

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY
Meeting Date: December 13, 2011**

Request to Approve Regulations for the SB 71 Sales and Use Tax Exclusion Program

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Issue. Senate Bill (SB) 71 (Padilla), signed into law on March 24, 2010, authorized the California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”) to approve Projects¹ for sales and use tax exclusions (“STE”) on Qualified Property utilized for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components or systems.

CAEATFA approved the initial regulations through the emergency rulemaking process on September 16, 2010 and the permanent regulations on June 28, 2011. CAEATFA staff has continued to review and evaluate certain elements of the program, and determined that modifications to the regulations would improve the Program. After Board consideration, a draft of these proposed modifications will be noticed for public comment according to the emergency rulemaking process.

CAEATFA staff does not anticipate any negative public comment to these proposed modifications, and will bring any unanticipated substantive issues to the Board for consideration and deliberation.

Proposed Modifications to the Regulations.

Subsequent to approval of the regulations for the SB 71 Program in June, 2011, Staff has continued to evaluate the program. This evaluation has led to the recommendation to adopt a series of modifications to the CAEATFA regulations. These changes are being proposed in response to comments and testimony made at the SB 71 oversight hearing conducted by the legislature on October 19th, as well as the experience of staff in dealing with previously approved and prospective applicants.

Staff proposes modifications to the SB 71 regulations to further clarify and specify provisions and address “lessons learned” from earlier implementation. The following sections summarize the key changes proposed to the Program regulations.

Following is a brief summary of each of the sections of the proposed regulations for which staff is recommending a change.

¹ All capitalized terms not defined here are defined in the Program’s statute and regulations.

§10033. Eligibility Requirements and Application Evaluation

Applications that meet the Project definition criteria will be evaluated based on criteria developed and specified in the regulations. These evaluation criteria are designed to measure and quantify the fiscal and environmental benefits of the Project and to compare the result to the cost of the sales tax exclusion (STE).

Issues: As part of the permanent rulemaking process, a modification to the scoring methodology was adopted which estimates the marginal increase in capital investment stemming from the granting of the STE. Staff has determined that the methodology as embodied in the approved regulations could lead to a misleading or inaccurate estimate of the net benefits of a project in certain unusual circumstances, such as when applicants anticipate operating an a substantial loss for the duration of the period covered by the application. The proposed change would address this issue so as to produce a more accurate estimate of the net benefits stemming from such projects, should any seek to apply. The scoring for typical projects which anticipate an operating profit would remain unchanged.

§10034. Approval of Applications by the Authority

This section outlines the process and procedures of when and how the Authority may consider applications for financial assistance.

Issues: The Program regulations currently describe the process under which an application will be considered for financial assistance, and how applicants will be notified of the Board's decision. The regulation text is currently inaccurate, describing that Applicants will be informed of the amount of sales and use tax exclusion that the Authority approves, when in fact the Authority approves a maximum amount of Qualified Property, by which Staff estimates a value for the sales and use tax exclusion. The actual amount of sales and use tax exclusion awarded or used is unknown, and CAEATFA relies on estimates based on the statewide average (currently 8.1%) of the eligible equipment.

§10035. Master Regulatory and Title Conveyance Agreement and Compliance

Master Regulatory Agreement.

A Master Regulatory Agreement will be executed between the approved Applicant (in statute the Participating Party) and the Authority. The Master Regulatory Agreement requires Applicants to comply with the requirements in the regulations, including a requirement of ongoing reporting and compliance for the term of the agreement. Modifications to this section will clarify instances in which the agreement may be rescinded versus termination of the agreement.

Recovery of Financial Assistance.

These Program regulations include a provision that enables the recovery of financial assistance in situations in which an Applicant fails to meet the substantial use test or moves the equipment out of the State of California prior to the date permitted in the Regulatory Agreement.

Issues: The Regulatory Agreement and subsequent conveyance and reconveyance of the Qualified Property provide the legal mechanism for excluding certain purchases from sales and use taxes and ensure ongoing compliance with the statute and regulations. The current version of the regulations refers to circumstances under which the regulatory agreement can be “rescinded” while the text of the agreement itself refers to “termination.” The proposed change would replace the term “rescinded” in the regulations with the term “termination” so as to make the regulations and the regulatory agreement consistent and to clarify that the act of terminating the agreement is not retroactive, but does prevent the conveyance and reconveyance of any additional Qualified Property.

In addition, the current regulations require Applicants to install and maintain equipment in California for a period equal to the term of the regulatory agreement or three years, whichever is shorter. The proposed change would require that the equipment remain in California for a period of one year. This change would allow applicants that seek to upgrade and modernize their equipment to do so by allowing them to sell or otherwise dispose of the older equipment without penalty.

For the full version of the modified regulation text see Attachment A; changes proposed are shown in blue single underline text for additions and red single strikethrough text for deletions.

Emergency Regulatory Process.

Pursuant to the SB 71 statute, CAEATFA was granted emergency rulemaking authority under Public Resources Code Section 26011.8(i). This authority provides CAEATFA with the ability to make modifications or changes to the regulations in an expedited manner.

The emergency rulemaking process requires that CAEATFA provide notice of the emergency rulemaking action five days prior to submitting the modifications to OAL for approval, and provides a five day public comment period. OAL has 10 calendar days to review the regulations, which will be in effect for 180 days (and two 90-day readoptions if necessary) while Staff undergoes the regular rulemaking process.

Tentative Timeline.

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

December 13, 2011	Board Meeting, present proposed regulations to Board for approval
Day -5 ² December 14, 2011	Pre OAL Submission: CAEATFA staff publically notice 1) proposed regulation text, 2) finding of emergency, 3) rulemaking statement
Day 0 December 21, 2011	OAL Submission: CAEATFA files rulemaking package with OAL

² Five working Days.

Day +5
December 26, 2011

The public may submit comments for five calendar days

Day +8
December 29, 2011

CAEATFA's response deadline to public comment

Day +10
December 30, 2011

OAL Decision Deadline. Regulations enacted for 180 days

Recommendation. Staff recommends adoption of a resolution to approve the proposed modifications to regulations for the SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program.

Attachment A: Proposed Text of Modified Regulations

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED
TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS AND
OTHER ACTIONS RELATED THERETO**

December 13, 2011

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 SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program ("SB 71 Program"), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to implement the SB 71 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.

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CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY REGULATIONS IMPLEMENTING
ADVANCED TRANSPORTATION AND ALTERNATIVE SOURCE MANUFACTURING
SALES AND USE TAX EXCLUSION PROGRAM

December 13, 2011

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Section 10030. Purpose and Scope

These regulations establish procedures for granting sales and use tax exclusions to qualifying Applicants pursuant to Chapter 10, Statutes of 2010, which authorizes the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to award such sales and use tax exclusions.

Authority: Section 26011.8, Public Resources Code.
Reference: 26011.8, Public Resources Code and Section 6010.8 of
the Revenue and Taxation Code.

Section 10031. Definitions

- (a) “Administrative Fee” means the fee payable following approval of an Application at the time of conveyance/reconveyance of property to CAEATFA.
- (b) “Advanced Transportation Technology” or “Advanced Transportation Technologies” is defined as stated in Section 26003(d) of the Public Resources Code.
- (c) “Alternative Source” is defined as stated in Sections 26003(c) and 26011.8(b)(2) of the Public Resources Code.
- (d) “Applicant(s)” means a natural person; business entity, whether organized for profit or not for profit; or public agency, acting individually or as a group, submitting an Application.
- (e) “Application” means a completed formal request for sales and use tax exclusion as specified in Section 10032.
- (f) “Application Fee” means the fee payable at the time of Application for a sales and use tax exclusion.
- (g) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 (commencing with Section 26000 of the Public Resources Code).
- (h) “California Supplier” means a business entity that manufactures, assembles, or produces its product or service in the state of California.
- (i) “Emerging Green 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, the advancement of which is in the public interest, and which advances the purposes of the Program. The Executive Director may from time to time submit to the Authority a list of Emerging Green 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. Once approved by the Authority, the list of these industries will be publicly posted on the Authority’s website.

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- (j) “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.
- (k) “Executive Director” means the executive director of CAEATFA.
- (l) “Facility” or “Facilities” mean 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 Transportation Technologies or Alternative Source products, components, or systems.
- (m) “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.
- (n) “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.
- (o) “Participating Party” is defined as stated in Section 26003(f) of the Public Resources Code.
- (p) “Program” means the sales and use tax exclusion program created pursuant to Public Resources Code Section 26011.8.
- (q) “Project” is defined as stated in Section 26003(g)(2) of the Public Resources Code. Project does not include machinery or equipment that utilizes or is designed to utilize an Alternative Source.
- (r) “Qualified Property” means the tangible personal property identified in the Application or Regulatory Agreement necessary for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems to be purchased for use in the Facility. 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.
- (s) “Regulatory Agreement” means the agreement specified in Section 10035.

Authority: Section 26011.8, Public Resources Code.

Reference: 26011.8, Public Resources Code and Section 6010.8 of
the Revenue and Taxation Code.

Section 10032. Application Requirements

- (a) Timing of Application submissions.

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- (1) Except as otherwise provided by the Authority pursuant to subparagraph (2) 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 (2), (3), and (4) below.
 - (2) The Authority may limit the number of meetings each year at which Applications will be considered.
 - (3) 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.
 - (4) 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.
- (1) Applications not meeting all requirements shall be considered incomplete. An Applicant shall be notified by the Authority should its Application be deemed incomplete and may correct any deficiency and resubmit the Application. Resubmitted Applications will be reviewed for completeness and, if complete, will be further reviewed by staff and presented to the Authority pursuant to the regular review and evaluation process and timeline.
 - (2) Determination of completeness, compliance with all requirements, and the scoring of the Application shall be based entirely on the documents contained in the Application as of the date on which the Application was submitted. Any additional documents pertaining to the requirements or scoring categories that the Applicant chooses to submit shall be accepted after the Application-filing date only with the understanding that, for purposes of calculating the 60 calendar days to determine the earliest meeting at which the Application will be heard, the date the additional documentation is received shall be the date of receipt of the Application. In the event the Authority asks an Applicant for additional information or requests clarification or correction of errors, Applicants shall be given up to three (3) business days from the date of receipt of staff notification to submit said documents to complete the Application. A timely response shall not cause a redetermination of the date of receipt. The Authority may request additional clarifying information from third party sources, such as local government entities, other state agencies, or subject matter experts. To the extent that third party information is received that contradicts or otherwise calls into question information provided in the Application or otherwise may result in a reduction in the score that an Application would receive, the Applicant will be notified and will be given three (3) business days to respond to the third party information received.
 - (3) An Application may not be changed, nor may any additional information with respect to scoring be submitted subsequent to the Application filing date, except as noted above.
 - (4) Applications not submitted with the Application Fee will be considered incomplete.
 - (5) To be considered complete, a paper copy of the filled-out Application and any

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supporting documentation, including original signatures as required on part A of the Application form, must be received at the Authority's Sacramento office.

- (c) Documentation. The following documentation relevant to the proposed Facility is required to be submitted with all Applications:
- (1) Applicant Certification. A signed statement certifying the responsibility of the Applicant to:
 - (A) provide Application-related documentation to the Authority upon request;
 - (B) be familiar with and comply with Program statutes and regulations;
 - (C) hold the Authority and its employees and consultants harmless from any and all issues arising from the Applicant's participation in the Program;
 - (D) agree to comply with and remain in compliance with all applicable laws and regulations during the term of the Regulatory Agreement;
 - (E) acknowledge that the Authority has recommended the Applicant seek tax advice;
 - (F) acknowledge that the Application will be evaluated according to Authority regulations;
 - (G) acknowledge that continued compliance with Program requirements, including ongoing reporting requirements and any costs associated with such requirements for the term of the Regulatory Agreement, is the responsibility of the Applicant;
 - (H) acknowledge that information submitted to the Authority may be subject to disclosure pursuant to the Public Records Act (Government Code Sections 6250, et seq.);
 - (I) agree to enter with the Authority into a Regulatory Agreement if the Application is approved; and,
 - (J) acknowledge, under penalty of perjury, that all information provided to the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Authority of any material changes to the information submitted in the Application during the Application process and the term of the Regulatory Agreement.
 - (2) Legal Information. Applicants shall complete the Legal Status Questionnaire (as revised on October 1, 2010).
 - (3) Designated Contacts. The Application must identify designated contacts who can respond to questions from the Authority or provide additional information if requested. If the designated contacts are not directly employed by Applicant, the Application must include appropriate documentation signifying the contact's authority to represent and act on behalf of the Applicant with respect to the Application.
 - (4) Applicant and Facility Information. Applicants are responsible for providing all requested information, which shall include:
 - (A) Applicant Information.
 - (i) Name, phone number, email address, mailing address, and taxpayer identification number of Applicant,

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- (ii) Applicant organization type (e.g., corporation, LLC, partnership, etc.),
 - (iii) Name, phone number, email address, and mailing address of a primary and secondary contact person
 - (iv) Contacts' titles or relationships to Applicant,
 - (v) The name(s) of the owners of the Applicant's business entity.
 - a. If the Applicant is a corporation, include the names of the officers of the corporation, major shareholders (10.0% or greater), and date and place of incorporation.
 - b. If the Applicant is a sole proprietorship, include the name of the proprietor and the date and place of establishment.
 - c. If the Applicant is another type of legal entity, identify the name(s) of the owners and each owner's share of ownership (the totals of the reported shares of ownership should equal 100%).
 - d. For all types of business entities, other than publicly traded corporations, private equity firms or sole proprietorships, that are owned by another business entity with an ownership share greater than or equal to 10 percent, identify any individuals or businesses with an ownership share in the parent entity of 10 percent or more.
 - (vi) Brief description of the Applicant's business, including product(s) produced, facility locations, years in business, and any unique technological or environmental characteristics of the business or products.
- (B) Facility Information
- (i) Brief description of Facility and product(s) to be produced, including the following:
 - a. Physical location of the Facility
 - b. A description of the Facility, including the design, manufacturing, or assembly process to be employed, the product to be produced, and the intended or likely customers.
 - c. Identification of the Advanced Transportation Technology or Alternative Source product, component or system to be produced. In the case of a Facility producing property or products that, after further manufacture, will become the Green Component of an Advanced Transportation Technology or Alternative Source product or system, the Applicant must describe both the property or product produced by the Facility and the Green Component of the Advanced Transportation Technology or Alternative Source product or system for which the product produced will be used.
 - d. Current Facility status and a schedule indicating the estimated Facility construction start date through the placed-in-service date for the Qualified Property identified in the Application, including the expected date of any needed permits.
 - e. Description of the sources of financing necessary for Facility completion.

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- f. Total value of the capital stock used to produce the product, including the anticipated Qualified Property purchases. The value is not the cost of the capital stock, but the depreciated value of the capital stock excluding buildings and land.
 - g. Projected average number of employees at the Facility, measured in full time equivalents, assuming Qualified Property is utilized.
 - h. Projected number of employees employed for purposes of constructing the Facility or installing Qualified Property, measured in full time equivalents.
 - i. Estimated annual corporate or other income taxes paid by the company on its profits.
- (C) Qualified Property Information. Completed provisional Qualified Property list to include the following information for each piece of property to be subject to the sales and use tax exclusion. Good faith estimates are acceptable if specific property characteristics are not available at the time of Application. Individual items of Qualified Property valued at less than \$10,000 can be grouped together provided that (a) the total value of the group of items does not exceed \$100,000 and (b) the individual items are reasonably related, such as items that will be used together to construct or assemble a larger piece of machinery or equipment that will be used to design, manufacture, produce or assemble Advanced Transportation Technologies or Alternative Source products, components, or systems.
- (i) Brief description of Qualified Property to be purchased and its use in the manufacturing, production, assembly, or design process.
 - (ii) Estimated cost of the Qualified Property to be purchased
 - (iii) Average Estimated Useful Lifespan of the Qualified Property, weighted by cost.
 - (iv) Estimated percent of time Qualified Property will be used to make Advanced Transportation Technologies or Alternative Source products, components, or systems.
- (D) Product information (all information must relate solely to the Facility or product to be produced with Qualified Property if the Applicant produces other goods or services):
- (i) Brief description and name of the product to be produced with Qualified Property and within California, including the six-digit (NAICS) code.
 - (ii) Estimated average annual number of Advanced Transportation Technologies or Alternative Source products, components, or systems to be sold or shipped
 - (iii) Estimated per unit sales price.
 - (iv) Estimated total Facility sales in dollars.
 - (v) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.
 - (vi) Estimated percent of production costs from California Suppliers

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- (vii) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.
 - (viii) Estimated Useful Lifespan of product, component, or system.
 - (ix) Estimated percent of total Advanced Transportation Technology or Alternative Source products, components, or systems to be sold in California.
 - (x) Statement as to whether the technology, product, component, or system is a subcomponent of an Advanced Transportation Technology or Alternative Source end-of-supply-chain product.
 - (xi) Total value of the end-of-supply-chain Green Component.
- (E) Environmental Benefit Information.
- (i) For Facilities producing the Green Component of Alternative Source products, components or systems:
 - a. Annual energy generation capacity or energy content per unit.
 - b. Lbs. of CO₂ (or equivalent) emitted per MWh or equivalent.
 - c. Lbs. of SO₂ emitted per MWh or equivalent.
 - d. Lbs. of NO_x emitted per MWh or equivalent.
 - e. Amount of other pollutants emitted per MWh or equivalent.
 - f. Pollution cost of other pollutants emitted per MWh or equivalent.
 - (ii) For Facilities producing the Green Component of Alternative Source energy efficiency products, components or systems
 - a. Type and units of energy conserved
 - b. Annual baseline system consumption of energy per unit
 - c. Annual improved system consumption of energy per unit
 - (iii) For Facilities producing the Green Component of Advanced Transportation Technology products, components, or systems
 - a. Annual baseline system consumption of energy per unit
 - b. Annual improved system consumption of energy per unit
 - c. Annual consumption of any offsetting energy required to achieve improved system performance
 - (iv) For Facilities producing the Green Component of Alternative Source or Advanced Transportation Technology products, components, or systems that do not fall within the above categories of products, the Applicant shall explain and quantify the following:
 - a. Description of environmental benefits.
 - b. Annual value of environmental benefits associated with use of the product.
 - c. Annual pollution cost of any off-setting energy use or other pollutants emitted.
- (F) Optional Supplemental Information. The following information may be submitted with an Application. Submission of this information may increase an

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Applicant's score, as specified in Section 10033, however, the Authority will not use this information to adjust an Applicant's score if an Applicant's score, based on the required information listed above, exceeds the established points threshold.

- (i) Applicants claiming any additional significant environmental benefits associated with use of their product beyond those associated with reduced energy consumption or increased Alternative Source energy generation may provide a description of these benefits, including the amount of pollution avoided and a quantification of the impact of the pollution reduction in dollars if possible.
- (ii) Applicants utilizing a manufacturing or production process that is characterized by substantial environmental improvements relative to the processes employed by directly comparable entities in energy use, water use, atmospheric emissions, waterborne waste, industrial solid waste, or post-consumer solid waste may submit the following information, submission of which may increase an Applicant's score:
 - a. An explanation of the process improvements
 - b. Demonstrated proof of input use and output emission improvements over the standard processes
 - c. Quantification of the amount of the process improvements
- (iii) Additional documentation only for Applicants claiming that without the exclusion the proposed Facility will not be sited in California. Determination of Facility benefits, as further delineated in Section 10033, may be increased for Facilities that would not locate production Facilities in California absent the grant of the sales and use tax exclusion. For Applicants claiming that Facility location or expansion decisions are dependent upon receipt of the sales and use tax exclusion, Applications must provide evidence to support the claim. Such evidence may include the following:
 - a. Internal financial analysis demonstrating the extent of an advantage for a non-California site.
 - b. Location consultant report demonstrating the extent of an advantage for a non-California site.
 - c. Other internal or external analyses demonstrating that, absent the grant of the sales and use tax exclusion, the proposed Facility will not proceed at the California site.
- (G) Calculations and assumptions relied upon by the Applicant. For any calculation performed by or assumption relied upon by the Applicant in completing the Application, the Applicant must provide an explanation of the basis for the value resulting from the calculation or reasonableness of the assumption relied upon. Applicants may be asked to provide additional supporting information, including business plans, pro forma financial statements or other comparable documents used for the purpose of soliciting investors to verify responses contained in the Application. Applications that do not adequately document any

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calculations or assumptions relied upon will be considered incomplete.

- (5) Application materials and supporting documentation in excess of thirty pages will not be considered or reviewed except to the extent that documentation in excess of this page limit is provided in response to a direct request for additional information from the Authority.

Authority: Section 26011.8, Public Resources Code.
Reference: 26011.8, Public Resources Code and Section 6010.8 of
the Revenue and Taxation Code.

Section 10033. Eligibility Requirements and Application Evaluation

- (a) Staff summary and recommendation. Following receipt of a complete Application, Authority staff will review each Application and prepare a summary and recommendation to the Authority. The summary and recommendation will include a calculation of the benefits of the Facility and an assessment of whether the proposed Facility meets the eligibility requirements.
- (b) Eligibility. To be eligible for the sales and use tax exclusion, a Facility must:
- (1) Include the purchase of tangible personal property otherwise subject to sales and use tax used substantially for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems or for the design, manufacture, production or assembly of a component of the Green Component of an Advanced Transportation Technologies or Alternative Source products or systems.
- (A) For this purpose, “used substantially” shall mean that the Qualified Property must be used for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems as defined in Public Resources Code sections 26003(c), 26003(d), and 26011.8(b)(2) more than 50.0 percent of the time during each year and more than 75.0 percent of the time on average during the longer of (a) one year or (b) one-half of the weighted average Estimated Useful Lifespan of the Qualified Property (WALS).
- (2) Produce benefits to the State of California, as determined by the Authority subject to the criteria and evaluation process identified herein.
- (c) Evaluation. Applications shall be scored according to the benefits provided to the state by the marginal increase in Qualified Property purchases resulting from the sales and use tax exclusion. Applicants must demonstrate that the benefits of the marginal increase in Qualified Property purchases exceed the cost to the state of the sales and use tax exclusion. Benefits can be a combination of fiscal, environmental and other benefits, as specified. Each Application will be evaluated based on these elements as specified below.
- (1) Fiscal Benefits
- (A) The estimated percent increase in capital investment (PICI) resulting from sales and use tax exclusion. The increase in capital investment will be calculated based on the factor share of capital (ω), the price elasticity of demand for output

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(η), the elasticity of substitution between capital and labor (σ), and the change in user cost from the sales tax exclusion (equal to the current statewide average sales tax rate or STR) according to the following formula:

$$PICI = (\sigma - \sigma * \omega + \omega * \eta) * STR$$

- (i) The factor share of capital (ω) is calculated for each Applicant depending on the capital stock's contribution to the firm's value-added output. To calculate the factor share of capital, Applicant-provided information about estimated annual sales value (Sales), production-related purchases from suppliers (Supplies), labor costs (Labor), the value of the capital stock (VCS), and determinations made by the Executive Director based on the relevant research literature and consultation with outside experts of the cost of employee benefits (EB) and the cost of capital (\$CAP) are used in the following formula:

$$\omega = \text{Equipment Capital as Percent of Total Capital} \\ * \text{Capital Share of Output}$$

- a. Equipment Capital as Percent of Total Capital is the ratio of the Estimated Annual Payment for Capital Stock (CAP) to Total Capital. CAP is the lesser of: 1) the estimated amount the applicant would have to pay for the capital stock (VCS) with interest (\$CAP) over the weighted average life span (WALS) of the Qualified Property, or 2) Total Capital, which is calculated pursuant to the following formula:

$$\text{Total Capital} = \text{Sales} - \text{Supplies} - (\text{Labor} + \text{EB})$$

Notwithstanding the above, if the resulting value is less than the value of CAP, then Total Capital shall be equal to CAP.

- b. Capital Share of Output is the ratio of capital to output calculated pursuant to the following formula:

$$\text{Capital Share of Output} = 1 - (\text{Labor} + \text{EB}) / (\text{Sales} - \text{Supplies})$$

Notwithstanding the above, if the resulting value is less than zero, then the capital share of output shall be calculated pursuant to the following formula:

$$\text{Capital Share of Output} = \text{Total Capital} / (\text{Total Capital} + \text{Labor})$$

- (ii) The price elasticity of demand for output (η) and the elasticity of substitution between capital and labor (σ) are determined by the Executive Director based on the relevant research literature and consultation with outside experts.
- (iii) The change in user cost is the same as the sales tax rate (STR) as determined by the Executive Director based on information collected by

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the California State Board of Equalization.

- (iv) Where the Applicant can demonstrate that the Facility would have been located outside of California absent the sales and use tax exclusion, the Executive Director will adjust the PICI to reflect this fact.

- (B) The estimated marginal increase in Qualified Property (MIQP) purchases resulting from sales and use tax exclusion. The increase in purchases will be calculated using Applicant-provided information on the total value of the Qualified Property (VQP) and the estimated percent increase in capital investment (PICI)The MIQP will be calculated pursuant to the following formula:

$$\text{MIQP} = (\text{VQP} / (1 + \text{PICI}) * \text{PICI})$$

- (C) The estimated marginal increase in sales (MIS) resulting from sales and use tax exclusion. The increase in sales will be calculated by multiplying MIQP times the ratio of the estimated annual units of production times the average per unit sales price to the value of the capital stock (VCS) used to produce the product, pursuant to the following formula:

$$\text{MIS} = \text{MIQP} * (\text{Estimated Annual Sales Value} / \text{VCS})$$

- (i) The present value of the MIS (PVMIS) will be calculated based on the weighted average life span (WALS) of the Qualified Property as provided by the Applicant and a discount rate determined by the Executive Director based on the relevant research literature, consultation with outside experts, or information provided by other state agencies and approved by the Authority.

- (D) The estimated annual marginal increase in units (MIU) resulting from sales and use tax exclusion. The increase will be calculated using the marginal increase in sales (MIS) and Applicant-provided data on the sales price per unit (\$Unit), pursuant to the following formula:

$$\text{MIU} = (\text{MIS} / \$\text{Unit})$$

- (E) The estimated annual increase in employee wages (AIEW) will be calculated based on Applicant-provided information about the per unit labor costs and the per unit price, pursuant to the following formula:

$$\text{AIEW} = (\text{MIU}) * \text{average per unit labor cost}$$

- (F) The estimated marginal increase in state economic output (MISO) resulting from the sales and use tax exclusion. The MISO will be calculated using the MIS, the AIEW resulting from the marginal increase in sales, the marginal increase in in-state supplier purchases (MISP) and a multiplier effect (Multiplier) to be determined by the Executive Director based on the relevant

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research literature, consultation with outside experts, or information provided by other state agencies, pursuant to the following formulas:

$$\text{MISP} = \text{MIU} * \text{percent of production costs from California suppliers} \\ * \text{Per unit production-related purchases from suppliers}$$

and

$$\text{MISO} = (\text{MISP} * \text{Multiplier} + \text{AIEW} * \text{Multiplier} - \text{AIEW})$$

- (i) The present value of the MISO (PVMISO) will be calculated based on the WALs of the Qualified Property as provided by the Applicant and a discount rate determined by the Executive Director

- (G) The estimated extent of increased tax revenues, or total fiscal benefits (TFB), that will accrue to the state and local governments over the WALs resulting from the PVMIS and PVMISO. TFB is the sum of the increased direct fiscal benefits (DFB) and the indirect fiscal benefits (IFB).

$$\text{TFB} = \text{DFB} + \text{IFB}$$

- (i) The DFB are the sum of the increases in sales taxes (IST), personal income taxes (IPIT), corporate or other income taxes paid by the company on its profits (ICIT) and property taxes (IPT) that result from the company's MIS.

$$\text{DFB} = \text{IST} + \text{IPIT} + \text{ICIT} + \text{IPT}$$

- a. The IST is calculated using MIS, Applicant-provided data on the percent of sales in California (POSCA), and the current statewide average sales tax rate (STR) as determined by the Executive Director based on information collected by the California State Board of Equalization, and the percent value added (VA), pursuant to the following formula:

$$\text{IST} = \text{POSCA} * \text{PVMIS} * \text{VA} * \text{STR}$$

- b. The IPIT is calculated using the present value of the AIEW and the average state income tax rate (SIR) as determined by the Executive Director by using the most recent two-year average of personal income tax rates published by the California Franchise Tax Board, pursuant to the following formula:

$$\text{IPIT} = \text{Present Value (AIEW)} * \text{SIR}$$

- i. The present value is based on the WALs of the capital equipment purchased as provided by the Applicant and the discount rate determined by the Executive Director.

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- c. The ICIT paid by the company on its profits is the present value of the estimated annual tax liability that is attributable to the Qualified Property.
 - i. The ICIT is calculated using Applicant-provided data on estimated annual tax liability (ATL), the value of the capital stock (VCS) used to produce the product and the MIQP pursuant to the following formula:

$$\text{ICIT} = \text{Present Value (ATL * MIQP/VCS)}$$

- ii. The present value is based on the WALs of the capital equipment purchased as provided by the Applicant and the discount rate determined by the Executive Director.
- d. The increase in property taxes (IPT) is the present value of the annual property taxes paid on the MIQP.
 - i. The annual property tax amount is calculated using MIQP and the current property tax rate (PTR) as determined by the Executive Director based on information collected by the California State Board of Equalization, pursuant to the following formula:

$$\text{IPT} = \text{Present Value (MIQP * PTR)}$$

- ii. The present value is based on the WALs of the capital equipment purchased as provided by the Applicant and the discount rate determined by the Executive Director.
- (ii) The indirect fiscal benefits (IFB) result from increased state and local revenues resulting from increased economic activity caused by additional purchases from in-state suppliers and increased employee wages resulting from the MIQP.
 - a. The increase in revenues is calculated using PVMISO and the ratio of state and local government revenues to gross state output (GRSO) as determined by the Executive Director using the sum of the latest two-year average of actual state general fund revenues from the California Department of Finance, the latest two-year average of actual aggregate city and county revenues excluding intergovernmental transfers and service charges from the cities annual report and the counties annual report from the California State Controller's Office, divided by the latest two-year average of gross state product from U.S. Department of Commerce's Bureau of Economic Analysis, pursuant to the following formula:

$$\text{IFB} = \text{PVMISO * GRSO}$$

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(2) Environmental Benefits.

- (A) The allocated share (AS) is the estimated percent of the pollution benefit from the Green Component of the Advanced Transportation Technology or Alternative Source product, component, or system that can be attributed to the Applicant's use of the Qualified Property. The AS is calculated using Applicant-provided data on the percent of time (POT) that the Qualified Property will be used to make the Advanced Transportation Technology or Alternative Source product, component or system and the fractional component contribution (FCC) of the Applicant's product to the Green Component of the end-of-supply-chain product. FCC will be calculated by multiplying the percent value added (VA) per unit times the sales price per unit (\$Unit) and then dividing by the total value of the end-of-supply-chain product for Facilities producing end products or systems or by the total value of the Green Component of the end-of-supply-chain product for Facilities producing subcomponents (End \$) as provided by the Applicant. The AS will be calculated pursuant to the following formulas:

$$FCC = (VA * \$Unit) / End \$$$

and

$$AS = POT * FCC$$

[Notwithstanding the above, the FCC and the AS both have a maximum value of 1.](#)

- (B) The estimated impact of pollution from a gallon of gasoline equivalent (GGE) or a MWh of electricity. GGE refers to the number of gallons of a fuel that has the equivalent amount of energy to one gallon of gasoline.
- (i) The dollar value of pollution costs associated with a GGE (\$GGE) is calculated based on the percent of sales in California (POSCA) as provided by the Applicant and the pollution cost per unit of volatile organic compounds (VOCs), nitrous oxide (NOx), and carbon dioxide or carbon dioxide equivalent (CO2) as determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies, pursuant to the following formula:

$$\begin{aligned} \$GGE = & \text{Pollution cost of CO}_2 \text{ per GGE} + \\ & (\text{POSCA} * (\text{pollution cost of VOC per GGE} \\ & + \text{pollution cost of NO}_x \text{ per GGE})) \end{aligned}$$

- (ii) The dollar value pollution costs associated with a MWh of electricity generation (\$MWh) is calculated based on the POSCA as provided by the Applicant and the pollution cost per unit of CO2, nitrous oxide, and sulfur dioxide released from a MWh of electricity production in California (CA) and the rest of the United States (US) as determined by the Executive Director based on the relevant research literature, expert analysis, or

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information provided by other state agencies, pursuant to the following formula:

$$\begin{aligned} \$MWh = & (POSCA * (\text{pollution cost of CA CO}_2 \text{ per MWh} \\ & + \text{pollution cost of CA NO}_x \text{ per MWh} \\ & + \text{pollution cost of CA SO}_2 \text{ per MWh})) + ((1-POSCA) \\ & * \text{pollution cost of US CO}_2 \text{ per MWh}) \end{aligned}$$

- (iii) The dollar value per pound of any other offsetting energy pollutants (\$OP) shall be determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies.
 - a. Any non-greenhouse gas emissions benefits will be weighted according to the POSCA.
- (C) The total pollution benefit (TPB) will be calculated based on the marginal increase in product sales due to the sales and use tax exclusion in the following areas:
 - (i) Net change in use of electricity generated from alternative sources (increased use of alternative sources). The total pollution benefit (TPB) resulting from the net change in electricity generated from alternative sources is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.
 - a. The LPB is calculated using information on the annual net electricity generation per unit (MWhG), the annual emissions per MWh of offsetting pollutants (OP) as provided by the Applicant, and estimates of the pollution cost in dollars of avoided MWh (\$MWh) and the pollution cost in dollars of any offsetting energy pollutants (\$OP) as determined by the Executive Director, pursuant to the following formula:

$$LPB = \text{Present Value } (\$MWh * MWhG) - (OP * \$OP)$$

- i. The present value is based on the estimated useful lifespan of the product (ULOP) as provided by the Applicant and the discount rate determined by the Executive Director, pursuant to the following formula:
 - b. The TPB is then calculated pursuant to the following formula:
- $$TPB = \text{Present Value } (LPB * AS * MIU)$$
- i. The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate determined by the Executive Director.
 - (ii) Net change in fossil fuel consumption resulting from increased use of Alternative Source fuels. The TPB resulting from the net change in

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consumption of fossil fuels is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

- a. The LPB is calculated based on the dollar value of pollution avoided per unit calculated as the number of GGEs per unit (GGEA) times the dollar value of pollution avoided per GGE (\$GGE) less the dollar value of offsetting pollution cost for any fuel or electricity required to produce a unit (OFF) of Alternative Source fuel (\$GGE or \$MWh or dollar value of pollution cost per unit for other pollutants), as determined by the Executive Director, pursuant to the following formula:

$$\text{LPB} = (\text{GGEA} * \$\text{GGE}) - (\text{OFF} / * \$\text{GGE}) - (\text{OFF} * \$\text{MWh}) - \text{dollar value of other pollution costs/per unit}$$

- b. The TPB is then calculated pursuant to the following formula:

$$\text{TPB} = \text{Present Value (LPB * AS * MIU)}$$

- i. The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate determined by the Executive Director.
- (iii) Net change in use of electricity generated from current sources (energy efficiency). The TPB resulting from the net change in the use of electricity generated from current sources is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

- a. The LPB is calculated using the annual net improvement in system consumption per unit (NI) as provided by the Applicant and estimates of the dollar value of pollution avoided per MWh (\$MWh), per GGE (\$GGE), or per MMBTU (\$MMBTU), respectively, as determined by the Executive Director, pursuant to the following formula:

$$\text{LPB} = \text{Present Value (NI * \$MWh)}$$

or

$$\text{LPB} = \text{Present Value (NI * \$GGE)}$$

or

$$\text{LPB} = \text{Present Value (NI * \$MMBTU)}$$

- i. The present value is based on the ULOP as provided by the Applicant and the discount rate determined by the Executive Director.

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- b. The TPB is then calculated pursuant to the following formula:

$$\text{TPB} = \text{Present Value (LPB * AS * MIU)}$$

- i. The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate determined by the Executive Director.
- (iv) Net change in consumption of fossil fuels due to increased use of Advanced Transportation Technologies. The TPB resulting from the net change in consumption of fossil fuels is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

- a. The LPB is calculated by using the annual net improvement in system consumption per unit (NI) and the annual consumption of offsetting energy (OFF) as provided by the Applicant and estimates of the dollar value of pollution avoided per GGE (\$GGE) and the dollar value of pollution emitted as a result of the offsetting energy consumption (\$MWh) as determined by the Executive Director, pursuant to the following formula:

$$\text{LPB} = \text{Present Value } ((\$GGE * \text{NI}) - (\text{OFF} * \$MWh))$$

- i. The present value is based on the ULOP as provided by the Applicant and the discount rate determined by the Executive Director.
- b. The TPB is then calculated pursuant to the following formula:

$$\text{TPB} = \text{Present Value (LPB * AS * MIU)}$$

- i. The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate determined by the Executive Director.
- (v) Other environmental benefits. Any other environmental benefits asserted by the Applicant shall be evaluated by the Executive Director based on verification of Applicant-provided information regarding the methodology for calculating such benefits and shall be added to the appropriate Total Pollution Benefit (TPB) amount determined pursuant to these regulations.
- (3) The value of the sales and use tax exclusion. For each Application, the total cost of the sales and use tax exclusion will be calculated by multiplying the value of the Qualified Property (VQP) as reported by the Applicant times the STR.
- (4) Calculation of points. Points for fiscal benefits will be calculated by dividing total fiscal benefits (TFB) by the value of the sales and use tax exclusion and multiplying the result by 1,000. Points for environmental benefits will be calculated by dividing total pollution benefits (TPB) by the value of the sales and use tax exclusion and multiplying the result by 1,000.
- (5) Additional points. The total amount of additional points cannot exceed 200. Points

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shall be awarded as follows:

- (A) Unemployment score. An Applicant may earn up to 40 points for creating jobs in high unemployment areas.
 - (i) The unemployment rate for the area means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The most current annual average unemployment rate information available at the time of the Application submission shall be used.
 - (ii) Points are based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployment rate, pursuant to the following formula:

$$\text{Points} = (\text{Local Rate} / \text{State Rate}) * 100) - 110$$

- a. Non-integer points (e.g., 20.4) will be rounded to the nearest whole integer for scoring purposes.
- (B) New jobs score. An Applicant may earn up to 40 points for creating new jobs.
 - (i) The Executive Director will calculate the amount of the sales and use tax exclusion per job created by the Applicant as a result of the MIQP. The number of jobs created by the Applicant as a result of the MIQP will be calculated by multiplying the total number of full time equivalent jobs associated with the production of the Applicant's product times the ratio of the MIQP to the VCS. Points will be awarded as follows:
 - a. Less than or equal to \$50,000 in sales and use tax exclusion per job – 40 points
 - b. Less than or equal to \$100,000 in sales and use tax exclusion per job but greater than \$50,000 per job – 30 points
 - c. Less than or equal to \$150,000 in sales and use tax exclusion per job but greater than \$100,000 per job – 20 points
 - d. Less than or equal to \$200,000 in sales and use tax exclusion per job but greater than \$150,000 per job – 10 points
 - e. Greater than \$200,000 in sales and use tax exclusion per job – 0 points
- (C) Construction or installation jobs score. An Applicant may earn up to 20 points for creating construction or installation related jobs.
 - (i) The Executive Director will calculate the amount of the sales and use tax exclusion per annual full time equivalent construction or installation job created by the Applicant as a result of the MIQP. The number of annual full time equivalent construction or installation jobs created by the Applicant as a result of the MIQP will be calculated by multiplying the total number of annual full time equivalent construction or installation jobs associated with construction of the Applicant's Facility or the installation of the Applicant's equipment times the ratio of the MIQP to the VCS. Points will be awarded as follows:

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- a. Less than or equal to \$50,000 in sales and use tax exclusion per job – 20 points
 - b. Less than or equal to \$100,000 in sales and use tax exclusion per job but greater than \$50,000 per job – 15 points
 - c. Less than or equal to \$150,000 in sales and use tax exclusion per job but greater than \$100,000 per job – 10 points
 - d. Less than or equal to \$200,000 in sales and use tax exclusion per job but greater than \$150,000 per job – 5 points
 - e. Greater than \$200,000 in sales and use tax exclusion per job – 0 points
- (D) Emerging Green Industry score. An Applicant may earn up to 40 points if the Applicant's industry is in an Emerging Green Industry as defined in Section 10031(i). The Executive Director will determine if an Applicant's industry is an Emerging Green Industry and award points to those Applicants that qualify.
- (E) Process improvement score. An Applicant may earn up to 40 points for utilizing a manufacturing process that is characterized by substantial environmental improvements relative to the manufacturing processes employed by directly comparable products or processes in the following categories:
- (i) Process Inputs. For inputs to the manufacturing process, improvement means decreased use of the following inputs:
 - a. Energy. Process energy is the energy required to operate and run the subsystem process(es), including but not limited to such items as heat exchangers, pumps, blowers, and boilers.
 - b. Water. Water withdrawn from a stream, used in a process, treated, and replaced in essentially the same quality and in the same location should not be included. Water withdrawn from groundwater and subsequently discharged to a surface water body should be included because the groundwater is not replaced to maintain its beneficial purposes. In practice, the water quantity to be estimated is net consumptive usage. Consumptive usage as a life-cycle inventory input is the fraction of total water withdrawal from surface or groundwater sources that either is incorporated into the product, co-products (if any), or wastes, or is evaporated.
 - (ii) Process outputs. For outputs of the manufacturing process, improvement refers to decreased creation of the following outputs:
 - a. Atmospheric emissions. Atmospheric emissions from the production process are particulates, nitrogen oxides, volatile organic compounds (VOCs), sulfur oxides, carbon monoxide, aldehydes, ammonia, lead, and other atmospheric emissions monitored by the state or the United States Environmental Protection Agency.
 - b. Waterborne wastes. Waterborne waste from the production process include biological oxygen demand (BOD), chemical oxygen demand (COD), suspended solids, dissolved solids, oil and grease, sulfides, iron, chromium, tin, metal ions, cyanide, fluorides, phenol,

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phosphates, ammonia, and other waterborne waste monitored by the state or the United States Environmental Protection Agency.

- c. Industrial solid waste. Industrial solid waste refers to the solid waste generated during the production of a product and its packaging and is typically divided into two categories: process solid waste and fuel-related solid waste. Process solid waste is the waste generated in the actual process, such as trim or waste materials that are not recycled, as well as sludges and solids from emissions control devices. Fuel-related waste is solid waste produced from the production and combustion of fuels for transportation and the operating process. Fuel combustion residues, mineral extraction wastes, and solids from utility air control devices are examples of fuel-related wastes.
 - d. Post-consumer solid waste. Post-consumer solid waste refers to the product/packaging once it has met its intended use and is discarded into the municipal solid waste stream.
- (iii) For each area in which an Applicant demonstrates substantial improvement relative to comparable production processes for like products, the Executive Director will award 10 points with a maximum of 40 points. Substantial improvement will be evidenced by documentation evidencing improvements relative to standards such as those identified by third-party certifiers, state or federal regulations, or academic studies.
- (F) Out-of-state environmental benefits score. An Application may be awarded points for non-greenhouse gas environmental benefits attributable to Advanced Transportation Technologies or Alternative Source products, components, or systems sold outside of California, pursuant to the following:
- (i) The Executive Director will calculate the value of the non-greenhouse gas environmental benefits resulting from the marginal increase in out-of-state product sales due to the sales and use tax exclusion, pursuant to the following equations:
 - a. The dollar value of an out-of-state non-greenhouse gas benefit from a GGE (\$OSG) pursuant to the following formula:
$$\text{\$OSG} = (1 - \text{POSCA}) * (\text{pollution cost of VOC per GGE} + \text{pollution cost of NOx per GGE})$$
 - b. The dollar value of an out-of-state non-greenhouse gas benefit from a MWh (\$OSM) is calculated pursuant to the following formula:
$$\text{\$OSM} = (1 - \text{POSCA}) * (\text{pollution cost of US NOx per MWh} + \text{pollution cost of US SO2 per MWh})$$
 - c. The dollar value per unit of any other offsetting pollutants (\$OP) be weighted by the POSCA and incorporated by the Executive Director into the calculation of the out-of-state environmental benefits score.
 - d. The total value of out-of-state non-greenhouse gas pollution benefits

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(TOB) due to electricity generated from alternative sources (increased use of alternative sources) is calculated pursuant to the following formula:

$$LPB = \text{Present Value } ((NI * \$OSM) - (OP * \$OP))$$

and

$$TOB = \text{Present Value } (LPB * AS * MIU)$$

- e. The total value of out-of-state non-greenhouse gas pollution benefits (TOB) to electricity generated from non-alternative sources or fossil fuels burned (conservation) is calculated pursuant to the following formula:

$$LPB = \text{Present Value } (NI * \$OSM)$$

or

$$LPB = \text{Present Value } (NI * \$OSG)$$

and

$$TOB = \text{Present Value } (LPB * AS * MIU)$$

- f. The total value of out-of-state non-greenhouse gas benefits (TOB) due to increased use of advanced transportation technologies is calculated pursuant to the following formula:

$$LPB = \text{Present Value } ((NI * \$OSG) - (OFF * \$OSM))$$

and

$$TOB = \text{Present Value } (LPB * AS * MIU)$$

- (ii) The Authority will then calculate the ratio of the total value of out-of-state non-greenhouse gas benefits (TOB) to the value of the sales and use tax exclusion and the result will be multiplied times 1000 and divided in half to determine the Applicant's point total, pursuant to the following formula:

$$\text{Points} = ((TOB / \text{Sales and Use Tax Exclusion}) * 1000) / 2$$

- a. Non-integer point totals will be rounded to the nearest whole integer for scoring. A maximum of 40 points may be awarded for out-of-state pollution benefits
- (6) Total Score. The total number of additional points not to exceed 200 determined pursuant to Section 10033(c)(5) shall be added to the number of points determined

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pursuant to Section 10033(c)(4). The result of this sum is the Applicant's total score. Complete Applications receiving both a total score greater than or equal to the threshold value of 1,000 and a TPB score of greater than or equal to 100 will be recommended for a sales and use tax exclusion. Notwithstanding the foregoing, where a project receives a total score of less than 1,000, a TPB score of less than 100, or both the Executive Director may recommend it to the board for approval upon a statement articulating specific reasons why the approval is in the public interest and advances the purposes of the Program.

- (7) Upon a recommendation from the Executive Director that it is in the public interest and advances the purposes of the Program, the Authority may adjust the threshold value set forth in Section 10033(c)(6).

Authority: Section 26011.8, Public Resources Code.

Reference: 26011.8, Public Resources Code and Section 6010.8 of the Revenue and Taxation Code.

Section 10034. Approval of Applications by the Authority

- (a) Applications may be considered at meetings in accordance with the schedule established by the Authority pursuant to Section 10032. The Authority will evaluate Applications based on the eligibility requirements contained in Section 10033 and the summary and recommendation prepared by the Authority staff.
- (b) For each Application, the Authority will determine whether the Application meets the eligibility requirements and will produce benefits for the State of California.
- (c) Applicants that do not receive a recommendation for approval from the Authority staff will be notified in writing of the staff recommendation prior to the board meeting in which the Application will be considered. Applicants that do not receive a favorable recommendation from the staff may appeal the staff recommendation to the Authority. Applicants wishing to appeal the staff recommendation must notify the Authority of their intent to appeal the decision within five (5) business days of receipt of the notice containing the staff recommendation. No Applicant may appeal the evaluation of another Applicant's Application.
- (d) Rejected Applications. Applicants whose Applications are not approved by the Authority will be notified in writing following the Authority's board meeting in which the determination was made.
- (e) Approved Applications. For each approved Application, the Authority will pass a resolution including the following findings:
- (1) The Applicant to be a Participating Party (Pub. Res. Code Sec. 26003(f))
 - (2) The equipment proposed for the sales and use tax exclusion to be a "project" (Pub. Res. Code Sec. 26003(g)(2))
 - (3) The conveyance/reconveyance arrangement constitutes financial assistance (Pub. Res. Code Sec. 26003(e)(2))

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- (f) Applicants with Applications that are approved by the Authority will be notified in writing following the Authority's board meeting at which the determination was made. The amount of the ~~sales and use tax exclusion~~ Qualified Property approved by the Authority will be stated in the letter.

Authority: Section 26011.8, Public Resources Code.
Reference: 26011.8, Public Resources Code and Section 6010.8 of
the Revenue and Taxation Code.

Section 10035. Regulatory Agreement and Compliance

- (a) Regulatory Agreement. All recipients of sales and use tax exclusions are required to execute a Regulatory Agreement as a condition to the Authority's making a finding and awarding a sales and use tax exclusion.
- (1) This agreement, to be entered into between the Applicant and the Authority's Executive Director, will require the Applicant to comply with the requirements set forth in these regulations. This agreement must be signed by a representative of the Applicant's company authorized to enter into contracts on behalf of that company and returned to CAEATFA within 30 calendar days from the acceptance date shown on the notification provided pursuant to Section 10034(f).
 - (2) The Regulatory Agreement will commence upon execution and will continue in force for a period equal to the longer of (a) three years or (b) one-half of the Estimated Useful Lifespan of the longest lived item of Qualified Property identified in the Application.
- (b) Conveying title to the Authority. In order to receive the sales and use tax exclusion, Applicants must convey title of the Qualified Property to the Authority for purposes of reconveyance back to the Applicant without financial consideration.
- (1) Conveyance of title to CAEATFA by Applicants and from CAEATFA to Applicants shall be pursuant to a title conveyance agreement by and between CAEATFA and the Applicant. This agreement must be signed by a representative of the Applicant's company authorized to enter into contracts on behalf of that company. The agreement shall include but not be limited to:
 - (A) An agreement by the Applicant to convey title of Qualified Property to CAEATFA.
 - (B) Representations that the Applicant has not put the Qualified Property to a functional use prior to the conveyance.
 - (C) A requirement that CAEATFA reconvey title within 10 days of the initial conveyance.
 - (D) An agreement that there will be no fees for the conveyance or reconveyance other than those set forth in the regulations.
 - (E) A requirement that the Applicant indemnify and hold harmless CAEATFA from claims connected with: 1) the Project, 2) transactions associated with the Project, 3) any violation of law connected with the Project, and 4) any dispute or ruling regarding the ultimate taxability of the sale or use of the Qualified

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Property.

- (F) A requirement that the Qualified Property be installed, maintained and operated within the State of California [for a period of one year from the date of the reconveyance of the Qualified Property.](#)
 - (G) Information about the Qualified Property purchased, including the acquisition date; conveyance date; purchase order number; vendor city, county, and country; actual cost; address where the Qualified Property will be located or installed; a description and explanation of the purpose of the Qualified Property; and any other information requested by the Executive Director that is reasonably related to the purposes of the Program.
- (2) To the extent that purchases of Qualified Property are made in multiple separate transactions, each purchase shall be subject to the same conveyance/reconveyance requirements as identified in Section 10035(b)(1).
 - (3) The Applicant will submit a “final conveyance/reconveyance agreement” when the final total amount of Qualified Property purchases equals the total amount of exclusion granted or when the Applicant no longer wishes to exercise the sales and use tax exclusion granted and signifies that the Applicant’s purchases are no longer subject to the sales and use tax exclusion. Pursuant to Section 10036(b)(6) a determination will be made of the total amount of Qualified Property actually purchased, and the corresponding amount of the total Administrative Fee due. If any remaining Administrative Fee is due, the Fee should be submitted at the time of submitting the final conveyance/reconveyance agreement. In the event that an Applicant has overpaid Administrative Fees, the overpayment will be paid to the Applicant within thirty (30) days of execution of the final conveyance/reconveyance agreement. Within thirty (30) days of execution of a final conveyance/reconveyance agreement the Applicant will provide a complete individualized list of Qualified Property.
 - (4) Applicants will be assessed an Administrative Fee at the time of each conveyance/reconveyance transaction, as identified in Section 10036, Fees.
- (c) Compliance. Applicants are responsible for compliance with all applicable Program regulations, including the following:
- (1) Exercise of sales and use tax exclusion. Except as noted in subparagraphs (A) and (B) below, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than twenty-five percent (25.0%) of the total amount listed in the approval resolution; all purchases of Qualified Property must be made within three years of Application approval. Regulatory Agreements for Facilities not meeting these requirements will be ~~reseeded~~[subject to termination](#), and no [further](#) purchases will be excluded from the imposition of the sales and use tax.
 - (A) Upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the first year purchases of Qualified Property are at least twenty-five percent (25.0%) of the total amount listed in the approval resolution.
 - (B) Upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that all purchases of

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Qualified Property be made within three years of Application approval.

- (2) **Obligation to inform the Authority.** During the term of the Regulatory Agreement, Applicants must inform the Authority if the Qualified Property is moved out of the State of California or of any change in the ownership of the Qualified Property, including the name, ownership percentage, and mailing address of the new owners.
 - (A) Any transfer of Qualified Property ownership prior to the expiration of the Regulatory Agreement shall be evidenced by a written agreement between the parties to the transfer. Such sale or transfer may require Applicant to repay the amount of the sales and use tax exclusion if the new owner of the Qualified Property does not enter into a Regulatory Agreement with the Authority within 30 calendar days of the close of the transaction in which the owner acquires title to the Qualified Property.
- (3) **Certification letter and compliance report.** During the term of the Regulatory Agreement, Applicants must submit an annual certification and compliance report. The certification letter must document that the Qualified Property was used for the purposes specified in the Application ~~for the entire period since~~ [following conveyance/reconveyance as required by these regulations](#). The certification letter and compliance report must be submitted to the Authority by January 31 with information reported for the previous calendar year. The annual compliance report shall contain:
 - (A) total payroll;
 - (B) number of full time equivalent permanent jobs at the Applicant's Facility;
 - (C) number of full time equivalent construction or installation jobs created as a result of the Qualified Property purchases;
 - (D) total annual product sales (in dollars) including the fraction in California;
 - (E) total number of units sold including the fraction in California;
 - (F) anticipated corporate or personal income tax related to the Facility for the preceding calendar year; if the Facility makes multiple products, include information relating to the tax liability associated with the production of Alternative Source or Advanced Transportation products;
 - (G) the amount spent on supplier purchases for Advanced Transportation or Alternative Source products, components or systems, including the fraction of such purchases from California Suppliers;
 - (H) the total amount of Qualified Property purchased as of the date specified in the compliance report;
 - (I) a narrative description of the project status and consistency with the timeline contained in the Application, anticipated purchase dates of any additional items of Qualified Property, and an explanation of any material changes to the product or manufacturing process implemented since the approval of the Application;
 - (J) a statement indicating the fraction of the time that the Qualified Property has been used to make Advanced Transportation or Alternative Source products, components, or systems; and
 - (K) any other information requested by the Executive Director that is reasonably

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related to the purposes of the Program.

- (4) Retention of records. Applicants must retain records necessary to document information provided in the annual compliance reports and certification letters for at least five (5) years following the date of the latest certification letter or compliance report required.
 - (5) False Information. Upon a finding that information supplied by an Applicant, or any person acting on behalf of an Applicant, is false or no longer true, and the Applicant has not notified the Authority in writing, the Authority may, after written notice to the Applicant, rescind the approval resolution and conveyance/reconveyance agreement, in addition to other remedies.
 - (6) Rescission. Following a finding that an Applicant has provided false information pursuant to paragraph 5 or has otherwise violated the Regulatory Agreement, the Authority may, after written notice to the Applicant, terminate or rescind the approval resolution and conveyance/reconveyance agreement, in addition to other remedies. Applicants may request an opportunity to be heard in front of the Authority to contest rescission. Any such request must be made in writing to the Authority and postmarked no later than fifteen (15) calendar days following the mailing of written notice from the Authority. Upon a final decision by the Authority, the approval resolution and conveyance/reconveyance agreement shall be rescinded, and notice of the rescission may be provided to the Board of Equalization.
 - (7) Reporting. The Authority may from time to time publish the actual total value of the Qualified Property purchased within each city or county in California. If the Executive Director determines that publishing such information could cause the price paid by an Applicant to a supplier for a Qualified Property purchase or the identity of that supplier to become known, then the information from multiple cities or counties will be aggregated so as to protect the confidentiality of this information.
- (d) Recovery of Financial Assistance. The Regulatory Agreement shall contain a provision under which the Authority may seek recovery of the Financial Assistance provided plus interest at a rate to be reasonably determined by the Authority and specified in the Regulatory Agreement. The Authority may seek recovery of the Financial Assistance actually utilized in cases in which the Applicant: (1) does not meet the substantial use requirements identified in Section 10033(b)(1)(A) or (2) removes the Qualified Property purchased from the State of California prior to the expiration of one year from the date of the reconveyance of the Qualified Property~~shorter of (a) the expiration of the term of the Regulatory Agreement or (b) three years.~~

Authority: Section 26011.8, Public Resources Code.

Reference: 26011.8, Public Resources Code and Section 6010.8 of the Revenue and Taxation Code.

Section 10036. Fees

- (a) Application Fee.
 - (1) Every Applicant shall be required to pay an Application Fee.

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- (2) The Application Fee shall be equal to .0005 (one twentieth of one percent) of the total amount of Qualified Property identified in the Application as originally submitted. If, during the Application process, the Applicant reduces the amount of Qualified Property listed in the Application as submitted, the Applicant will not be entitled to a refund of the excess Application Fees paid. If the Applicant makes a request to CAEATFA to increase the amount of Qualified Property listed in a revised or amended Application, CAEATFA will require additional Application Fees to be submitted. The minimum Application Fee shall be \$250 and shall not exceed \$10,000.
 - (3) This fee shall be paid in a check payable to the Authority, and shall be submitted with the Application.
 - (4) This fee is not refundable.
- (b) Administrative Fee.
- (1) The Authority shall charge an Administrative Fee to cover the costs associated with the Program, including the costs of compliance monitoring.
 - (2) The total Administrative Fee amount shall be .004 (four tenths of one percent) of the total amount of the Qualified Property purchased.
 - (3) In no case shall the total Administrative Fee be less than \$15,000 nor more than \$350,000.
 - (4) \$15,000 of the total Administrative Fee shall be due upon the execution of the Regulatory Agreement between the Applicant and the Authority.
 - (5) The balance of an Applicant's Administrative Fee shall be payable at the time of each subsequent conveyance/reconveyance calculated on that transaction's Qualified Property purchase amount.
 - (6) The initial \$15,000 paid by the Applicant at the time of executing the Regulatory Agreement will be credited to the Applicant's total Administrative Fee upon a determination of total amount of Qualified Property actually purchased.
 - (7) The Administrative Fee shall be paid in checks payable to the Authority.
 - (8) The total Administrative Fee is not refundable, except as indicated in section 6 above.

Authority: Section 26011.8, Public Resources Code.
Reference: 26011.8, Public Resources Code and Section 6010.8 of
the Revenue and Taxation Code.

Section 10037. Trade secrets and confidential information

- (a) If elements of an Application or any other materials submitted to the Authority contain information the Applicant considers to be trade secrets, confidential, privileged or otherwise exempt from disclosure under the Public Records Act (California Government Code Section 6250, et seq.), the Applicant shall assert a claim of exemption at the time of submission by identifying in an accompanying letter each of the items to be restricted. The asserted claim shall indicate the specific information within the Application or other materials submitted to the Authority to which the claim is made. Upon receipt of a Public Records Act request for documents that may include information the Applicant has

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identified as trade secret, confidential, privileged or otherwise exempt from disclosure, the Authority shall provide notice to the Applicant and provide the Applicant with three (3) business days to provide the Authority with an explanation as to why the information is not subject to disclosure pursuant to the Public Records Act. The Authority shall consider a claim of exemption and the basis for it, but retains the authority to make the final determination as to what information will be released under the Public Records Act. Applicants will be notified by the Authority prior to release of any such information.

Authority: Section 26011.8, Public Resources Code.
Reference: 26011.8, Public Resources Code and Section 6010.8 of
the Revenue and Taxation Code.