

**TITLE 4. BUSINESS REGULATIONS  
DIVISION 13**

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or the “Authority”) proposes to amend Sections 10031 through 10036 of Article 2, Division 13, Title 4 of the California Code of Regulations concerning the implementation of the Sales and Use Tax Exclusion Program after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Authority has not scheduled a public hearing on this proposed action. However, a public hearing will be held if any interested person, or his or her duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the Agency Contact Person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Authority. The written comment period for the proposed regulations ends on **January 18, 2022**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Article 2, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

**AUTHORITY and REFERENCE**

Authority: Public Resources Code Sections 26009 and 26011.8. Revenue and Taxation Code Section 6010.8. Public Resources Code Section 26009 authorizes CAEATFA to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code Section 26011.8 provides the authority to develop the Sales and Use Tax Exclusion Program. Revenue and Taxation Code Section 6010.8 provides CAEATFA the ability to provide financial assistance in the form of a sales and use tax exclusion.

Reference: Section 26011.8 of the Public Resources Code. This regulation will implement, interpret, and make specific Section 26011.8 of the Public Resources Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) and requires CAEATFA to establish programs to provide Financial Assistance to Participating Parties for Projects related to alternative energy sources and advanced transportation.

Existing law authorizes CAEATFA to provide a sales and use tax exclusion (“STE”) to certain types of manufacturers and recyclers to promote the creation of California-based manufacturing, California-based jobs, advanced manufacturing, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. (PRC Section 26011.8(a).)

Existing law specifies criteria by which CAEATFA shall evaluate Project Applications, including the extent to which the Project will create new, permanent full-time jobs in California; the extent of unemployment in the area in which the Project is proposed to be located; and, to the extent feasible, the extent to which the Project, or the product produced by the Project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by federal or state law or regulation; and any other factors the Authority deems appropriate in accordance with Section 26011.8. (PRC Section 26011.8(d).)

In October 2019, Governor Newsom signed into law AB 176 (Cervantes, Chapter 672, Statutes of 2019), which adds to the Application evaluation criteria the extent to which a Project will result in the loss of permanent, full-time jobs in California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained. Existing law also limits the amount of STE CAEATFA may grant for each calendar year to \$100 million. (PRC Section 26011.8(h).)

Existing Program regulations establish eligibility and evaluation criteria by which Applications are reviewed in accordance with PRC Section 26011.8(d). Current Program regulations provide that CAEATFA will accept Applications on a rolling, first-come-first-serve basis until the Program becomes oversubscribed, and that the Board may limit the number of meetings at which Applications will be considered. As part of the Application, existing Program regulations require Applicants to submit information on the Applicant’s business, the proposed Project, and the product(s) to be manufactured.

Previous STE Program regulations limited Applicants to receiving \$20 million in STE per calendar year based on the average statewide sales and use tax rate at the time of application. If any STE from the \$100 million cap was available at the end of the calendar year after all Applications submitted for that calendar year had been considered, capped Applicants were able to submit a revised Application for consideration by CAEATFA to seek additional STE. Previous STE Program regulations required that any STE remaining from the \$100 million cap be split evenly among Applicants CAEATFA approved to receive additional STE.

Now, existing STE Program regulations establish a competitive process whereby Applications are ranked based on specific criteria to determine the order of priority for consideration by CAEATFA if the Program becomes oversubscribed in a given month.

Existing STE Program regulations require approved Applicants to execute a Regulatory Agreement with CAEATFA that sets out the terms of using the award. Previous STE Program regulations required approved Applicants to purchase at least 15% of the total Qualified Property amount approved within one year of approval and did not provide the CAEATFA Board the ability to waive or extend this requirement.

Existing STE Program regulations require Applicants to pay fees to cover the cost of reviewing Applications and administering the Program. Previous regulations required Applicants to pay a \$500 fee for requests for the CAEATFA Board to modify the Regulatory Agreement or authorizing resolution.

For the first time in STE Program history, CAEATFA exhausted the \$100 million STE cap by the July 2019 Board meeting rather than the December CAEATFA Board meeting. Also for the first time, the Program's Competitive Criteria were used to determine which Applicants would be considered. Given the limited resources and recent competitive nature of the STE Program, the CAEATFA Board requested that Staff re-evaluate Program goals and priorities to determine how best to effectuate the purpose of the Program. Additionally, Staff had been identifying lessons learned throughout Program implementation.

At the November 19, 2019, CAEATFA Board meeting, Staff presented proposed amended regulations reflecting feedback from the CAEATFA Board and Staff's stakeholder outreach. The modified regulations made incremental changes to address more immediate STE Program priorities at the time, while reserving some of the more complex issues for when Staff could take more time to solicit input and thoughtfully consider the issues and policy trade-offs.

After the initial emergency regulations were approved by the Office of Administrative Law and became effective on December 16, 2019, CAEATFA began accepting STE Applications for the 2020 calendar year. By the first application deadline, the STE Program was oversubscribed for the 2020 calendar year. In March 2020, the CAEATFA Board approved 18 Applications, fully awarding the \$100 million in STE. Six Applicants requesting approximately \$10 million in STE remained on the waitlist.

Subsequently, the COVID-19 pandemic spread throughout the world, affecting purchase timeframes, financing, feedstock supply, revenue, construction, and operations for previously approved Applicants. However, the ultimate market impact of the COVID-19 pandemic remains unknown.

Given the significant STE Program and market changes since the December 2019 emergency regulations first took effect, CAEATFA conducted additional stakeholder outreach and discussions to determine what lessons learned could be applied to the regulations going forward. Proposed amended regulations reflecting feedback from the CAEATFA Board and Staff's stakeholder outreach were presented and approved by the CAEATFA Board at the September 15, 2020, CAEATFA Board meeting. The December 2019 emergency regulations expired on October 15, 2020.

The September 2020 proposed Emergency Regulations addressed the STE Program's oversubscription for the last three years, addressed the unprecedented economic impact of the COVID-19 pandemic, and incorporated the lessons learned from program implementation.

After the September 2020 Emergency Regulations took effect on November 4, 2020, CAEATFA began accepting Applications for consideration in calendar year 2021. CAEATFA received 31 Applications by the first deadline of November 20, 2020, for consideration in January 2021, requesting over \$102 million in STE. Given the number of Applications received and the time needed to implement the different pools of STE and the competitive process, the first Applications were considered at the March 2021 CAEATFA Board meeting.

At the March 2021 CAEATFA Board meeting, the CAEATFA Board approved 29 Applications, leaving an estimated STE value of \$7,020,745 in the STE Program's general pool. The Applications considered in March resulted in an oversubscription of the \$20 million in STE set-aside for small Projects requesting \$2 million or less in STE and a competitive process for that particular pool. The general pool of STE was not oversubscribed based on the complete Applications received by the deadline for consideration, and, therefore, all Applications under that pool were brought before the CAEATFA Board in order of receipt. Subsequently, one of the Applicants approved in March 2021 did not move forward with a Regulatory Agreement with CAEATFA, restoring \$433,011 in STE to the Small-Project Pool.

After the March 2021 CAEATFA Board meeting, CAEATFA had eight Applications in the queue for the remaining 2021 calendar year STE. The remaining STE was awarded to three Applicants at the May 2021 CAEATFA Board meeting. Based on the amount of STE available in both the Small-Project Pool and the general pool, the two complete Applications received by the December 2020 application deadline were considered in order of receipt, with one of the Applicants receiving the remaining STE from the Small-Project Pool. The two Applications received by the January 2021 application deadline were ranked based on the Competitive Criteria, and the Application with the greater point-score was the third and final Application considered at the May 2021 CAEATFA Board meeting. CAEATFA has continued to accept Applications for the 2021 calendar year waiting list, which currently has 15 applications requesting approximately \$56 million in STE.

CAEATFA Staff assessed the benefits and challenges of the regulations modifications, and at the October 19, 2021, CAEATFA Board meeting, the Authority approved modified regulations to improve and streamline the STE Program administration and incorporate lessons learned from Program implementation.

The proposed regulations address the Program's oversubscription for the last three years, the unprecedented economic impact of the COVID-19 pandemic, implement the statutory changes under AB 176, and incorporate lessons learned from Program implementation. The proposed amendments and objectives for each modification are described below.

These regulations incorporate proposed regulations that were initially adopted under the emergency regulation process on November 4, 2020 (OAL Files No. 2020-1026-02(E) and 2021-0820-04(EE)), as well as modifications that were approved at the October 19, 2021, CAEATFA Board meeting.

The proposed regulations will allow the Authority to continue to offer Financial Assistance to Alternative Source, Advanced Transportation, Advanced Manufacturing, and Recycled feedstock Projects. By promoting these types of Projects the Authority promotes California-based manufacturing, California-based jobs, the reduction of greenhouse gases, and the reduction of air and water pollution or energy consumption.

### **Anticipated Benefits of the Proposed Regulation**

The broad objective of the regulation is to allow the Authority to continue to offer Financial Assistance to Alternative Source, Advanced Transportation, Advanced Manufacturing, and recycling Projects. By promoting these types of Projects the Authority promotes California-based manufacturing, California-based jobs, the reduction of greenhouse gas emissions, and the reduction of air and water pollution and energy consumption.

### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations**

Government Code Section 11346.5(a)(3)(D) requires that the notice of emergency rulemaking include, “[an] evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations.” CAEATFA’s Staff reviewed the California Code of Regulations and found no existing regulations dealing with this issue. Therefore, CAEATFA believes that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Executive Director of the Authority has made the following determinations regarding the effect of the regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** The proposed regulations increase Program fees to help cover the costs of ongoing Program operations and maintenance.

Current regulations provide that the Application Fee is not refundable unless an Application is not reviewed by Staff due to the STE Program being oversubscribed. Because the proposed regulations switch the STE Program to specific application periods that will enable CAEATFA to know whether the Program is oversubscribed before a subsequent application period, CAEATFA will no longer accept Applications if there is no STE available to award. Therefore, all Applications will at least be reviewed to determine Competitive Criteria scores. Determining the Competitive Criteria score of an Application requires Staff to review the Qualified Property list, estimated number of employees, and production-related information provided in the Application. To reflect the amount of time spent on this initial review of the Application, the

proposed regulations provide that 75% of the Application Fee will be refunded if the Application is (1) reviewed to only determine its Competitive Criteria ranking and (2) not fully reviewed by Staff due to the Applicant's Competitive Criteria ranking and the oversubscription of the Statutory Cap.

Current regulations require an Applicant to pay a \$500 fee for any modification made to an existing award (e.g. name changes, award transfers, extension of the timeframe to meet the 15% purchase requirement, and extension of the three-year initial term to purchase all Qualified Property). To adjust the fees to better reflect the amount of time spent reviewing and processing requests for extensions and Board consideration, and to account for the additional years of reporting and administration, the proposed regulations increase the Administrative Fee to \$1,500 for requests to extend the 15% purchase requirement timeframe, to \$2,000 for requests to extend the three-year initial term to use the STE award, and to \$2,250 if an Applicant requests extensions the 15% purchase requirement timeframe and the three-year initial term for consideration at the same CAEATFA Board meeting.

Aside from certain savings for CAEATFA, there are no other costs or savings to any other state agency.

The assumptions for these savings are further explained in an attachment to the Economic and Fiscal Impact Statement, Std. Form 399, which is available for viewing on the CAEATFA website or by contacting the Agency Contact Person.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561:** None.

**Other non-discretionary cost or savings imposed on local agencies:** None. While the sales and use tax that is excluded could be seen as "lost revenue," the Program regulations limit the Financial Assistance to those Applications/Projects that are anticipated to have a net fiscal and environmental benefit for the State. Additionally, the proposed regulations do not expand CAEATFA's authority to provide an STE nor increase the amount of STE that CAEATFA may grant, which is capped by statute.

**Cost or savings in federal funding to the state:** None.

**Significant effect on housing costs:** None.

**Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:** The Authority has made the determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Participation in the Program is voluntary for California businesses. For those businesses that choose to apply and are awarded a sales and use tax exclusion, the Program provides an incentive, which reduces their capital purchasing costs. In fact, the Authority finds that the proposed regulation will have a positive effect on certain businesses that are awarded Financial Assistance and on the State's economy and

environment generally as a result of the increased economic activity of Advanced Manufacturing and Recycled Resource Extraction Projects and production of Alternative Source and Advanced Transportation products. This determination is based on a review of the public comments received in previous rulemaking proceedings and analysis performed by the consultant hired by the Authority to assist with the development of the Program.

## **RESULTS OF ECONOMIC IMPACT ANALYSIS**

### **Creation or Elimination of Jobs within the State of California**

The regulations help provide an incentive to California manufacturers and, therefore, are not anticipated to eliminate jobs within the State of California. The Authority finds that the proposed regulations are likely to create an unknown number of manufacturing jobs based on stakeholder comments received and analysis performed by the consultant hired by the Authority to assist with the development of the proposed regulations.

### **Creation of New or Elimination of Existing Businesses within the State of California**

The regulations help provide an incentive to California manufacturers and, therefore, are not anticipated to eliminate existing businesses within the State of California. The Authority finds that the proposed regulations will have a positive effect on certain businesses that are awarded Financial Assistance, including new businesses, based on stakeholder comments received and analysis performed by the consultant hired by the Authority to assist with the development of the proposed regulations but are unlikely to significantly affect the creation of new businesses within the State of California.

### **Expansion of Businesses Currently Doing Business within the State of California**

The Authority finds the proposed regulations will have a positive effect on certain businesses that are awarded Financial Assistance, including businesses currently doing business within the State of California, based on stakeholder comments received and analysis performed by the consultant hired by the Authority to assist with the development of the proposed regulations. This determination is unquantifiable at this time.

### **Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The regulations may benefit the health and welfare of California residents and the State's environment by incentivizing Advanced Manufacturing, recycling, and the manufacturing and production of Alternative Source products and Advanced Transportation technologies. The development of such manufacturing projects in California is anticipated to benefit the health and welfare of California residents and the State's environment through reduction of waste, emissions, and fuel and energy consumption. The regulations may also benefit worker safety by incentivizing the deployment of advanced manufacturing systems and techniques that could provide a safer work environment.

**Cost impact on a representative private person or business:** The Authority is not aware of any cost impacts that a representative private person would incur as a result of compliance with the proposed action. Business entities applying for the Program would incur costs associated with applying for financial assistance and complying with the proposed regulations, however, these costs would constitute a small fraction of the amount of Financial Assistance awarded.

**Small Business:** The proposed regulations will not have an adverse impact on small businesses in California and will not affect small businesses since the proposed regulations do not impose additional restrictions or costs on small businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private person and equally effective in implementing the statutory policy or other provision of law.

The Authority invites interested persons to present statements with respect to alternatives to the regulations during the written comment period.

## **AGENCY CONTACT PERSON**

Written comments, inquiries and any questions regarding the substance of the regulations shall be submitted or directed to:

Matthew Jumps, Analyst  
CAEATFA  
915 Capitol Mall, Room 538  
Sacramento, California 95814  
Telephone: 916-651-5103  
Email: [mjumps@treasurer.ca.gov](mailto:mjumps@treasurer.ca.gov)

The backup contact is:

Ashley Emery, Program Manager  
CAEATFA  
915 Capitol Mall, Room 538  
Sacramento, California 95814  
Telephone: 916-651-5100  
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## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF THE PROPOSED REGULATIONS**

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Room 220, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at:  
<https://www.treasurer.ca.gov/caeatfa/ste/regulations/index.asp>.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the public hearing and the written comment period ends, the Authority may adopt the regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

## **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the proposed regulations are based, including studies or documents relied upon, is contained in the rulemaking file, which is available for public inspection by contacting the Agency Contact Person designated in this Notice. Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at  
<https://www.treasurer.ca.gov/caeatfa/ste/regulations/index.asp>.