

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

**Thursday, September 26, 2013**

***Request to Approve Emergency Regulations to Incorporate Advanced Manufacturing and  
Energy Efficiency into the Sales and Use Tax Exclusion Program***

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**Summary.** The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or “Authority”) currently offers a sales and use tax exclusion (“STE”) for manufacturers of Alternative Source<sup>1</sup> and Advanced Transportation products (the “Program”). Staff is proposing modifications to the existing Program regulations to incorporate Advanced Manufacturing projects, as authorized by Senate Bill 1128 (Padilla, 2012). Additionally, the proposed regulations will also provide a clear Program structure for manufacturers of energy efficiency products or sub-components and make a number of administrative changes. Staff is requesting approval to proceed with the emergency rulemaking process for the proposed regulations (Attachment A).

**Background.**

*Advanced Manufacturing*

Senate Bill (SB) 1128 expanded CAEATFA’s existing statutory authority to include Advanced Manufacturing projects. In order to implement the changes contained in SB 1128, the Authority has worked with stakeholders, experts, and other state agencies to determine the best approaches for incorporating Advanced Manufacturing projects into the existing Program, including the most practical way of evaluating Advanced Manufacturing projects. On June 25, 2013, CAEATFA held a public workshop to solicit input from stakeholders on a proposed Program structure for including Advanced Manufacturing projects in the Program. On September 11, 2013, the Authority held a second public workshop to discuss the proposed regulation amendments.

*Energy Efficiency*

Previously, the CAEATFA board directed staff to further refine the process for evaluating energy efficiency applications under the SB 71 program. Energy efficiency products are considered Alternative Source products under the Program’s original authorizing legislation.

Due to the nature of energy efficiency products, a wide range of projects (from appliance manufacturers to makers of smart grid technologies) could potentially apply to the Program. This large variety of products could create challenges in the evaluation process, as the existing Program regulations did not provide a clear basis for determining what constitutes an energy

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<sup>1</sup> All capitalized terms not defined here are defined in the Program’s statute and proposed emergency regulations.

efficiency product or determining the baseline to which an energy efficiency product would be compared.

To address these issues, CAEATFA staff presented a number of energy efficiency policy options to the Board for consideration at the August 2012 CAEATFA Board meeting. The Board requested that staff hold additional workshops to solicit further input from stakeholders. In September 2012, CAEATFA's Executive Director informed the Board that energy efficiency implementation efforts would be pursued in conjunction with the implementation of SB 1128.

During the past year, CAEATFA staff reached out to stakeholders to determine the best means of evaluating energy efficiency projects. At the workshops for Advanced Manufacturing, CAEATFA also presented its proposed program structure and proposed regulation amendments for energy efficiency projects.

#### *Program Administrative Changes*

Beyond proposed regulatory changes relating to Advanced Manufacturing and energy efficiency products, staff have taken the opportunity to improve other administrative aspects of the STE Program based upon past experiences and lessons learned. In addition, SB 1128 required modifications to certain administrative elements of the program. The proposed regulations therefore include a number of additional modifications that relate to the administration of the program generally.

#### *Public Input into the Proposed Regulations*

Throughout the process of developing the proposed regulations, CAEATFA staff sought input from experts and stakeholders. CAEATFA issued an initial request for comment to solicit public input on program elements and structure in February 2013. On June 25, 2013, a public workshop was held in which CAEATFA staff presented a proposed program structure for incorporating Advanced Manufacturing into the existing Program and for evaluating energy efficiency applications. CAEATFA provided the text of the proposed regulations to interested parties on September 4, 2013. A workshop to review the proposed regulations was held on September 11, 2013, and public comments were submitted by September 12, 2013. Staff updated the regulations as appropriate to reflect the comments received from stakeholders throughout this process.

#### **Overview of the Existing STE Program for Alternative Source and Advanced Transportation Projects.**

Below is a brief summary of the existing process an Applicant will go through to receive an STE award. Some elements of the Program described below, however, will change with the proposed regulations.

*Application Evaluation*

Applicants to the Program are subject to a net benefits test where the project's fiscal and environmental benefits are compared to the cost of the STE. Fiscal benefits measure the marginal economic activity generated by the STE, which is estimated with information provided by the Applicant, including, but not limited to, the project's projected annual tax liability, revenues, labor and capital costs, and the number of full time equivalent and construction jobs. Environmental benefits use the marginal increase in production due to the STE in order to determine the amount traditional fossil fuel use displaced by the Alternative Source or Advanced Transportation product. The reduction in fossil fuel use is considered the project's pollution benefit, which is quantified by assigning dollar values to the greenhouse gas emissions that would otherwise be produced if not for the STE award.

Applicants must score a total of 1,000 points and a minimum of 100 environmental benefit points in order to be recommended for approval by staff.

*Post-Approval*

After the CAEATFA Board considers and approves an Application, the Authority and the Applicant enter into a Master Regulatory and Title Conveyance Agreement ("Master Agreement") that outlines the terms and conditions for the use of the STE award. The initial term of the Master Agreement gives the Applicant three years to utilize the full amount of the STE award. Additionally, the Applicant must use 25% of the award within the first year of approval. Applicants must also convey title of the Qualified Property (the manufacturing equipment and tangible property for the project) to the Authority (and the Authority must reconvey title back) before putting it to functional use. With each conveyance/reconveyance transaction, the Applicant also pays an administrative fee proportional to the value of Qualified Property in the transaction.

**Program Structure for Advanced Manufacturing Projects.**

*Eligibility*

Projects must meet the definition of Advanced Manufacturing as it is defined in section 26003(a) of the California Public Resources Code:

An "Advanced Manufacturer" employs a manufacturing process that improves upon existing, or creates entirely new materials, products, and processes through the use of science, engineering, or information technologies, high-precision tools and methods, a high-performance workforce, and innovative business or organizational models utilizing any of the following technology areas:

- (i) Micro- and nanoelectronics, including semiconductors.
- (ii) Advanced materials.
- (iii) Integrated computational materials engineering.

- (iv) Nanotechnology.
- (v) Additive manufacturing.
- (vi) Industrial biotechnology.

Advanced manufacturing systems or processes must also result in a substantive advancement, whether incremental or breakthrough, beyond the current industry standard, in the production of materials and products.

The advanced manufacturing system or process must also be sustainable by minimizing the use of resources while maintaining or improving cost and performance.

Applicants will demonstrate how they meet this definition through a narrative description of their project that touches upon all of the specific requirements outlined in the statute.

*Evaluation*

Advanced Manufacturing projects will be scored the same as Alternative Source and Advanced Transportation projects for the fiscal benefits; however, the environmental benefits will be scored in a different manner due to the nature of the Advanced Manufacturing projects. Specifically, for Alternative Source or Advanced Transportation applicants, the products themselves produce environmental benefits, whereas the products produced by an Advanced Manufacturing process need not yield any such benefits. Instead, for Advanced Manufacturing Applicants environmental benefits will generally stem from the improvements to the manufacturing process itself.

As a result, the environmental benefits for Advanced Manufacturing projects are not monetized in the application scoring process as they are with Alternative Source and Advanced Transportation projects. Instead, points will be given for specific environmental process improvements.

Advanced Manufacturers will still be required to score 1,000 points in total, but will only be required to score more than 20 environmental benefit points since the environmental benefits may not be as high as they are for Alternative Source and Advanced Transportation projects.

The environmental benefits for Advanced Manufacturing will be scored as follows:

Environmental Benefit Category	Point Value
<b><i>Environmental Sustainability Plan.</i></b> Companies that have an environmental sustainability plan in place that tracks water, energy, solid and hazardous waste generation or air pollution emissions at the Facility described in the Application.	20

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Environmental Benefit Category	Point Value
<p><b>Energy consumption.</b> Percent change in energy intensity (i.e. energy use per unit of output) resulting from the production process described in the Application relative to the prior/historical production process used by the Facility or company, the process utilized by its closest competitor, or the industry standard for a comparable product.</p>	<p>Must achieve a minimum of 5 percent reduction to receive 5 points. Plus 1 point for each additional percent up to a maximum of 30 points</p>
<p><b>Water use.</b> Percent change in water use (per unit of output) resulting from the production process described in the Application relative to the prior/historical production process used by the Facility or company, the process utilized by its closest competitor, or the industry standard for a comparable product.</p>	<p>Same as above</p>
<p><b>Solid waste.</b> Percent change in solid waste generation (per unit of output) resulting from the production process described in the Application relative to the prior/historical production process used by the Facility or company, the process utilized by its closest competitor, or the industry standard for a comparable product.</p>	<p>Same as above</p>
<p><b>Hazardous waste.</b> Percent change in hazardous waste generation (per unit of output) resulting from the production process described in the Application relative to the prior/historical production process used by the Facility or company, the process utilized by its closest competitor, or the industry standard for a comparable product.</p>	<p>Same as above</p>
<p><b>Air Pollutants.</b> Percent change in emissions of air pollutants (per unit of output) resulting from the production process described in the Application relative to the prior/historical production process used by the Facility or company, the process utilized by its closest competitor, or the industry standard for a comparable product.</p>	<p>Same as above</p>
<p><b>Other Pollutants.</b> Percent change in emissions of other pollutants (per unit of output) resulting from the production process described in the Application relative to the prior/historical production process used by the Facility or company, the process utilized by its closest competitor, or the industry standard for a comparable product.</p>	<p>Same as above</p>

In addition to fiscal and environmental benefits points, Applicants who can demonstrate “Other Facility Characteristics,” which are specific benefits associated with Advanced Manufacturing facilities, will be able to receive additional points as follows:

Other Facility Characteristic	Point Value
Applicants with research and development facilities in California that perform research and development functions related to the product or production process at the proposed Project.	25
Applicants with partnerships with educational institutions either for training existing workforce at facility or assisting in training future workers.	25
Applicants in an industry cluster – inter-related businesses or industries in a region that increase productivity due to geographic proximity. Cluster must be identified by a government entity or regional economic development authority.	40

**Proposed Program Structure for Energy Efficiency Products.**

Energy efficiency projects will be evaluated in a manner similar to the existing Alternative Source and Advanced Transportation projects. The proposed modifications to the regulations make clear which types of products are eligible and establishes a clear baseline to which the products will be compared for purposes of measuring changes in energy consumption.

*Eligibility*

To be eligible for the Program, an Applicant’s energy efficiency product must be subject to and meet or exceed an existing Recognized Energy Efficiency Standard. Examples include the federal government’s Energy Star program for consumer products and California’s Title 24 building energy efficiency regulations.

Sub-components of products which meet or exceed an existing Recognized Energy Efficiency Standard are also eligible for the Program as long as the sub-component contributes to the energy efficiency of the final product.

*Evaluation*

The fiscal benefits will be evaluated in the same manner as the existing Program, however, the environmental benefits will take an approach that is specific to energy efficiency products in order to determine the reduction in greenhouse gasses attributable to the Applicant’s product(s).

The energy efficiency benefits of an Application will be based on the difference between the Baseline System Consumption and the Improved System Consumption. The Baseline System

Consumption is the energy used by a product comparable to the Applicant's under existing energy efficiency statutes, regulations or standards. In cases where more than one standard exists, the regime with the most stringent requirements for that product class will apply. Improved System Consumption is the amount of energy consumed by the Applicant's product under the same conditions as for the applicable standard.

For sub-components of energy efficiency products, the contribution of the applicant's product (sub-component) to the energy efficiency benefits of the final product will be based on the sub-component's pro-rata share of the total sales price of the Energy Consumption-Related Components ("ECRC") of the final product. The ECRC of the final product are those portions of the product that affect the product's energy consumption.

*Definitions*

Baseline System Consumption: For products subject to applicable state or federal energy efficiency statutes, regulations, or standards, such as Energy Star or Title 24, the annual Baseline System Consumption shall be the amount of energy consumed by Similar Products meeting the most stringent of the existing state or federal statutes, regulations, or standards. Energy consumption for the purposes of SB 71 will be measured in the same units used for the applicable standard.

Improved System Consumption: Improved system consumption is the energy consumed by the applicant's product, measured in the same units and under the same operating conditions as those used for calculating the Baseline System Consumption.

Recognized Energy Efficiency Standard (REES): A statutory, regulatory, or voluntary set of minimum energy efficiency standards for one or more products, product components, or categories of products or product components. Examples include Energy Star, Title 24, and the National Fenestration Rating Council's window efficiency ratings. The CAEAFTA Executive Director may designate additional energy efficiency programs as REES if they meet the following requirements:

- (1) They must be adopted and currently maintained by a government agency, trade group, or non-profit organization.
- (2) They must have clearly defined test methods.
- (3) Product energy consumption ratings must be based on independent certification and testing.
- (4) The energy consumption of products that meet the standards is significantly below the consumption of comparable products.

Energy Consumption-Related Components: The components of a product that directly affect its energy consumption and therefore its energy efficiency.

**Program Administrative Changes.**

*\$100 Million Cap*

SB 1128 established a cap of \$100 million in STE awards per calendar year. Prior to SB 1128, CAEATFA was only required to notify the Legislature if the amount of STE exceeded \$100 million in a given year. CAEATFA has yet to award \$100 million in STE in any calendar year.

*Waiting List for Applications in excess of \$100 million*

Applications will be reviewed as received, as under the current process. To the extent that total STEs awarded during the calendar year reach the \$100 million cap, no additional Applications will be reviewed until January of the subsequent calendar year (when the cap resets).

(Complete) Applications that are received but not awarded due to the funding cap will be placed on a waiting list. The total value of requested STE for all projects on the waiting list shall not exceed \$20 million. To the extent that additional STE becomes available during the year, these applications will be reviewed and presented to the CAEATFA Board for approval in the order in which they were received. Each year in November, all Applications will be removed from the waiting list. Applicants may then reapply for consideration at the subsequent January CAEATFA board meeting. Applicants that have previously applied will not be required to pay a second Application Fee to the extent that re-submitted Applications are substantially similar to the originally submitted Application.

*Elimination of the Requirement that 25% of Qualified Property be purchased within one year of Approval*

The existing requirement that 25% of the Qualified Property be purchased within one year of application approval is removed (for Advanced Manufacturing, Alternative Source and Advanced Transportation Applications). Applicants will continue to be subject to the requirement that all purchases be made within three years of application approval.

*Conveyance and Reconveyance Process Removed; Shift to Semi-Annual Reports of Purchases*

SB 1128 eliminated the statutory requirement for the conveyance and reconveyance process. Approved Applicants will now be able to put Qualified Property to functional use without conveying title of the Qualified Property to the Authority.

Instead of the conveyance and reconveyance process, the Authority will require a semi-annual report to track the purchases of Qualified Property. Applicants will be required to submit the semi-annual report regardless of whether or not the Applicant purchased any Qualified Property during the report period. For each semi-annual report, the Applicant will pay (a portion of) the remaining balance of the administrative fee equal to .004 of the value of Qualified Property included on the semi-annual report. Failure to submit the report and corresponding administrative fee could lead to termination of the award and loss of the STE.

*Substantial Use Test*

Applicants are currently required to demonstrate that the Qualified Property is used more than 50.0 percent of the time during each year and an average of more than 75.0 percent of the time over half of the life of the Qualified Property for the proposed project. This will be modified to only require that the equipment be used more than 50.0 percent of the time for the proposed project to be consistent with Assembly Bill 93's (California's upcoming sales and use tax exclusion for all manufacturers) definition of substantial use.

**Proposed Modifications to the Regulations.**

The following is a brief summary of the key changes made by the new proposed regulatory modifications. The proposed modifications to the regulations can be found in Attachment A.

*§10031(v): Definitions – Recognized Energy Efficiency Standard Definition.* This section defines the Recognized Energy Efficiency Standard, which was described in the text above.

*§10032(a)(4): Application Requirements – \$100 Million Cap for STE Per Year and the Application Waiting List.* This modification establishes the \$100 million cap and the waiting list process.

*§10033(b)(1)(A): Eligibility Requirements and Application Evaluation – Substantial Use Test.* This amendment modifies the definition of “used substantially.”

*§10033(c)(2)(D)(i): Eligibility Requirements and Application Evaluation – Environmental Benefits Evaluation and Scoring for Advanced Manufacturing Project.* This section outlines the criteria and scoring used to evaluate the environmental benefits of advanced manufacturing projects.

*§10033(c)(5)(A), (B) and (C): Eligibility Requirements and Application Evaluation – Increased Job and Unemployment Points.* This proposed amendment increases the amount of points an Applicant receives for creating new jobs, construction jobs, and creating jobs in areas of high unemployment.

*§10033(c)(5)(F): Eligibility Requirements and Application Evaluation – Other Facility Characteristics.* This section outlines the criteria and scoring used to evaluate the Other Facility Characteristics.

*§10033(c)(7): Eligibility Requirements and Application Evaluation – Environmental Benefits Points required for Advanced Manufacturing Projects.* This section establishes the minimum amount of environmental points required for an Advanced Manufacturing Project.

*§10035(a)(3)(F): Regulatory Agreement and Compliance – Semi-Annual Report.* This section lists the requirements for the semi-annual report that Applicants are required to submit twice per year.

*§10035(b)(1): Regulatory Agreement and Compliance – Elimination of the 25% Purchase Requirement.* This amendment removes the readiness requirement that requires Applicants to use 25% of the award amount within the first year.

**Emergency Regulatory Process.**

CAEATFA’s statute provides ability to utilize the emergency rulemaking authority when promulgating regulations (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, while ultimately completing the rulemaking process in the standard 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 re-adoptions, if necessary) while staff proceeds with the regular rulemaking process.

**Tentative Timeline.**

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

Day -5 <sup>2</sup> September 18, 2013	Pre OAL Submission: CAEATFA staff publically notice 1) proposed regulation text, 2) finding of emergency, 3) rulemaking statement
September 26, 2013	Board Meeting: present proposed regulations to Board for approval
Day 0 September 27, 2013	OAL Submission: CAEATFA files rulemaking package with OAL
Day +5 October 2, 2013	End of the public comment period for the emergency rulemaking process
Day +8 October 5, 2013	CAEATFA’s response deadline to public comment
Day +10 October 7, 2013	OAL Decision Deadline. Regulations enacted for 180 days

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<sup>2</sup> Five working days.

**Recommendation.** Staff recommends adoption of a resolution to approve the proposed modifications to regulations for the CAEATFA Sales and Use Tax Exclusion Program.

Attachment A Proposed Text of Modified Regulations: Modifications for consideration by the Board are in underlined or struck-out text.

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

September 26, 2013

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 Sales and Use Tax Exclusion Program ("STE Program"), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to incorporate Advanced Manufacturing and energy efficiency Projects.

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.

Attachment A

CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION  
FINANCING AUTHORITY REGULATIONS IMPLEMENTING

~~ADVANCED TRANSPORTATION AND ALTERNATIVE SOURCE MANUFACTURING~~  
SALES AND USE TAX EXCLUSION PROGRAM

Changes Proposed September 26~~13~~, 2013

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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 Section 26011.8 of the Public Resources Code 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 submitting the semi-annual report to CAEATFA.
- (b) “Advanced Manufacturing” is defined as stated in Section 26003(a) of the Public Resources Code.
- ~~(b)~~(c) “Advanced Transportation Technology” or “Advanced Transportation Technologies” is defined as stated in Section 26003(ad) of the Public Resources Code.
- ~~(e)~~(d) “Alternative Sources” is defined as stated in Sections 26003(ae) ~~and 26011.8(b)(2)~~ of the Public Resources Code.
- ~~(d)~~(e) “Applicant(s)” means a Participating Party 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)~~(f) “Application” means a completed formal request for sales and use tax exclusion as specified in Section 10032.
- ~~(f)~~(g) “Application Fee” means the fee payable at the time of Application for a sales and use tax exclusion.
- ~~(g)~~(h) “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).
- (i) “California Supplier” means a business entity that manufactures, assembles, or produces its product or service in the state of California.
- ~~(h)~~(j) “Emerging Green-Strategic Industry” means an innovative industry, technology or product that may be identified by the Executive Director as having a potentially significant impact on the State’s environmental goals or economy, the advancement of which is-are in the public interest, and which advances the purposes of the Program. The Executive Director may from time to time submit to the Authority develop or add to a list of Emerging Green Strategic Industries which will be identified by North American Industry Classification System (NAICS) code (or its equivalent) or by description of the product or manufacturing process. Once approved by the Authority, tThe list of these industries will be publicly

posted on the Authority's website.

- ~~(k)~~ “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.
- ~~(l)~~ “Executive Director” means the executive director of CAEATFA.
- ~~(m)~~ “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. Facilities involving more than one location may be combined in a single Application, provided the locations are part of a single process. Where facilities at multiple locations are performing the same or substantially similar operations they will require separate Applications
- ~~(n)~~ “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.
- ~~(o)~~ “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.
- ~~(p)~~ “Industry Cluster” means a concentration of inter-related businesses or industries in a region that, by virtue of being located in proximity, act to increase productivity or economic growth in that region. For purposes of receiving points as part of an Application, Industry Clusters must be recognized by a California state or local government entity, regional economic development authority, or association of governments as an industry cluster, strategic cluster, or competitive cluster of the region within which the Applicant’s project resides.
- ~~(q)~~ “Participating Party” is defined as stated in Section 26003~~(a)(7)(A)~~ of the Public Resources Code.
- ~~(r)~~ “Program” means the sales and use tax exclusion program created pursuant to Public Resources Code Section 26011.8.
- ~~(s)~~ “Project” is defined as stated in Section 26003~~(g)(2)(a)(8)(B)~~ of the Public Resources Code. Project does not include machinery or equipment that utilizes or is designed to utilize an Alternative Source.
- ~~(t)~~ “Qualified Product” means an Advanced Transportation Technology or Alternative Source product, component or system or a product produced with an Advanced Manufacturing process.
- ~~(u)~~ “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

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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.

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

~~(w)~~ “Regulatory Agreement” means the agreement specified in Section 10035.

~~(t)~~—

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.

(1) Except as otherwise provided by the Authority pursuant to subparagraphs (3) 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 ~~Ce~~complete Application, except as noted in paragraphs (3), (6), and (7) below.

~~(1)~~(2) Applications must be submitted via e-mail to CAEATFA@treasurer.ca.gov as well as in person or via regular mail or commercial delivery service. CAEATFA must receive the original paper Application within five (5) business days of submission of the electronic version of the Application.

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

(4) To the extent that total sales and use tax exclusions (STEs) awarded during the calendar year reach \$100 million (the funding cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the funding cap will be placed on a waiting list. The total value of requested sales tax exclusions for all projects on the waiting list shall not exceed \$20 million. To the extent that additional STEs become available during the calendar year, Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which they were received. Each year in November,

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- all Applications will be removed from the waiting list. Applicants may then reapply for consideration at the Authority's subsequent January board meeting. Applicants that have previously applied will not be required to pay a second Application Fee to the extent that re-submitted Applications are substantially similar to the originally submitted Application.
- (5) Complete Applications will be reviewed in the order in which they are received.
- (A) The order in which they are received will be determined by the time and date stamp of the electronic submission of the Application via e-mail.
- ~~(2)~~(6) 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.
- ~~(3)~~(7) 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 and the date on which a complete application is deemed to have been received, 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.

unless an Application is a resubmission pursuant to Section 10032(a)(4).

- (5) To be considered complete, a paper copy of the filled-out Application and any 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).
  - ~~(2)~~
  - (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.

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- (i) Name, phone number, email address, mailing address, and taxpayer identification number of Applicant,
  - (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 or the Advanced Manufacturing process to be utilized. 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.

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- e. Description of the sources of financing necessary for Facility completion, including the provision of financial assistance from any local governments for the project.
  - 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 ~~produce a particular sub-component or perform a discrete function in the manufacturing process~~ 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 or will be utilized in an Advanced Manufacturing process.
- (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~~ Qualified Products, components, or systems to be ~~sold or shipped~~ produced.
  - (iii) Estimated per unit sales price.
  - (iv) Estimated total Facility sales in dollars.

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- (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
  - (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 Qualified Products 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 a Qualified Product n-Advanced Transportation Technology or Alternative Source-an 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 CO<sub>2</sub> (or equivalent) emitted per MWh or equivalent.
    - c. Lbs. of SO<sub>2</sub> emitted per MWh or equivalent.
    - d. Lbs. of NO<sub>x</sub> 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
    - a.b. Applicable Recognized Energy Efficiency Standard
    - b.c. Annual baseline system consumption of energy per unit
    - e.d. 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.

(v) For Advanced Manufacturing Facilities:

- a. Description of environmental benefits.
- b. Estimated reduction in energy or water use; solid waste, hazardous waste, or air pollution emissions.
- c. Description of any environmental sustainability plans.

(F) Optional Supplemental Information. The following information may be submitted with an Application. Submission of this information may increase an 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) Advanced Transportation or Alternative Source 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) Other Facility Information

- a. Applicants with facilities located in California that perform research and development functions related to the product or production process at the Facility that is the subject of the Application may submit information establishing the location of the research and development facility and the connection between the research and development and the Facility, submission of which may increase an Applicant's score.
- b. Applicants that have partnerships with educational institutions either for the purpose of training the workers at the Facility or for purposes of assisting in the training of potential future workers submit information documenting this partnership, submission of which may increase an Applicant's score.

- c. Applicants in Industry Clusters as defined may submit information establishing this fact, submission of which may increase an Applicant's score.

~~(iii)~~(iv) 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 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.

~~(d)~~—

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 (a) the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems, ~~(b) or~~ for the design, manufacture, production or assembly of a component of the Green Component of an Advanced Transportation Technology~~ies~~ or Alternative Source product, components or systems, or (c) as part of an Advanced Manufacturing process.
    - (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~~(ae)~~, ~~26003(d)~~, and 26011.8(b)(2) or as part of an Advanced Manufacturing process 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 ( $\omega$ ), the price elasticity of demand for output ( $\eta$ ), the elasticity of substitution between capital and labor ( $\sigma$ ), 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 ( $\omega$ ) 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:

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

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- 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 ( $\eta$ ) and the elasticity of substitution between capital and labor ( $\sigma$ ) 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 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:

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

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

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

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

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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.

$$DFB = IST + IPIT + ICIT + IPT$$

- 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:

$$IST = POSCA * PVMIS * VA * STR$$

- 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:

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

- 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.
- 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:

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

- 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:

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

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- 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:

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

(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:

$$\text{FCC} = (\text{VA} * \$\text{Unit}) / \text{End } \$$$

and

$$\text{AS} = \text{POT} * \text{FCC}$$

Notwithstanding the above, the FCC and the AS both have a maximum value of 1.

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(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 (NO<sub>x</sub>), and carbon dioxide or carbon dioxide equivalent (CO<sub>2</sub>) 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 CO<sub>2</sub>, 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 information provided by other state agencies, pursuant to the following formula:

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

(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.

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

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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:

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

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:

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

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 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:

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

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

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

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-energy~~ generated or produced from current sources (energy efficiency). The TPB resulting from the net change in the use of ~~electricity-energy~~ generated or produced 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

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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.

ii. The net improvement in system consumption is calculated as the difference between baseline system consumption and improved system consumption where the baseline system consumption is equal to the maximum energy consumption amount that would allow the product to qualify for the applicable Recognized Energy Efficiency Standard. If more than one Recognized Energy Efficiency Standard applies to a product, the more stringent standard will be used for purposes of setting the baseline system consumption. The improved system consumption is the energy consumption of the Applicant's product under circumstances and conditions substantially similar to those used for purposes of setting the baseline system consumption value.

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

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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:

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

- 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:

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

- 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.

(D) For Advanced Manufacturing Applications, the environmental benefits score is calculated based on the per unit reduction in energy use, waste generation, water use, or emissions of air pollutants, or other environmental benefits as follows:

(i) Applicants may receive points for the following:

- a. Applicants with an environmental sustainability plan that describes the Applicant's plans to reduce energy use or water use and reduce solid waste, hazardous waste, or air pollutant emissions at the Facility will receive 20 points.
- b. Applicants with Facilities that reduce energy use by at least five percent relative to the baseline identified in the Application will receive 5 points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points.
- c. Applicants with Facilities that reduce water use by at least five percent relative to the baseline identified in the Application will receive 5 points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points.
- d. Applicants with Facilities that reduce solid waste by at least five percent relative to the baseline identified in the Application will receive 5 points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points.
- e. Applicants with Facilities that reduce hazardous waste by at least five percent relative to the baseline identified in the Application will receive 5 points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points.
- f. Applicants with Facilities that reduce air pollutant emissions by at

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least five percent relative to the baseline identified in the Application will receive 5 points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points.

g. Applicants with Facilities that reduce emissions of other pollutants by at least five percent relative to the baseline identified in the Application will receive 5 points plus one point for each additional percentage point of reductions over five percent up to a maximum of 30 points.

~~(v)~~—

- (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 for Advanced Transportation and Alternative Source Applications 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. Points for environmental benefits (TPB points) for Advanced Manufacturing Applicants will be equal to the sum of the environmental benefits points awarded based on the categories listed in Section 10033(c)(2)(D).
- (5) Additional points. ~~The total amount of additional points cannot exceed 200.~~ Additional Ppoints shall be awarded as follows:
  - (A) Unemployment score. An Applicant may earn up to ~~40~~ 50 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:
$$\text{Points} = (\text{Local Rate} / \text{State Rate}) * 100) - \underline{100-110}$$
      - 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~~ 75 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:

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- a. Less than or equal to \$50,000 in sales and use tax exclusion per job – ~~40~~ 75 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~~ 60 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~~ 55 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~~ 45 points
- e. Less than or equal to \$300,000 in sales and use tax exclusion per job but greater than \$200,000 per job – 40 points
- f. Less than or equal to \$400,000 in sales and use tax exclusion per job but greater than \$300,000 per job – 35 points
- g. Less than or equal to \$750,000 in sales and use tax exclusion per job but greater than \$400,000 per job – 30 points
- h. Less than or equal to \$1,500,000 in sales and use tax exclusion per job but greater than \$750,000 per job – 20 points
- e.i. Greater than ~~\$200,000~~ \$1,500,000 in sales and use tax exclusion per job – 0 points

(C) Construction or installation jobs score. An Applicant may earn up to ~~20~~ 75 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:

- a. Less than or equal to \$50,000 in sales and use tax exclusion per job – 75 points
- b. Less than or equal to \$100,000 in sales and use tax exclusion per job but greater than \$50,000 per job – 60 points
- c. Less than or equal to \$150,000 in sales and use tax exclusion per job but greater than \$100,000 per job – 55 points
- d. Less than or equal to \$200,000 in sales and use tax exclusion per job but greater than \$150,000 per job – 45 points
- e. Less than or equal to \$300,000 in sales and use tax exclusion per job but greater than \$200,000 per job – 40 points
- f. Less than or equal to \$400,000 in sales and use tax exclusion per job but greater than \$300,000 per job – 35 points
- g. Less than or equal to \$750,000 in sales and use tax exclusion per job but greater than \$400,000 per job – 30 points
- h. Less than or equal to \$1,500,000 in sales and use tax exclusion per

job but greater than \$750,000 per job – 20 points

- i. Greater than \$1,500,000 in sales and use tax exclusion per job – 0 points
- 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-Strategic Industry score. An Applicant may earn up to 40 points if the Applicant’s industry is in an Emerging Green-Strategic Industry as defined in Section 10031(i). The Executive Director will determine if an Applicant’s industry is an Emerging Green-Strategic Industry and award points to those Applicants that qualify.

(E) Process improvement score. An-Advanced Transportation or Alternative Source Applicants 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.

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- 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, 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) Other Facility Characteristics

(i) An Application may be awarded points for the following other facility characteristics:

- a. Applicants with facilities in California that perform research and development functions related to the product or production process at the Facility that is the subject of this application will receive 25 points.
- b. Applicants with partnerships with educational institutions either for the purpose of training the workers at the Facility or for purposes of assisting in the training of potential future workers will receive 25 points.
- e.c. Applicants in Industry Clusters, as defined, will receive 40 points.

~~(F)~~(G) 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:

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- a. The dollar value of an out-of-state non-greenhouse gas benefit from a GGE (\$OSG) pursuant to the following formula:

$$\begin{aligned} \$OSG = & (1- POSCA) * (\text{pollution cost of VOC per GGE} \\ & + \text{pollution cost of NOx per GGE}) \end{aligned}$$

- b. The dollar value of an out-of-state non-greenhouse gas benefit from a MWh (\$OSM) is calculated pursuant to the following formula:

$$\begin{aligned} \$OSM = & (1-POSCA) * (\text{pollution cost of US NOx per MWh} \\ & + \text{pollution cost of US SO2 per MWh}) \end{aligned}$$

- 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 (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

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

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- (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:

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

- 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 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~~ for Advanced Transportation of Alternative Source Applications or 20 for Advanced Manufacturing Applications 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 these thresholds,~~ 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(~~af~~)(7))
  - (2) The equipment proposed for the sales and use tax exclusion to be a "project" (Pub. Res. Code Sec. 26003(~~ag~~)(7~~z~~))
  - ~~(3) The conveyance/reconveyance arrangement constitutes financial assistance (Pub. Res. Code Sec. 26003(e)(2))~~
- (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 dollar value 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.
  - (3) The Regulatory Agreement shall include but not be limited to the following:
    - (A) 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 Property.
    - (B) A requirement that the Qualified Property be installed, maintained and operated within the State of California, except as provided by this section.
    - (C) The Executive Director may approve a request to relocate Qualified Property

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outside of California in an amount up to fifteen percent (15%) of the dollar volume of Qualified Property included on all semi-annual reports to the Authority as of the date of the request. The amount of Qualified Property relocated shall be cumulative and the amount requested will be added to any previously approved request and compared to the dollar volume of Qualified Property included on all semi-annual reports to determine compliance with the fifteen percent (15%) limitation. The Executive Director shall approve a request pursuant to this section upon a finding that the relocation is part of an improvement, upgrade or increase in the economic efficiency of the Project and that approval of the requested relocation is likely to continue or increase the anticipated net benefits of the Project. Any denial of a request pursuant to this section may be reviewed by the Authority.

- (D) Requests for relocation of Qualified Property in excess of the fifteen percent (15%) requirement set forth in (i) may be approved by the Authority based on a recommendation from the Executive Director and upon a finding that the relocation is part of an improvement, upgrade or increase in the economic efficiency of the Project and that approval of the requested relocation is likely to continue or increase the anticipated net benefits of the Project.
- (E) Any amount of Qualified Property may be relocated outside of California upon a voluntary payment by the Applicant in an amount calculated by multiplying the original purchase price of the Qualified Property to be relocated by the average statewide sales tax rate at the time of the proposed relocation.
- (F) A requirement that the Applicant file a semi-annual report. This report will identify purchases of qualified property, if any, made during the preceding two calendar quarters.
  - (i) Each semi-annual report shall include information about the Qualified Property purchased, including the acquisition date; vendor city, county, and country; 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.
  - (ii) The semi-annual report covering the first two calendar quarters of the year shall be submitted to the Authority on or before July 31; the semi-annual report covering the last two calendar quarters of the year shall be submitted to the Authority on or before January 31 of the immediately following calendar year.

~~(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 receipt of the initial original complete 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 Property.~~
- ~~(F) A requirement that the Qualified Property be installed, maintained and operated within the State of California, except as provided by this section.
  - ~~(i) The Executive Director may approve a request to relocate Qualified Property outside of California in an amount up to fifteen percent (15%) of the dollar volume of Qualified Property conveyed to the Authority as of the date of the request. The amount of Qualified Property relocated shall be cumulative and the amount requested will be added to any previously approved request and compared to the dollar volume of conveyed Qualified Property to determine compliance with the fifteen percent (15%) limitation. The Executive Director shall approve a request pursuant to this section upon a finding that the relocation is part of an improvement, upgrade or increase in the economic efficiency of the Project and that approval of the requested relocation is likely to continue or increase the anticipated net benefits of the Project. Any denial of a request pursuant to this section may be reviewed by the Authority.~~
  - ~~(ii) Requests for relocation of Qualified Property in excess of the fifteen percent (15%) requirement set forth in (i) may be approved by the Authority based on a recommendation from the Executive Director and upon a finding that the relocation is part of an improvement, upgrade or increase in the economic efficiency of the Project and that approval of the requested relocation is likely to continue or increase the anticipated net benefits of the Project.~~
  - ~~(iii) Any amount of Qualified Property may be relocated outside of California upon a voluntary payment by the Applicant in an amount calculated by multiplying the original purchase price of the Qualified Property to be relocated by the average statewide sales tax rate at the time of the proposed relocation.~~~~
- ~~(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~~

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~~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, Fees.~~

~~(e)(b)~~ 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; a~~ All purchases of Qualified Property must be made within three years of Application approval. Regulatory Agreements for Facilities not meeting these requirements will be ~~reseinded~~ 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)~~ (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 all purchases of 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

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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~~ the signing of the Regulatory Agreement 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~~ Qualified Products;
  - (G) the amount spent on supplier purchases for ~~Advanced Transportation or Alternative Source~~ products, components or systems Qualified Products, 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 Qualified Products; and
  - (K) any other information requested by the Executive Director that is reasonably 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

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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)~~(c) 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 shorter of (a) the expiration of the term of the Regulatory Agreement or (b) three years, except in compliance with section 10035(b)(1)(F).

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.
  - (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

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- 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.
  - ~~(4)~~ Twenty-five percent of the Administrative Fee shall be payable 180 days from the date of Application approval by the Authority.
  - ~~(5)~~ The balance of an Applicant's Administrative Fee shall be payable at the time of each subsequent conveyance/reconveyance semi-annually on July 31 and January 31 each year following Application approval until such time as the total amount of the Administrative Fee due has been paid. The amount of the Administrative Fee due during each period shall be based on the calculated on that transaction's Qualified Property purchase amounts during the immediately preceding six month period (from January 1 through June 30 and July 1 through December 31, respectively) such that the fee due is proportional to the total amount of the Administrative Fee remaining after the initial \$15,000 and twenty-five percent payments have been made.
    - ~~(A)~~ Each semi-annual Fee payment shall include information about the Qualified Property purchased, including the acquisition date; vendor city, county, and country; 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.
    - ~~(A)~~~~(B)~~ The Applicant will submit a "final statement" when the 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 a determination will be made of the total amount of Qualified Property purchased, and the corresponding amount of the total Administrative Fee due. If any remaining Administrative Fee is due, the Fee shall be submitted together with the final statement. In the event that an Applicant has overpaid Administrative Fees, the overpayment will be paid to the Applicant within thirty (30) days of submission of the final statement.
  - ~~(5)~~~~(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.

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~~(6)~~(7) The Administrative Fee shall be paid in checks payable to the Authority.

~~(7)~~(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 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.