

**State of California
Office of Administrative Law**

In re:
**California Alternative Energy and Advanced
Transportation Financing Authority**

Regulatory Action:

Title 04, California Code of Regulations

**Amend sections: 10031, 10032, 10033,
10034, 10035, 10036**

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2021-1118-02

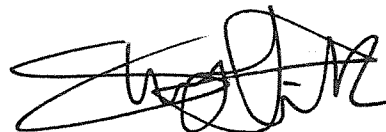
OAL Matter Type: Emergency Readopt (EE)

In this emergency readopt of OAL Matter No. 2021-0820-04EE, the California Alternative Energy and Advanced Transportation Financing Authority is amending the Sales and Use Tax Exclusion Program to revise definitions, application requirements, eligibility requirements, and compliance deadlines, and update cross-references and numbering.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 12/1/2021 and will expire on 3/2/2022. The Certificate of Compliance for this action is due no later than 3/1/2022.

Date: November 29, 2021



**Steven J. Escobar
Senior Attorney**

Original: Derek Chernow, Executive
Director

Copy: Matt Jumps

For: Kenneth J. Pogue
Director

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-	2021	1118-02EE

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2021 NOV 18 PM 3:06

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

NOV 29 2021

1:18 pm

NOTICE	REGULATIONS
AGENCY WITH RULEMAKING AUTHORITY California Alternative Energy and Advanced Transportation 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 <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Sales and Use Tax Exclusion Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-1026-02E; 2021-0820-04EE
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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
	AMEND
4	10031, 10032, 10033, 10034, 10035, 10036
TITLE(S)	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<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 checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

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 type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) 12/1/2021

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 Matt Jumps	TELEPHONE NUMBER 916-651-5103	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) mjumps@sto.ca.gov
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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 	DATE 11/17/21
TYPED NAME AND TITLE OF SIGNATORY Derek Chernow, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 29 2021

Office of Administrative Law

Per agency's request: SE, 11/29/2021

TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

Division 13. California Alternative Energy and Advanced Transportation Financing Authority

Article 2. MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM

§ 10031. Definitions.

(a) "Administrative Fee" means the fee payable upon the execution of the Regulatory Agreement between the Applicant and the Authority and at the time of submitting the semi-annual report to CAEATFA.

(b) "Advanced Manufacturing" is defined as stated in Section 26003(a) of the Public Resources Code.

(c) "Advanced Transportation Technology" or "Advanced Transportation Technologies" is defined as stated in Section 26003(a) of the Public Resources Code.

(d) "Alternative Sources" is defined as stated in Sections 26003(a) of the Public Resources Code.

(e) "Applicant(s)" means a Participating Party submitting an Application.

(f) "Application" means a completed formal request for sales and use tax exclusion as specified in Section 10032.

(g) "Application Fee" means the fee payable at the time of Application for a sales and use tax exclusion.

(h) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 of the Public Resources Code (commencing with Section 26000).

(i) "Biofuel" includes "Biodiesel," a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, and "Biogas," the raw gaseous mixture comprised primarily of methane and carbon dioxide and derived from the anaerobic decomposition of organic matter in a landfill, lagoon, or constructed reactor (digester).

(j) "California Supplier" means a business entity that manufactures, assembles, or produces its product or service in the state of California.

(k) "Competitive Criteria" means a set of Project or Applicant characteristics, as determined in Section 10032(a)(8)(B), which are measurable at the time of application.

(l) "Corporate Headquarters" means the location that is the primary center of direction, control and coordination for the company.

(m) "Emerging Strategic Industry" means an innovative industry, technology or product that may be identified by the Executive Director as having a potentially significant impact on the State's environmental goals or economy, the advancement of which are in the public interest, and which advance the purposes of the Program. The Executive Director may from time to time develop or add to a list of Emerging Strategic Industries which will be identified by North American Industry Classification System (NAICS) code (or its equivalent) or by description of the product or manufacturing process. The list of these industries will be publicly posted on the Authority's website.

(n) "Estimated Useful Lifespan" means the length of time the Qualified Property or Advanced Transportation Technology or Alternative Source product, component, or system can reasonably be expected to last in a productive capacity, as identified in the Application or the Regulatory Agreement.

(o) "Executive Director" means the executive director of CAEATFA.

(p) "Facility" or "Facilities" means a design, manufacturing, production, or assembly facility that includes or will include tangible personal property utilized for the design, manufacture, production, or assembly of Advanced Manufacturing, Advanced Transportation Technologies or Alternative Source products, components, or systems, or a facility that includes or will include tangible personal property that at least 50 percent of its use is either to process Recycled feedstock that is intended to be reused in the production of another product or using Recycled feedstock in the production of another product or soil amendment. Facilities involving more than one location may be combined in a single Application, provided the locations are part of a single process. Where facilities at multiple locations are performing the same or substantially similar operations they will require separate Applications.

(q) "Financial Assistance" means the granting of a sales and use tax exclusion by the Authority pursuant to Section 26011.8(a) of the Public Resources Code.

(r) "Green Component" means the component or system within Advanced Transportation Technologies or Alternative Source products, components, or systems that is primarily responsible for or required to enable the increase in energy efficiency, Alternative Source generation, or pollution reduction.

(s) "Industry Cluster" means a concentration of interrelated businesses or industries in a region that, by virtue of being located in proximity, act to increase productivity or economic growth in that region. For purposes of receiving points as part of an Application, Industry Clusters must be recognized by a California state or local government entity, regional economic development authority, or association of governments as an industry cluster, strategic cluster, or competitive cluster of the region within which the Applicant's Project resides.

(t) "Participating Party" is defined as stated in Section 26003(a)(7)(A) of the Public Resources Code.

(u) "Program" means the sales and use tax exclusion program created pursuant to Public Resources Code Section 26011.8.

(v) "Project" is defined as stated in Section 26011.8(b)(1) of the Public Resources Code. Project does not include machinery or equipment that utilizes or is designed to utilize an Alternative Source.

(w) "Qualified Product" means an Advanced Transportation Technology or Alternative Source product, component or system, a product produced with an Advanced Manufacturing Process, or a product made by processing Recycled feedstock or utilizing Recycled feedstock.

(x) "Qualified Property" means the tangible personal property identified in the Application or Regulatory Agreement to be purchased for use in the Facility if at least 50 percent of its use is either to process Recycled feedstock that is intended to be reused in the production of another product or using Recycled feedstock in the production of another product or Soil amendment; or tangible personal property that is used in the state for the design, manufacture, production, or assembly of Advanced Transportation Technologies, or Alternative Source products, components, or systems or utilized in an Advanced Manufacturing process. Qualified Property must be used for the purpose stated in the Application for a period equal to the longer of (a) one year or (b) one-half of the Estimated Useful Lifespan of the Qualified Property. The total value of Qualified Property necessary for the operation of the Facility and located on the same site as the Facility, but not directly used for the design, manufacture, production or assembly of advanced transportation technologies or alternative source products, components or systems shall not exceed one percent (1%) of the total value of all Qualified Property purchased by the Applicant.

(y) "Recognized Energy Efficiency Standard" is a statutory, regulatory, or voluntary set of minimum energy efficiency standards for one or more products, product components, or categories of products or product components, as designated by the Executive Director. The Executive Director may designate a standard as a Recognized Energy Efficiency Standard if it (a) has been adopted and currently maintained by a government agency, trade group, or nonprofit organization, (b) has clearly defined test methods, (c) contains product energy consumption ratings based on independent certification and testing, and (d) the energy consumption of products that meet the standards is significantly below the consumption of comparable products.

(z) "Recycled feedstock" is defined as stated in Section 26011.8(b)(2) of the Public Resources Code.

(aa) "Recycled Resource Extraction Project" is a project that converts Recycled feedstock into materials that are used in subsequent manufacturing processes.

(ab) "Regulatory Agreement" means the agreement specified in Section 10035.

(ac) "Soil amendments" is defined as stated in Section 26011.8(b)(3) of the Public Resources Code.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

§ 10032. Application Requirements.

(a) Timing of Application submissions.

(1) Except as otherwise provided by the Authority pursuant to subparagraphs (3) and (9) below, Applications may be submitted for consideration at any time. Applications will be presented at the first meeting at which Applications will be considered occurring at least 60 calendar days after the receipt of the Complete Application, except as noted in paragraphs (3), (9), and (10) below.

(2) Applications must be submitted via e-mail to CAEATFA@treasurer.ca.gov.

(3) The Authority may limit the number of meetings each year at which Applications will be considered.

(4) \$20 million in sales and use tax exclusions shall be available to award only to Applications requesting \$2 million or less in sales and use tax exclusion through September each year. If any of the \$20 million in sales and use tax exclusion remains after September, it shall be made available to award to all Applicants. In the event that the Applications received by CAEATFA requesting \$2 million or less in STE by the deadline for a particular Board meeting represent STE in excess of the \$20 million set-aside for that calendar year, the Applications submitted for that particular Board meeting will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria, as established in Section 10032(a)(8)(B) below. When the amount requested in the Application exceeds the STE available from the \$20 million set-aside, the Authority shall award the remaining STE request using STE from the general pool of STE allocation, if any remains. Any Applicant requesting \$2 million or less in STE that is not awarded from the \$20 million in STE set-aside will be considered for an award from the general pool of STE allocation, if any remains.

(5) Except as provided in subparagraphs (A) and (B) below, Applications shall be capped at \$10 million of sales and use tax exclusions per 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 \$10 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 Applicants that qualified for additional STE but were capped pursuant to this paragraph. The remaining STE available will be awarded first to the last Applicant considered for additional STE pursuant to subparagraph (B), below, if it did not receive its full STE request, then to any additional Applicants wishing

to exceed the \$10 million cap that were not awarded pursuant to subparagraph (B), below. The Applications will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria. If there is still additional STE available, then Applicants wishing to exceed \$20 million in STE will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria. Applicants wishing to exceed the cap shall bring a revised Project Application or a 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 Executive Director will announce end of the year availability no later than 28 days prior to the December Authority meeting.

(B) For Applicants wishing to exceed the \$10 million in STE cap, \$15 million in STE will be available to award to Applicants in addition to the \$10 million in STE cap at the first Board meeting of the calendar year. Requests for STE in addition to the \$10 million in STE cap shall be capped at \$10 million in STE, for a potential total award of \$20 million in STE. The Applications will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria, as established in Section 10032(a)(8)(B) below. If the amount requested in the last Application considered exceeds the STE available from the \$15 million in STE set-aside, the Applicant shall only receive the amount remaining from the \$15 million in STE set-aside. If any of the \$15 million in STE is not awarded, it shall be made available to award to all Applicants.

(6) To the extent that total sales and use tax exclusions awarded during the calendar year reach \$100 million (the statutory cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the statutory cap will be placed on a waiting list. To the extent that additional STEs become available during the calendar year, it will be awarded first to the last Applicant considered, if it did not receive its full STE request. If the last Applicant considered received its full STE request, then Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria. The waiting list shall expire at midnight on January 1 of the year following the year the list is established.

(7) Complete Applications will be reviewed in the order in which they are received, except as noted in paragraph (8) below.

(A) The order in which they are received will be determined by the time and date stamp of the electronic submission of the Application via e-mail.

(8) In the event that Applications received by CAEATFA by the deadline for a particular Board meeting represent STEs in excess of the statutory cap for that calendar year, the order in which the Applications submitted for that particular Board meeting shall be considered by the Authority will be based on a ranking of Competitive Criteria, as established in subparagraphs (A) and (B) below.

(A) The Projects with the greatest point score will be reviewed and presented to the CAEATFA Board. In the event of a tie, the Application representing the smaller STE award will move forward to consideration before the Authority. If the STE amounts are identical, the Application that was received by CAEATFA first shall be heard first. When the amount requested in the Application exceeds the STE available in the calendar year, the Authority shall award the remaining STE request using STE from the following calendar year, up to \$2 million in STE. Any remaining Applications shall be placed on the waiting list.

(B) Competitive Criteria.

(i) The competitive criteria score will be the sum of the following:

- a. 100 points for Applicants with environmental benefits points greater than zero as calculated pursuant to the method for calculating points for environmental benefits for Advanced Transportation, Alternative Source, and Recycled Resource Extraction Applications in Section 10033(c)(4);
- b. The Unemployment Score as calculated pursuant to Section 10033(c)(5)(A);
- c. The New Jobs Score as calculated pursuant to Section 10033(c)(5)(B);
- d. 50 points for Applicants that can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application;
- e. 15 points for Applicants with a Corporate Headquarters, as defined in Section 10031(l), located in California; and
- f. 50 points for Applicants that are not eligible to use any of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code. The Authority staff will consult with the California Department of Tax and Fee Administration regarding questions of eligibility for any of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code.

(9) Upon a recommendation of the Executive Director, the Authority may consider an Application at a meeting occurring less than 60 calendar days after the receipt of the complete Application.

(10) The Authority may, upon a finding that it is in the public interest and advances the purposes of the Program, at any time announce that it is not accepting further Applications.

(b) Application. Applicants shall submit to the Authority the information required by this section.