receiving a CAEATFA STE award.
15% Purchase Requirement	How do we assist our awardees in navigating the current economic and industry uncertainty while still discouraging Applicants from applying before they are ready?	<p>Must purchase or execute purchase orders of at least 15% of the Qualified Property within 18 months.</p> <p>Board may extend/waive upon a finding of extraordinary circumstances – this includes permitting delays but does not include a current lack of funding.</p>	No longer exclude a current lack of funding from qualifying as an extraordinary circumstance.	Provide additional flexibility to awardees to help mitigate the uncertainty in the current market.

Topic	Policy Issue	Current Regulations	Proposed Change	Policy Goals of Change
Additional Application Information	What else do we need to know about our stakeholders to better assess and improve Program impact and reach?		Additional Application information: <ul style="list-style-type: none"> • Whether Applicant is a small business. • Whether Applicant has received or applied for other state incentives or financing. • How the Applicant learned about the Program. 	Learn more about our Applicants to better understand program impact and reach.
AB 176	CAEATFA shall evaluate Applications based on the extent to which the project will create new, permanent or result in the loss of, permanent, full-time jobs in California. <i>California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained.</i>	Ask for estimated number of production-related employees (in annual fulltime equivalents) and estimated per-unit labor costs. Calculate the estimated marginal increase in jobs as a result of the STE. This information is used in the fiscal benefits analysis, and also award points based on amount of STE per estimated job created in the application scoring and competitive process.	Ask for projected average number of employees assuming the QP is not utilized and determine if there would be a net loss in jobs as a result of the Project. <ul style="list-style-type: none"> - If the value is negative (i.e. there is a net loss in jobs), then Applicant loses points. Ask for minimum and average wage of each classification of full-time employees proposed to be hired or not retained using wage bands: (e.g., up to \$20,000; \$20,001-\$30,000; \$30,001-\$40,000; \$40,001-\$50,000, etc.), as well as an explanation of why a classification is being eliminated and if any existing employees in the classification will be retrained or reclassified.	Incorporate statutory modifications into the Program, while keeping data anonymized for company and employee confidentiality concerns.

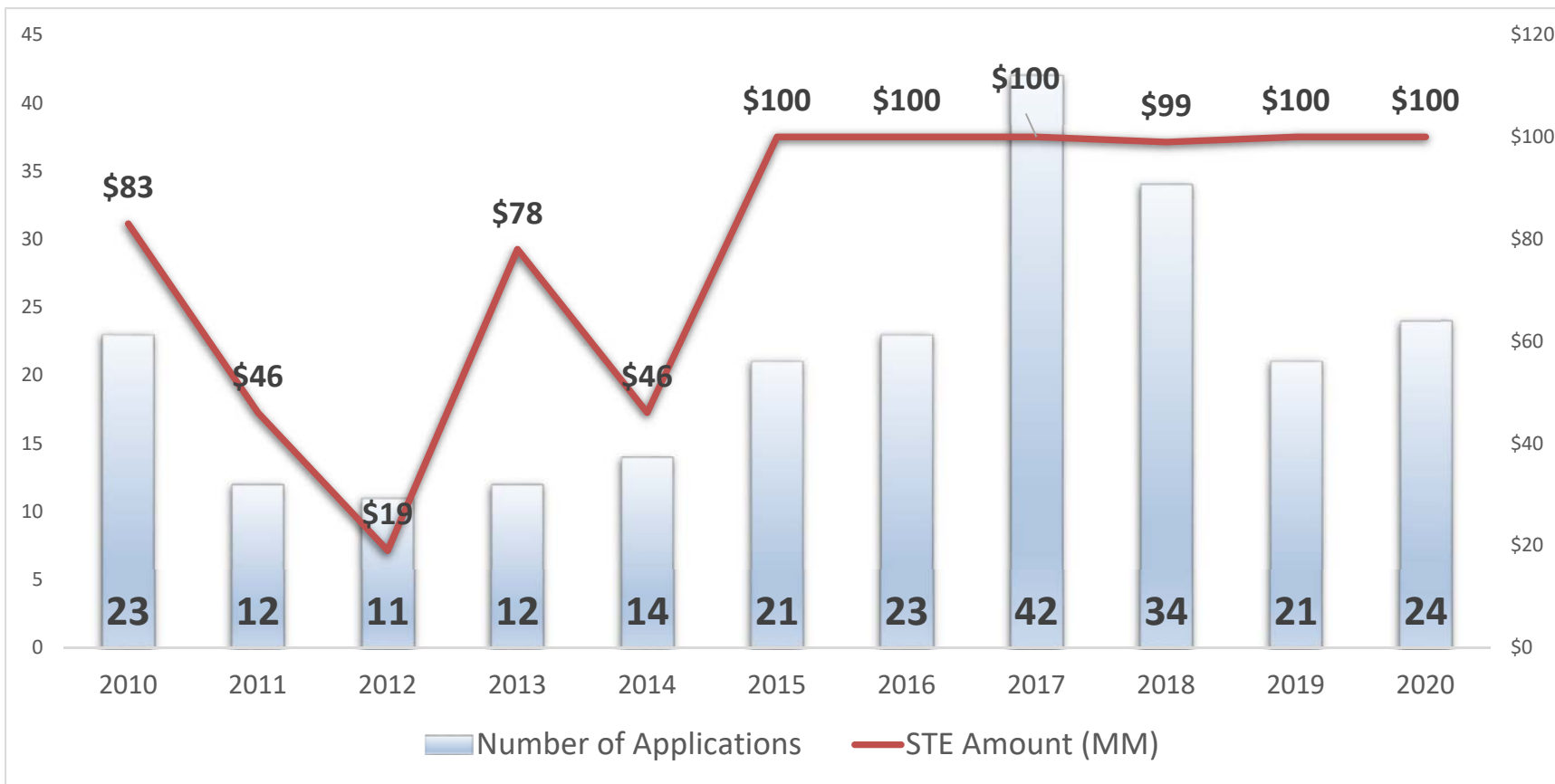
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<p>Job Quality</p>	<p>How do we improve our evaluation and recognition of job quality, while recognizing that the Program supports diverse industries, labor markets, and regional economies?</p>	<p>Fiscal benefits analysis factors in the estimated increase in wages and downstream economic impact.</p> <p>Award points for Projects in counties with high unemployment (in both Application scoring and Competitive Criteria) and for providing workforce training opportunities (Application scoring).</p> <p>Evaluate applicant’s legal and safety history.</p>	<p>Award points for Applicants that provide benefits and fringe benefits to employees in the Application scoring.</p>	<p>Recognize the benefits of providing jobs that include additional benefits to employees in the Application review.</p>

Attachments:

- Attachment A – Number of Applications and Amount of STE Awarded Each Year
- Attachment B – Number of Applications Approved Each Year Based on Award Size

Attachment A

Number of Applications and Amount of STE Awarded Each Year



Attachment B

**Number of Applications Approved Each Year Based on Award Size,
Shown as a Percentage of the Total Number of Applications Approved Each Year**

