

FINAL STATEMENT OF REASONS

California Alternative Energy and Advanced Transportation Financing Authority ("CAEATFA" or the "Authority")

Sales and Use Tax Exclusion Program

UPDATE OF INITIAL STATEMENT OF REASONS

As mentioned in the Initial Statement of Reasons, the proposed regulations include modifications initially adopted under the emergency rulemaking process (OAL File Nos. 2020-1026-02(E), 2021-0820-04(EE), and 2021-1118-02(EE)), as well as modifications that were approved at the October 19, 2021, CAEATFA Board meeting to help improve and streamline the Authority's administration of the Sales and Use Tax Exclusion ("STE") Program (the "Program").

The proposed regulations approved at the October 19, 2021, CAEATFA Board meeting became effective as emergency regulations on December 9, 2021 (OAL File No. 2021-1129-02E). As part of the emergency rulemaking process, modifications were made to the emergency regulation text that were also incorporated in the proposed regulations that are the subject of this rulemaking after the 45-day public comment period.

All of these modifications are nonsubstantial, as that term is used in Government Code Section 11346.8, as they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text.

The changes are described below:

- The authority cited in Sections 10031, 10032, 10033, 10034, 10035, and 10036 has been updated to include Section 26009 of the Public Resources Code.
- Section 10032(a)(4) is amended to fix a numbering error in the reference to the regulation section in which the Competitive Criteria are established from 10032(a)(8)(B) to 10032(a)(7)(B).
- Section 10032(c)(4)(C) is amended to fix a grammatical error by making the word "represent" plural.
- Section 10033(c)(5)(B)(ii) is amended to fix a numbering error in the reference to the regulation section in which the New Jobs Score is calculated from 10033(c)(5)(B)(1)(i) to 10033(c)(5)(B)(i).

No additional changes to the Initial Statement of Reasons are necessary.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

CAEATFA has not identified any alternatives that:

- would be more effective in carrying out the purpose for which the action is proposed; or
- would be as effective and less burdensome to affected private persons than the proposed action; or
- would be more cost-effective to affective private persons and equally effective in implementing the statutory policy or other provision of law.

Alternatives Considered

Alternatives to Application Periods Announced Prior to Each Calendar Year

Rather than announcing application periods prior to each calendar year, the Authority considered continuing to accept Applications on a rolling basis, which the Authority previously utilized to provide flexibility by allowing Applicants to apply when it best fit their business plan. However, given the realities of current Program demand, which has sometimes resulted in the Program becoming oversubscribed by the first application deadline, Applicants must apply early in the calendar year regardless of the Authority accepting Applications on a rolling basis. Additionally, by continuing to accept Applications even before the Authority knows if the Program is oversubscribed, some Applications sit unreviewed for months without any certainty to the Applicant as to whether the Application may be heard.

The Authority also considered accepting and reviewing Applications at set intervals throughout the year, such as during two or three periods per year, which would help distribute the STE review and award workload throughout the year. Given the current economic conditions as a result of the COVID-19 pandemic and the ever-changing market and Program demand, the proposed regulations provide the necessary flexibility of adapting the application periods each year in response to market conditions and Program demand.

Alternatives to the \$10 million cap, \$20 million set-aside for smaller projects, and \$15 million available for large projects

The Authority considered various cap amounts between \$5 million and \$10 million in STE. Based on award amounts to date, over 90% of approved Applications have requested \$10 million or less in STE. Although a cap amount lower than \$10 million would increase the total number of Applications that the Authority could approve, it would prevent the Authority from assisting larger, more capital-intensive Projects, which may have correspondingly larger benefits, and unnecessarily penalizes scaling companies for succeeding. Lowering the cap to \$10 million maximizes the number of eligible Applicants receiving an award, but still enables the vast majority of Applications to be fully awarded with a sizable STE (ability to purchase over \$119 million in equipment and machinery).

To ensure availability of STE for smaller Projects and large Projects over \$10 million in STE, the Authority considered various set-aside amounts and Project size thresholds for each set-aside. The Authority analyzed historical data since the Program began, which showed that approximately 71% of Applications have been for Projects of \$2 million or less in STE. While \$2 million in STE represents a small percentage of the total \$100 million in STE allocation, this Project size also accommodates a majority of Applicants, and prevents larger mid-sized Projects from crowding out smaller Projects. Historical data since the beginning of the Program show the average of total amount of STE awarded to Applications requesting \$2 million or less in STE in one calendar year is \$11,052,087. Since 2015, when the Legislature gave CAEATFA the authority to award STE to Applicants that process or utilize recycling, the average total amount of STE awarded to Applications requesting \$2 million or less in a calendar year is \$13,399,348. Setting aside \$20 million will ensure that the historical number of smaller Projects are guaranteed to receive STE and allow room for growth in the number of smaller Projects awarded. The largest total amount of STE awarded to Applicants requesting \$2 million or less in a single calendar year was \$26,295,395 in 2017. Based on this historical data, the Authority chose a \$20 million set-aside because even if the number of smaller Projects again reaches or surpasses the height of 2017, the amount will ensure that the majority of those Applicants will receive STE, while allowing the remainder of Applicants requesting \$2 million or less to qualify for STE from the general pool.

Setting aside \$15 million in STE for the Board to award to Applicants seeking more than the general per-Applicant cap of \$10 million allows for a smaller but significant amount of STE to be awarded to Applicants seeking to establish larger, scalable Projects in California. When the Authority adopted a \$10 million in STE per-Applicant cap at the end of 2019, without set-asides for small or large Projects, stakeholders were concerned that \$10 million in STE would not be enough given the growing costs of advanced technology. Historically, since the Program began, an average of two to three Applicants have received awards over \$10 million in STE in a calendar year. With \$15 million to award above \$10 million, up to \$20 million per Applicant, CAEATFA can award up to one \$20 million Project, and one or more Projects requesting \$15 million or under in STE.

Alternatives to the Competitive Criteria

The Authority considered various other criteria, including whether the Applicant is a small business, whether the Applicant is new to the Program, providing benefits and fringe benefits to employees, and manufacturing products to combat COVID-19. When deciding on the Competitive Criteria, the Authority considered the Program's statute and long-term policy goals and priorities, characteristics that are common among all types of eligible Projects, and keeping the Competitive Criteria process as simple as possible so that scores can be determined quickly.

The proposed amendments remove the competitive criterion for new Applicants in order to prioritize the specific benefits of individual Projects consistent with the Program's purpose and goals. Additionally, the proposed amendments look at the amount of STE per estimated number of jobs created, rather than whether the Applicant is a small business, consistent with the Program's statutory purpose to promote the creation of California-based jobs, and Public Resources Code Section 26011.8(d)(3), which requires the Authority to evaluate Projects based

on the extent to which the Project will create new, permanent jobs in California. This criterion also enables the Authority to help both small businesses and larger businesses, recognizing the need to assist both small Projects and larger, scaling Projects in order to meet the Program's goals.

The Authority also decided to incorporate providing benefits and fringe benefits to employees in the Application scoring rather than Competitive Criteria, awarding additional points for providing such benefits in order to recognize the benefits of providing additional benefits to employees in the Application review, while also recognizing that the Program supports diverse industries, labor markets, and regional economies.

Alternatives to the \$10,000 Wage Bands

The Authority considered asking for the exact minimum and average wages. However, the Authority received stakeholder feedback with concerns regarding employee confidentiality and company trade secrets. Some Applicants may have a few or even just one employee in a specific classification. To try to keep the wage information as detailed as possible while also providing some level of confidentiality and anonymization, the proposed regulations use \$10,000 wage bands.

Alternatives to Proposed Implementation of AB 176

The Authority considered having Applicants indicate in the Application whether there will be a net reduction in jobs at the Facility resulting from the purchase and use of the Qualified Property. The Authority determined this would not provide sufficient information and was not consistent with the current Application evaluation methodology. Therefore, the proposed regulations request the number of employees assuming the Qualified Property is not utilized, and uses this information, along with other Applicant-provided information already requested in existing regulations, to determine if there is a net loss in jobs. If there is a net loss in jobs, the proposed regulations provide that the Applicant will receive a New Jobs Score of zero and will lose points in the Application scoring (Lost Jobs Points). The proposed regulations also request, along with information on the average and minimum wage of each classification of full-time employees proposed to be hired or not retained, an explanation as to why a classification of employees is being eliminated and if any existing employees in the classification will be retained or reclassified, to get a more complete picture as to why a classification of employees is being eliminated and if it will result in a loss of jobs based on stakeholder feedback.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD OF DECEMBER 3, 2021, THROUGH JANUARY 24, 2022, AND PUBLIC HEARING

CAEATFA received no comments during the public comment period. CAEATFA also did not receive a request to hold a public hearing.