

**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

Adopt sections:

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

Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**


OAL Matter Number: 2022-0224-04

**OAL Matter Type: Certificate of Compliance
(C)**

This Certificate of Compliance action makes permanent emergency regulations that streamline administration of the Sales and Use Tax Exclusion Program which is available to qualifying manufacturers and recyclers for projects and products that create California-based manufacturing jobs or advanced manufacturing processes or reduce greenhouse gases, air and water pollution, or energy consumption. More specifically, the action revises definitions, application and eligibility requirements, and compliance deadlines, and updates cross references and subdivision numbering.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: April 7, 2022



Dale P. Mentink
Assistant Chief Counsel

For: Kenneth J. Pogue
Director

Original: Derek Chernow, Executive
Director

Copy: Matt Jumps

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

For use by Secretary of State only

STD. 400 (REV. 10/2019)

| | | | |
|--|---|---|------------------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2021-1123-03 | REGULATORY ACTION NUMBER 2022-0224-04 | EMERGENCY NUMBER C |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |
| AGENCY WITH RULEMAKING AUTHORITY | | AGENCY FILE NUMBER (If any) | |

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

APR 07 2022
3:10 PM

OFFICE OF ADMIN. LAW
2022 FEB 24 PM 2:43

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|--|--|------------------------|---|
| 1. SUBJECT OF NOTICE <i>California Alternative Energy and Advanced Transportation Financing Authority</i> | 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 2021, 49-Z |
| | | | PUBLICATION DATE 12/3/2021 |

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; 2021-0826-04EE; 2021-1118-02EE; 2021-1129-02E |
| 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 |
| | 10031, 10032, 10033, 10034, 10035, 10036 |
| TITLE(S) 4 | REPEAL |
| 3. TYPE OF FILING | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" 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"/> 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"/> File & Print <input type="checkbox"/> Print Only | |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <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 checked="" type="checkbox"/> Effective on filing with Secretary of State <input 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 checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal per agency request DM | |
| <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 |

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 2/23/22 |
| TYPED NAME AND TITLE OF SIGNATORY Derek Chernow, Executive Director | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 07 2022

Office of Administrative Law

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) "Small Project Pool" is the twenty million dollars (\$20,000,000) in sales and use tax exclusion available to award only to Applications requesting two million dollars (\$2,000,000) or less in sales and use tax exclusion through September each year as established in Section 10032(a)(4).

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

(ae) "Statutory Cap" means the maximum amount of sales and use tax exclusion the Authority may grant pursuant to Section 26011.8(h) of the Public Resources Code.

Note: Authority cited: Section 26009, Public Resources Code; 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) The Executive Director will announce the application periods for the sales and use tax exclusion prior to the start of each calendar year on the Authority website found at www.treasurer.ca.gov/CAEATFA.

(A) The announcement will include the (1) application periods, (2) deadline to submit Applications for each application period, (3) tentative dates when the Authority will hold Board meetings to consider Applications, and (4) amount of sales and use tax exclusion available to award during each application period.

(B) The Executive Director may reschedule or amend any previously announced application period by providing notice on the Authority website and may reschedule or relocate any previously announced Authority Board meeting so long as the information is posted on the Authority website at least ten (10) days before the scheduled meeting.

(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. Applications being considered under the Small Project Pool will be reviewed and presented to the CAEATFA Board for approval in the order in which the Applications are ranked based on Competitive Criteria, as established in Section 10032(a)(7)(B), and will be heard before Applications being considered for an award under the general pool of STE. When the amount requested in the Application exceeds the STE available from the Small Project Pool, 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 Small Project Pool 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 application period of the calendar year after all Applications are considered, 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 the Applicant 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 that cap must bring a revised Project Application or a new Application before the Authority Board for consideration in the last application period of the same calendar year in which the original Application was approved. The revised or new Application must include updated information requested ~~as~~ in Section 10032 and will be evaluated pursuant to Section 10033. The Executive Director will announce end-of-the-year availability of sales and use tax exclusion no later than 28 days prior to the last Authority Board meeting of the calendar year.

per agency
request
m

(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 in the first application period 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, and must be submitted during the first application period of the calendar year. 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, the remaining STE will be made available to award to all Applicants.

(6) To the extent the total sales and use tax exclusion awarded during the calendar year reaches the Statutory Cap, additional Applications will not 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 STE becomes available during the calendar year, it will be awarded first to the last Applicant considered, if that Applicant did not receive

its full STE request. If the last Applicant considered received its full STE request, Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which those Applications are ranked based on Competitive Criteria. The waiting list shall expire at midnight on January 1 of the year following the calendar year the list is established.

(7) Except as provided in paragraph (4), the order in which Applications will be reviewed and 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 all of the following:

- a. 100 points for Applicants with Recycled Resource Extraction Projects or Projects that produce an Advanced Transportation Technology or an Alternative Source product, component, or system;
- 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;
- 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; and
- g. 75 points if the Project's industry is in an Emerging Strategic Industry.