

**CALIFORNIA ALTERNATIVE ENERGY AND  
ADVANCED TRANSPORTATION FINANCING AUTHORITY**  
**Meeting Date: July 19, 2016**

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

Prepared By: *James Shimp*

**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 (AS) and Advance Transportation Products and manufacturers utilizing an Advanced Manufacturing (AM) process (the “Program”). Staff is proposing modifications to the existing Program regulations to incorporate manufacturers utilizing recycled feedstock, as authorized by Assembly Bill 199 (AB 199, Eggman, Chapter 768 of the Statutes of 2015), and address issues of Program oversubscription through changes to the administrative structure of the Program. Staff is requesting approval to proceed with the emergency rulemaking process for the proposed regulations and modify the date when the Authority can begin accepting and considering all new, non-AB199 applications.

**Background.** On October 11, 2015, Governor Brown signed AB 199 into law as an urgency statute, which takes effect immediately upon enactment. AB 199 expands the STE program to include manufacturers that process or utilize recycled feedstock. However, before regulations could be drafted for this new pathway to eligibility, CAEATFA received applications representing enough STE to oversubscribe the program’s \$100 million annual cap in 2015 and, potentially, in 2016 and beyond. By November 16, 2015, the Authority had received requests for a total of \$222 million of STE from AS, AT, and AM applicants. To appropriately handle the unprecedented Program oversubscription, staff recommended that applications exceeding the 2015 award cap be considered at the January 2016 Board meeting, that the Board suspend acceptance and consideration of any new applications until regulations to evaluate projects eligible under AB 199 are approved by the Office of Administrative Law (OAL),<sup>1</sup> and that the Board initially set-aside no less than \$23 million of the 2016 annual \$100 million cap for projects eligible under AB 199. The Board voted to review only AB 199 eligible applications for two months after OAL approval of regulations, after which the application process and any remaining funds from the \$23 million set-aside would be available for all applicant types.

In January and February of 2016, CAEATFA reviewed and approved applications representing roughly \$74 million of the \$100 million 2016 annual cap. Meanwhile, staff began working on updated regulations that would incorporate AB 199 projects and adapt the general program structure to an environment in which the award cap may be routinely oversubscribed.

*Significant Program Modifications*

The major proposed program modifications include:

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<sup>1</sup> As authorized under the Sales and Use Tax Exclusion Program, California Code of Regulations, Title 4, Division 13, Section 10032(a)(7).

- measuring the environmental benefits of AB 199 projects by evaluating the increases in the total amount of recycled materials produced and quantifying the fiscal benefits consistent with AS, AT, and AM projects;
- a per-project cap of \$20 million in STE, with a mechanism for allocating excess STE allocation available at the end of the calendar year to projects that require additional STE beyond the per-project cap;
- a requirement that applicants purchase 15% of Qualified Property within the first year of approval;
- a ranking system for applications when the Program is oversubscribed;
- changing the minimum environmental benefits points threshold for all types of projects to 20 points; and
- streamlining the application by automating some calculations and eliminating unused or redundant questions, while maintaining a rigorous evaluation methodology.

*Public Workshops and Comments*

CAEATFA hosted a public workshop on March 16, 2016, and stakeholder input was sought regarding several potential modifications, including AB 199 project evaluation, application streamlining, ranking based on competitive criteria, and individual project caps. Following a public comment period that ended March 25, 2016, regulations were drafted and potential applicants volunteered to submit information which was used to test an updated version of the STE Program application and evaluation process. Incorporating lessons learned and public comment, draft regulations were then presented at a second public workshop on June 22, 2016. Public comments from this second workshop were accepted until July 1, 2016, after which time the final draft version of the regulations was composed for Board consideration.

Public comments from the March and June workshops ranged from support for proposed modifications to questions about the application process, scoring guidelines, and compliance provisions. Feedback was taken into consideration and, where appropriate to meet needs identified through prior Program experience, has been incorporated into the final draft regulations. For example, comments from the March workshop included concern over the impact of a proposed requirement that 20% of Qualified Property be purchased in the first year after Board approval. In order to mitigate this concern while maintaining an important readiness measure, the requirement was reduced to 15%. Another commenter noted that the Environmental Protection Agency (EPA) Waste Reduction model (WARM), which was presented as the basis for quantifying environmental benefits for recycling projects, may differ from the model used by the California Air Resources Board (ARB) in some instances. In order to be consistent with other state agencies, the regulations were revised to specify the use of ARB methodology where it differs from the EPA model.

Additional comments were received that prompted staff to do additional research, but in the end were not incorporated into the regulations. For example, the June workshop prompted feedback asking CAEATFA to consider using CalEnviroScreen, rather than unemployment rates, as a criteria for competitive ranking. CalEnviroScreen is a valuable tool used by some state agencies that can be used to identify communities disproportionately burdened by pollution. Though staff recognizes the value of the tool, it was ultimately decided that relying on it may falsely imply a

connection between STE projects and their environmental impact at the community level. While some STE projects may have a measurable local impact – such as dairy biogas projects that reduce methane emission at the source – most projects have environmental benefits that are not as closely tied to the project location.

**Program Structure for AB 199 Projects.**

*Eligibility*

To be eligible for the STE Program under AB 199, applicants must satisfy the definitions of “Project” and “Recycled feedstock” (RF) as listed in Public Resources Code Sections 26011.8(b)(1) and (2). Applicants will provide evidence in the narrative portion (Part A) of the application that they satisfy the criteria for being classified as a RF project under the terms of the Program.

Based on current statute, there are some RF projects that may be eligible to apply under multiple pathways. For example, a biofuel project that converts organic waste to energy would fit the definition of both RF and AS, since it both processes recycled feedstock and creates an AS product. Similarly, many projects that utilize recycled feedstock in the creation of another product are already eligible under AM. In order to clarify this issue, the regulations define RF as those projects that are eligible under AB 199, but are not eligible to apply for an STE as an AS, AM, or AT project.

*Evaluation*

RF applicants will be subject to a net benefits test similar to the one currently used for AS and AT applications. Specifically, applicants will need to demonstrate both fiscal and environmental benefits, though the minimum environmental benefits threshold will be 20 points, lower than the 100 points previously required of AS and AT applications, as discussed below.

Fiscal benefits will be measured in the same fashion as currently employed for AS and AT applicants. Specifically, the additional (marginal) economic activity attributable to the STE will be estimated along with the corresponding fiscal impact based on information provided by the applicant, including, but not limited to, the project’s projected revenues, labor and capital costs, and the number of full time equivalent and construction jobs.

Environmental benefits will be measured based on increases in the total amount of recycled materials produced. Applicants will select the appropriate recycled material using a drop-down box in the application. Then, using the EPA’s WARM model (or other relevant sources of information), which estimates GHG benefits of recycling various waste materials, the increase in recycling will be translated into an estimated GHG reduction. Where the ARB has made modifications or developed an alternative to the WARM model, the ARB measurements will be used. GHG reductions will then be monetized based on economic estimates of the cost of each additional ton of GHG emissions (according to the process already utilized by CAEATFA to estimate the value of GHG reductions). Only projects that increase the amount of recycled

materials produced and generate sufficient environmental benefits will be eligible (e.g., replacing an existing piece of equipment with a similar new piece of equipment would likely not qualify).

Increases in recycling due to the STE will be estimated by taking applicant-provided information about total production costs, tons of materials processed, and amount of recycled materials to be produced and calculating:

- the change in production costs due to the STE,
- the resulting increase in recycling due to the incentive effect of the STE based on supply and demand characteristics of the relevant recycling market,
- the reduction in GHG emissions from the EPA WARM model (or ARB), and
- the economic benefit from the reduction in GHGs.

AS and AT applications have traditionally been subject to a minimum threshold of 100 environmental benefit points. However, based on the preliminary results of sample RF applications – applications that have not been through multiple reviews – it appears that most projects eligible under AB 199 would not meet the 100 environmental benefits point threshold. In order to avoid the disqualification of a large number of applicants for whom AB 199 was intended, the threshold for RF projects has been lowered to 20 points. A change to the environmental benefits threshold for AS and AT projects is also being proposed, as discussed later in this summary.

### **Program Administrative Changes.**

#### ***Project Cap***

The existing regulations do not limit the amount of STE that can be requested for a single Project in a given calendar year. Historically, this has not been an issue, as the Program has been undersubscribed. However, with the oversubscription in 2015, and given the likelihood that the annual \$100 million in STE will be insufficient to meet demand in 2016 and potentially beyond, staff believe that it is now appropriate to modify the Program to ensure a more equitable distribution of awards.

Under the proposed regulations, each project will be limited to a maximum of \$20 million of STE, calculated based on the statewide average sales and use tax at time of application. If additional funds are available at the end of the calendar year, approved applicants requesting more than the \$20 million STE cap will bring a revised application before the Authority in December of the same calendar year in which the original application was approved. The amount of additional STE available to each applicant will be determined by the Executive Director, calculated by taking the unawarded STE for that calendar year and dividing it evenly between all Projects that wish to exceed the \$20 million cap, with the amount allocated to each applicant not to exceed the additional amount requested by the applicant. The Authority will announce end of the year availability no later than 28 days prior to the December Authority meeting.

***Ranking System***

Current regulations stipulate that CAEATFA evaluate applications on a first-come-first-served basis. However, in light of the Program’s unprecedented oversubscription, questions have been raised as to whether this method of allocating awards provides the greatest possible benefit to the state. Instituting a competitive process when the Program cap is oversubscribed will rank projects by objective criteria that are verifiable at the time of application, rather than by order of submission, thereby maximizing the effectiveness of the Program in achieving its goals.

Applications will still be considered first-come first-served, to best meet the needs of business cycles. At the time of oversubscription, all applications (that meet the eligibility criteria) to be considered in the same month will be ranked based on four basic criteria: (1) unemployment rate in the county of the facility, (2) presence of corporate headquarters in California, (3) status as a small business, and (4) being a new applicant to the Program. Each criterion shall be worth between one and five points, and the application with the greatest point score shall be advanced first. Applicants will be able to earn a maximum of 12 points. In the event of a tie, the project with the smaller STE request will advance first. If the amounts of each request are identical, the order will be determined by the order in which the applications were received by CAEATFA. Additional applications will be advanced in the order of their rank, as the Program cap allows. The application that exceeds the Program cap will be the last application to be considered, with the portion of the award in excess of the cap being awarded from the next calendar year allocation. All subsequent applications will be placed on a waiting list and considered in the following calendar year. This waiting list will also be subject to the ranking process if the total amount on the waiting list exceeds the available STE for a given year.

Unemployment Rate

If the Project is located in a county with an unemployment rate greater than 110% of the statewide average, the Project shall receive points based on the ratio of the local unemployment rate (Local Rate) to the Highest Unemployment Rate In the State (HUIS), pursuant to the following equation:

$$1 + ((\text{Local Rate} / \text{HUIS}) * 4)$$

Based on this formula, a project locating in the county with the highest unemployment rate in the state will receive five points, the maximum amount available. All other projects located in counties that exceed 110% of the statewide average for unemployment will receive at least one point, plus a fraction of the four possible points remaining. All rates will be based on those most recently reported by the California Employment Development Department at the time of application submission.

In the event that an applicant changes the location of the Project after approval, such that its ranking in the competitive process would have been adversely affected, the award shall be rescinded and granted to the next applicant in line. See Section 10032(a)(7)(B)(i).

Corporate Headquarters

Applicants with a corporate headquarters in California shall receive one point, as long as any parent companies with an ownership interest greater than 50% also have a corporate headquarters in California. See Section 10032(a)(7)(B)(ii).

Small Business

If the applicant is classified as a small business under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and has fewer than 500 employees, the Project shall receive one point, provided that any parent company with an ownership interest greater than 50% is also classified as a small business. See Section 10032(a)(7)(B)(iii).

New Participant

If the applicant has not previously been approved for an award by the Authority, the Project shall receive five points, provided that, if the applicant has a parent company with an ownership interest greater than 50%, neither the parent company, nor its subsidiaries or affiliates have been previously approved for an award by the Authority. See Section 10032(a)(7)(B)(iv).

***Biofuels***

The proposed amendments to the regulations revise the evaluation criteria for Biofuel projects in order to simplify the application process and more accurately score fiscal benefits based on CAEATFA's previous experience with Biofuels applicants. Because Biofuels will be distinguished from other AS applicants, the proposed regulations now define Biofuels, which will include biodiesel and biogas as defined in Sections 95481(a)(6) and 95481(a)(9) of Division 3 of Title 17 of the California Code of Regulations.

Fiscal Benefits

Part of the fiscal benefits analysis includes the estimated sales tax paid by consumers of the product produced by the project. However, some applicants use the product produced directly, and therefore are not paying a sales tax on a purchase that would otherwise be made externally. For example, a landfill that generates biofuel and uses that fuel to power its trucks will actually reduce sales taxes since it no longer buys (taxable) diesel fuel that it would previously have used. The proposed regulations include modifications to the application, data items, and scoring adjustments to more accurately estimate sales tax revenue from this type of project.

Environmental Benefits Calculation for Biofuels Projects

Currently, the environmental effects of Alternative Source projects are measured and scored based on the energy generation potential of the project, which results in a

reduction in the amount of non-alternative source power that otherwise would be needed. Applicants must calculate and provide the energy generation capacity of the products produced by the project, and a dollar value of the pollution that is avoided per megawatt-hour of electricity generation is assigned based on available research and analysis.

Under the proposed regulations, Biofuel applicants will instead provide the type of biofuel produced and units of energy produced, and the application workbook will use ARB estimates and other relevant sources to calculate the net difference in GHG emissions between the various Biofuels and the corresponding fossil fuel that the fuel is replacing and assign a dollar value to the reduction in pollution based on available research and analysis.

### ***Application Streamlining***

As well as simplifying the application requirements for Biofuel projects, the proposed amendments to the regulations further streamline the application process by removing several questions from the application that are either redundant or have never been used to approve an applicant in the past. An example of redundancy in current regulations is a requirement that applicants provide estimated facility sales. The proposed regulations remove this specific input requirement from the application because applicants already provide different information from which this parameter may be calculated (i.e., number of units and sales price per unit). An example of unused data collected under current regulations is a section that allows AS and AT applicants to potentially earn supplemental points for substantial improvements in use of energy or water, or in avoided pollution or waste relative to comparable production processes. However, to date, no applicant has used the process improvement points to meet the minimum scoring threshold; therefore, the proposed regulations remove this section from the application.

### ***Environmental Benefits Scoring Threshold***

Current regulations set the environmental benefits threshold for applications at 100 points for AS and AT, and 20 points for AM. This difference in threshold requirements is due to the fact that AM projects typically generate fewer environmental benefits through manufacturing process improvements than AS and AT projects do through products that directly generate environmental benefits. In reviewing sample applications, it was noted that AB 199-eligible projects create environmental benefits that also meet different quantifiable standards. Accordingly, the environmental benefits threshold for RF projects has been set at 20. Absent any direction from the Legislature that would prioritize certain project types now eligible under the Program, the proposed regulatory change will reduce the 100 point threshold to 20 points for all projects, providing a consistent threshold for all eligible projects.

### ***Purchase Requirement – Readiness Criteria***

One of the challenges exacerbating the issue of oversubscription is that some projects, upon approval, do not move forward, or move forward on a much slower timeline than originally anticipated in the project application. In part, this is due to market fluctuations or to the uncertainty inherent in some industries; however, it is also due, at least in part, to that fact that

there is little disincentive to applying for an STE award before the project is shovel ready. To the contrary – early program design purposely promoted this degree of flexibility in order to allow applicants a degree of certainty during the site selection process.

In a competitive environment, the challenge is to ensure that a scarce resource is not only going to eligible projects, but is also being utilized effectively. An award that goes unused not only deprives the state of the benefits of the project, but may also deny other applicants a chance to move forward in the application process. To ensure that projects that apply are truly ready and will move forward, CAEATFA is requiring that 15% of the project's qualified property be purchased within one year of approval by the Authority. There shall be no provision for a waiver, and applicants who do not meet this requirement will be subject to termination of the award.

### *Compliance*

Approved applicants are required to adhere to terms and conditions laid out in statute, regulations, and the terms of the Master Agreement. Failure to comply with any of these may currently result in punitive measures such as termination of the award. Proposed modifications would create an additional tool to help ensure compliance with Program guidelines, without resorting to more drastic measures, such as terminating an award. If the applicant violates statute, regulations, or the terms of the Regulatory Agreement, the Executive Director may suspend the Regulatory Agreement until the Executive Director certifies that the applicant is once again in compliance. Purchases made during this suspension will not be excluded from the imposition of sales and use tax.

### *Fees*

The current fee structure is intended to offset the costs associated with the review of applications (application fee) and the ongoing administrative needs of the Program (administrative fee). These fees do not cover the additional expense of bringing an approved applicant back before the Board for modifications to an existing Master Agreement. Proposed modifications will add two fee provisions to address this issue. The first provision adds a \$500 fee for any applicant that requests a modification of its existing Master Agreement requiring approval by the Authority. The fee is intended to offset standard costs for staff and materials necessary to bring a resolution before the Board. The second provision adds a fee for any applicant that requests a modification to its Master Agreement or authorizing resolution that requires a revised application to be considered by the Authority. The fee will be calculated by taking .00005 (one two-hundredth of one percent) of the total amount of Qualified Property identified in the Authority resolution approved by the board, subject to a \$500 minimum and a \$2,000 maximum.

### **Proposed Modifications to the Regulations.**

Following is a brief section by section description of changes made by the new proposed regulatory modifications. The proposed modifications to the regulations can be found in Attachment A in underline and strikethrough red text.



**§10031(i): Definition of Biogas.** The evaluation criteria for Biofuel projects will be revised in order to simplify the application process and more accurately score fiscal benefits. Because Biofuels will be distinguished from other Alternative Sources, the proposed regulations define Biofuels, which will include biodiesel and biogas as defined in Sections 95481(a)(6) and 95481(a)(9) of Division 3 of Title 17 of the California Code of Regulations.

**§10031(k): Definition of Competitive Criteria.** Proposed amendments to the regulations will add a system of ranking applications in situations where STE requests exceed the available remaining annual program cap. This ranking will be based on competitive criteria, as now defined in regulations.

**§10031(l): Definition of Corporate Headquarters.** One of the competitive criteria used to rank applications will be the presence of a California headquarters. As such, a clear definition of corporate headquarters is needed in the regulations.

**§10031(x): Definition of Qualified Property.** The passage of AB 199 expanded the STE Program to manufacturers that utilize equipment that primarily processes Recycled feedstock or uses Recycled feedstock to create another product or Soil amendment. The definition of Qualified Property has been updated to reflect this expansion of the Program.

**§10031(z): Definition of Recycled Feedstock.** Provides a reference to Section 26011.8(b)(2) of the Public Resources Code in order to provide a definition of Recycled feedstock in regulations.

**§10031(aa): Definition of Recycled Resource Extraction Project.** Proposed amendments to the regulations create evaluation criteria for projects that convert Recycled feedstock into materials that are used in a subsequent manufacturing process. These are defined as Recycled Resource Extraction Projects. The modification also specifies that projects currently eligible under Alternative Source, Advanced Transportation, or Advanced Manufacturing are not included in this definition.

**§10031(ac): Definition of Soil Amendments.** Provides a reference to Section 26011.8(b)(3) of the Public Resources Code in order to provide a definition of Soil Amendments in regulations.

**§10032(a)(4): Individual Project Caps.** Limits the amount of STE requested by a single project to \$20 million per calendar year, unless additional STE is available at the end of the year.

**§10032(a)(7): Ranking Applications.** In situations where STE requests exceed the annual Program cap, applications will be ranked based on the unemployment rate in the county where the facility will be located, the presence of a California headquarters, the applicant's status as a small business, and whether or not the applicant is new to the Program.

**§10032(c): Application Streamlining.** Proposed modifications to the regulations will simplify the application process by removing unnecessary questions, or questions that have never been used in the evaluation process (because applicants were able to qualify without using points from these sections).

**§10032(c)(4)(C): Qualified Property List.** Part B of the application collects information about anticipated equipment purchases for the project. Applicants are asked to record information including a description of the equipment and its purpose in the manufacturing process, the estimated cost, the average lifespan, and percent of time it will be utilized in the qualifying process or to manufacture qualified products. Currently, applicants may lump together equipment valued at less than \$10,000, so long as the total value does not exceed \$100,000 and the individual items are reasonably related.

The proposed regulations will remove the \$10,000 limit for individual pieces of equipment and the \$100,000 cumulative cost limit. Program experience has shown that separating out projected equipment purchases based on a \$10,000 individual and \$100,000 cumulative cost basis can be difficult and sometimes unreliable. Applicants will still be allowed to group purchases as long as they are reasonably related. This will allow staff to review and inquire about the types of equipment necessary to complete the project prior to approval by the Authority. Additionally, all applicants are required to fill out a revised list of equipment purchases at the end of the project, which is easier and more accurate. As long as applicants group purchases in the application according to reasonably related categories, staff can carry out its due diligence responsibilities, while relying on the back-end analysis to capture more detailed purchasing information.

**§10032(c)(6): Environmental Benefits Scoring Threshold.** In order to accommodate the diversity of projects, as well as the range of environmental benefits they represent, the environmental benefits scoring threshold will be reduced to 20 points for all project types.

**§10035(b)(1): Purchase Requirement.** To ensure that prospective applicants do not encumber awards prior to their projects being ready, proposed modifications to the regulations will add a requirement that 15% of Qualified Property be purchased within one year of approval by the Authority.

**§10035(b)(8): Suspension.** If the applicant violates statute, regulations, or the terms of the Regulatory Agreement, the Executive Director may suspend the Regulatory Agreement until the Executive Director certifies that the applicant is once again in compliance. Purchases made during this suspension will be subject to sales and use tax.

**§10036(c): Fees.** Proposed modifications to the regulations will add fees to cover the additional expense of bringing an approved applicant back before the Board for modifications to an existing Master Agreement. An applicant that requests a modification of its existing Master Agreement requiring approval by the Authority shall be charged a fee of \$500. An applicant that requests a modification to its Master Agreement or authorizing resolution that requires a revised application to be considered by the Authority will be charged a fee that will be calculated by multiplying .00005 (one two-hundredth of one percent) times the total amount of Qualified Property identified in the Authority resolution approved by the board, subject to a \$500 minimum and a \$2,000 maximum.

**Emergency Regulatory Process.**

CAEATFA’s statute provides the Authority with emergency rulemaking authority under Public Resources Code Section 26011.8(i). This authority provides CAEATFA with the ability to make modifications or changes to the regulations in an expedited manner.

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

**Tentative Timeline.**

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

July 19, 2016	Board Meeting: present proposed regulations to Board for approval
Day -5 <sup>1</sup> July 20, 2016	Pre OAL Submission: CAEATFA staff publically notice 1) proposed regulation text, 2) finding of emergency, 3) rulemaking statement
Day 0 July 27, 2016	OAL Submission: CAEATFA files rulemaking package with OAL
Day +5 August 1, 2016	The public may submit comments for five calendar days
Day +8 August 4, 2016	CAEATFA’s response deadline to public comment
Day +10 August 6, 2016	OAL Decision Deadline. Regulations enacted for 180 days and projects only eligible under AB 199 are eligible to apply for consideration. <sup>2</sup>
September 17, 2016	CAEATFA begins accepting applications of non-AB 199 applications for consideration at the December 13, 2016 Board meeting
October 18, 2016	Board considers first round AB 199 applications
November 15, 2016	Board considers second round of AB 199 applications <sup>3</sup>

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<sup>1</sup> Five working days.

<sup>2</sup> Projects eligible under both AB 199 and the Program’s existing eligibility pathways, such as Alternative Source and Advanced Manufacturing, must wait until September 17, 2016 to apply.

<sup>3</sup> The consideration of applications at this board meeting is contingent upon the availability of STE.

December 13, 2016      Board considers all types of applications <sup>1</sup>

**Recommendation.**

Staff recommends adoption of a resolution to approve the proposed modifications to regulations for the Sales and Use Tax Exclusion Program and modify the date on which the Authority shall accept and consider all new, non-AB 199 applications. Doing so will incorporate AB 199 into the Program, streamline the application process, and provide structural modifications necessary to accommodate the challenges of oversubscription.

**Attachment(s):**

Attachment A    Proposed Text of Modified Regulations: Modifications for consideration by the Board are in underline and strikethrough red text.

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<sup>1</sup> The consideration of applications at this board meeting is contingent upon the availability of STE.

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

July 19, 2016

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009, and 26011.8 to adopt regulations to further implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program ("SB 71 Program"), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to implement the SB 71 Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. On September 17, 2016, the Authority may accept and consider the submission of all new, non-AB 199 applications.

Section 4. This resolution shall take effect immediately upon its approval.

Attachment A

**PROPOSED TEXT OF REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS**

**Title 4. Business Regulations**

**Division 13. California Alternative Energy and Advanced Transportation Financing Authority**

MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM

**§ 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, which authorizes the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to award such sales and use tax exclusions.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

**§ 10031. Definitions.**

(a) “Administrative Fee” means the fee payable following approval of an Application at the time of submitting the semi-annual report to CAEATFA.

(b) “Advanced Manufacturing” is defined as stated in Section 26003(a) of the Public Resources Code.

(c) “Advanced Transportation Technology” or “Advanced Transportation Technologies” is defined as stated in Section 26003(a) of the Public Resources Code.

(d) “Alternative Sources” is defined as stated in Sections 26003(a) of the Public Resources Code.

(e) “Applicant(s)” means a Participating Party submitting an Application.

(f) “Application” means a completed formal request for sales and use tax exclusion as specified in Section 10032.

(g) “Application Fee” means the fee payable at the time of Application for a sales and use tax exclusion.

(h) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 of the Public Resources Code (commencing with Section 26000).

(i) “Biofuel” includes “Biodiesel,” a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, and “Biogas,” the raw gaseous mixture comprised primarily of methane and carbon dioxide and derived from the anaerobic decomposition of organic matter in a landfill, lagoon, or constructed reactor (digester).

(~~h~~j) “California Supplier” means a business entity that manufactures, assembles, or produces its product or service in the state of California.

(k) “Competitive Criteria” means a set of Project or Applicant characteristics, as determined in Section 10032(a)(7)(B), which are measurable at the time of application.

(l) “Corporate Headquarters” means the location that is the primary center of direction, control and coordination for the company.

(~~m~~) “Emerging Strategic Industry” means an innovative industry, technology or product that may be identified by the Executive Director as having a potentially significant impact on the State's environmental goals or economy, the advancement of which are in the public interest, and which advance the purposes of the Program. The Executive Director may from time to time develop or add to a list of Emerging Strategic Industries which will be identified by North American Industry Classification System (NAICS) code (or its equivalent) or by description of the product or manufacturing process. The list of these industries will be publicly posted on the Authority's website.

(~~n~~) “Estimated Useful Lifespan” means the length of time the Qualified Property or Advanced Transportation Technology or Alternative Source product, component, or system can reasonably be expected to last in a productive capacity, as identified in the Application or the Regulatory Agreement.

(~~o~~) “Executive Director” means the executive director of CAEATFA.

(~~p~~) “Facility” or “Facilities” means a design, manufacturing, production, or assembly facility that includes or will include tangible personal property utilized for the design, manufacture, production, or assembly of Advanced 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.

(~~q~~) “Financial Assistance” means the granting of a sales and use tax exclusion by the Authority pursuant to Section 26011.8(a) of the Public Resources Code.

(~~r~~) “Green Component” means the component or system within Advanced Transportation Technologies or Alternative Source products, components, or systems that is primarily responsible for or required to enable the increase in energy efficiency, Alternative Source generation, or pollution reduction.

(ps) “Industry Cluster” means a concentration of interrelated businesses or industries in a region that, by virtue of being located in proximity, act to increase productivity or economic growth in that region. For purposes of receiving points as part of an Application, Industry Clusters must be recognized by a California state or local government entity, regional economic development authority, or association of governments as an industry cluster, strategic cluster, or competitive cluster of the region within which the Applicant's Pproject resides.

(qt) “Participating Party” is defined as stated in Section 26003(a)(7)(A) of the Public Resources Code.

(ru) “Program” means the sales and use tax exclusion program created pursuant to Public Resources Code Section 26011.8.

(sv) “Project” is defined as stated in Section 26003(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.

(tw) “Qualified Product” means an Advanced Transportation Technology or Alternative Source product, component or system or a product produced with an Advanced Manufacturing Process.

(ux) “Qualified Property” means the tangible personal property identified in the Application or Regulatory Agreement to be purchased for use in the Facility if at least 50 percent of its use is either to process Recycled feedstock that is intended to be reused in the production of another product or using Recycled feedstock in the production of another product or Soil amendment; or tangible personal property that is used in the state for the design, manufacture, production, or assembly of Advanced Transportation Technologies, or Alternative Source products, components, or systems or utilized in an Advanced Manufacturing process~~to be utilized in an Advanced Manufacturing process or necessary for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems to be purchased for use in the Facility.~~ Qualified Property must be used for the purpose stated in the Application for a period equal to the longer of (a) one year or (b) one-half of the Estimated Useful Lifespan of the Qualified Property. The total value of Qualified Property necessary for the operation of the Facility and located on the same site as the Facility, but not directly used for the design, manufacture, production or assembly of advanced transportation technologies or alternative source products, components or systems shall not exceed one percent (1%) of the total value of all Qualified Property purchased by the Applicant.

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



consumption of products that meet the standards is significantly below the consumption of comparable products.

(z) “Recycled feedstock” is defined as stated in Section 26011.8(b)(2) of the Public Resources Code.

(aa) “Recycled Resource Extraction Project” is a project that converts Recycled feedstock into materials that are used in subsequent manufacturing processes. Recycled Resource Extraction Project includes projects that are not eligible to apply for a sales and use tax exclusion as an Alternative Source, Advanced Transportation, or Advanced Manufacturing Project and that are eligible for a sales and use tax exclusion under the Recycled feedstock provisions of 26011.8(b)(1)

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

(ac) “Soil amendments” is defined as stated in Section 26011.8(b)(3) of the Public Resources Code.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

### **§ 10032. Application Requirements.**

(a) Timing of Application submissions.

(1) Except as otherwise provided by the Authority pursuant to subparagraph (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 Complete Application, except as noted in paragraphs (3), ~~(67)~~, and ~~(78)~~ below.

(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) Except as provided in subparagraph (A) below, Applications shall be capped at \$20 million of sales and use tax exclusions (STEs) per Project, based on the average statewide sales tax rate at time of Application.

(A) If STE will be available at the last Authority board meeting of the calendar year, the Authority may provide additional STE to Projects that qualified for additional STE but were capped at \$20 million of STE. Applicants wishing to exceed the \$20 million cap for

their Project shall bring a revised Application before the Authority for consideration in December of the same calendar year in which the original Application was approved. The revised Application shall include updated information requested in Section 10032 and will be evaluated pursuant to Section 10033. The Authority will announce end of the year availability no later than 28 days prior to the December Authority meeting.

i. The amount of additional STE available to each Applicant shall be determined by the Executive Director, and shall be the amount of the Project's approved award, plus an amount calculated by taking the unawarded STE for that calendar year and dividing it evenly between all Projects that wish to exceed the \$20 million Project cap, but not to exceed the requested STE for any Applicant. Applicants seeking additional STE beyond the Project cap shall not be eligible to receive STE from the subsequent calendar year pursuant to the provisions of Section 10032(a)(7)(A).

(45) To the extent that total sales and use tax exclusions ~~(STEs)~~ awarded during the calendar year reach \$100 million (the funding-statutory cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the funding-statutory 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~~ are ranked, based on Competitive Criteria. ~~Each year in November, 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 resubmitted Applications are substantially similar to the originally submitted Application.~~ Applications that are on the waiting list but are not evaluated by staff due to the statutory cap will be considered in the subsequent calendar year.

(56) Complete Applications will be reviewed in the order in which they are received, except as noted in paragraph (7) below.

(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.

(7) In the event that Applications received by CAEATFA represent STEs in excess of the statutory cap for that calendar year, the order in which the Applications shall be considered by the Authority will be based on a ranking of Competitive Criteria of all Projects moving forward before the board within the same month, as established in subparagraphs (A) and (B) below.

(A) Each criterion that the Application meets shall be worth between one and five points. The Projects with the greatest point score will be reviewed and presented to the CAEATFA Board. In the event of a tie, the Application representing the smaller STE award will move forward to consideration before the Authority. If the STE amounts are

identical, the Application that was received by CAEATFA first shall be heard first. When the amount requested in the Application exceeds the STE available in the calendar year, the Authority shall award the remaining STE request using STE from the following calendar year. Any remaining Applications shall be placed on the waiting list.

(B) Competitive Criteria.

(i) If the Project is located in a county with an unemployment rate greater than 110% of the statewide average, the Project shall receive points based on the ratio of the local unemployment rate (Local Rate) to the Highest Unemployment Rate In the State (HUIS), pursuant to the following equation:

$$1 + ((\text{Local Rate} / \text{HUIS}) * 4)$$

a. If a Project receives points for the unemployment rate of the proposed Project location and, after approval by the Authority, the Applicant changes its intended location to a county with a lower unemployment rate, such that the ranking of the Applicants would have been affected, the award shall be rescinded and automatically awarded to the next awardee in line.

b. If an award is rescinded due to changes in the proposed Project location, the Applicant may submit a revised Application with an updated Project location.

c. The local unemployment rate means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The highest unemployment rate in the state is unemployment rate for the county with the highest countywide rate reported. The most current annual average unemployment rate information available at the time of the Application submission shall be used.

(ii) If the Applicant has its Corporate Headquarters located in California, the Project shall receive one point, provided that:

a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also have its Corporate Headquarters in California.

(iii) If the Applicant is classified as small businesses under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and has fewer than 500 employees, the Project shall receive one point, provided that:

a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also be classified as small business under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and have fewer than 500 employees.

(iv) If the Applicant has not previously been approved for an award by the Authority, the Project shall receive five points, provided that:

a. If the Applicant has a parent company with an ownership interest greater than 50%, neither the parent company, nor its subsidiaries or affiliates may have been previously approved for an award by the Authority.

(68) 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.

(79) 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)(54).

(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 Section 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).

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(3) Designated Contacts. The Application must identify designated contacts who can respond to questions from the Authority or provide additional information if requested. If the designated contacts are not directly employed by Applicant, the Application must include appropriate documentation signifying the contact's authority to represent and act on behalf of the Applicant with respect to the Application.

(4) Applicant and Facility Information. Applicants are responsible for providing all requested information, which shall include:

(A) Applicant Information.

(i) Name, phone number, email address, mailing address, and taxpayer identification number of Applicant,

(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,~~ or the type of Recycled Resource Extraction Project. In the case of a Facility producing property or products that, after further manufacture, will become the Green Component of an Advanced Transportation Technology or Alternative Source product or system, the Applicant must describe both the property or product produced by the Facility and the Green Component of the Advanced Transportation Technology or Alternative Source product or system for which the product produced will be used.
- d. Current Facility status and a schedule indicating the estimated Facility construction start date through the placed-in-service date for the Qualified Property identified in the Application, including the expected date of any needed permits.
- e. Description of the sources of financing necessary for Facility completion, 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. For Alternative Source Projects producing Biofuels, the fraction of Biofuel produced that is used to offset external fuel purchases.
- j. Taxability of end of supply chain product for purposes of generating sales taxes.  
~~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 can be grouped together provided that 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, 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.~~

(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 (a) used to make Advanced Transportation Technologies or Alternative Source products, components, or systems, (b) utilized in an Advanced Manufacturing process, or (c) utilized in a Recycled Resource Extraction Project.~~

~~(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.~~  
~~(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 Qualified Products produced or amount of recycled material to be produced.~~  
~~(ii) Estimated average annual number of Qualified Products produced.~~

(iii) Estimated per unit sales price.

~~(iv) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.~~  
~~(iv) Estimated total Facility sales in dollars.~~

~~(v) Estimated percent of production costs from California Suppliers.~~  
~~(v) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.~~

~~(vi) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.~~  
~~(vi) Estimated percent of production costs from California Suppliers.~~



(vii) For Alternative Source and Advanced Transportation Projects, the Estimated Useful Lifespan of product, component, or system.~~(vii) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.~~

~~(viii) Estimated Useful Lifespan of product, component, or system.~~

~~(viii)~~ Estimated percent of total Qualified Products to be sold in California.

(ix) For Alternative Source or Advanced Transportation Projects, statement as to whether the technology, product, component, or system is a subcomponent of a Qualified Product or an end-of-supply-chain product.

~~(x) Statement as to whether the technology, product, component, or system is a subcomponent of a Qualified Product or an end-of-supply-chain product.~~

(x) For Alternative Source or Advanced Transportation Projects, total value of the end-of-supply-chain Green Component.

~~(xi) Total value of the end-of-supply-chain Green Component.~~

(xi) Estimated percent of total end of supply chain product sales in California.

(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.
- b. Applicable Recognized Energy Efficiency Standard.

- c. Annual baseline system consumption of energy per unit.
- 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.

(vi) For Recycled Resource Extraction Projects:

- a. Description of environmental benefits.
- b. Marginal increase in total amount of material recycled due to the sales and use tax exclusion.

(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) For Advanced Manufacturing Applicants only, Other Facility Information:

~~(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) For Advanced Manufacturing Applicants only, 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 may 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.

(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.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

**§ 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 (a) for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems, (b) for the design, manufacture, production or assembly of a component of the Green

~~Component of an Advanced Transportation Technology or Alternative Source product, component or system, (c) as part of an Advanced Manufacturing process, or (d) where at least 50.0 percent of the use of the Qualified Property is to process Recycled feedstock.(4) Include the purchase of tangible personal property otherwise subject to sales and use tax used substantially (a) for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems, (b) for the design, manufacture, production or assembly of a component of the Green Component of an Advanced Transportation Technology or Alternative Source product, component or system, 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(a) and 26011.8(b)(2) or;~~ as part of an Advanced Manufacturing process; or to process Recycled feedstock more than 50.0 percent of the time.

(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

## Agenda Item 4.B

cost of employee benefits (EB) and the cost of capital (\$CAP) are used in the following formula:

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

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

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

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

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

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

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

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

(ii) The price elasticity of demand for output ( $\eta$ ) 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:

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

(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:

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

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

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

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

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

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

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

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

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

If the Applicant produces Biofuel and utilizes a fraction of that Biofuel for purposes of operating the Facility and produces an end-of-supply-chain product that does not generate sales tax revenue, the IST will be reduced based on the fraction of the Applicant's Biofuel production that will offset external fuel purchases.

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

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

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

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 an estimate of annual tax liability (ATL) as determined by the Executive Director based on information collected by the California Franchise Tax Board, Applicant-provided data on estimated annual tax liability, or other sources as determined by the Executive Director; the value of the capital stock (VCS) used to produce the product; and the MIQP pursuant to the following formula:  
~~i. The ICIT is calculated using Applicant-provided data on estimated annual tax liability (ATL), the value of the capital stock (VCS) used to produce the product and the MIQP pursuant to the following formula:~~

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



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

d. The increase in property taxes (IPT) is the present value of the annual property taxes paid on the MIQP.

i. The annual property tax amount is calculated using MIQP and the current property tax rate (PTR) as determined by the Executive Director based on information collected by the California State Board of Equalization, pursuant to the following formula:

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

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

(ii) The indirect fiscal benefits (IFB) result from increased state and local revenues resulting from increased economic activity caused by additional purchases from in-state suppliers and increased employee wages resulting from the MIQP.

a. The increase in revenues is calculated using PVMISO and the ratio of state and local government revenues to gross state output (GRSO) as determined by the Executive Director using the sum of the latest two-year average of actual state general fund revenues from the California Department of Finance, the latest two-year average of actual aggregate city and county revenues excluding intergovernmental transfers and service charges from the cities annual report and the counties annual report from the California State Controller's Office, divided by the latest two-year average of gross state product from U.S. Department of Commerce's Bureau of Economic Analysis, pursuant to the following formula:

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

(2) 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.  
~~Environmental Benefits.~~

(3) Environmental Benefits.

(A) The allocated share (AS) is the estimated percent of the pollution benefit from the Green Component of the Advanced Transportation Technology or Alternative Source product, component, or system that can be attributed to the Applicant's use of the Qualified

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

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

and

$$AS = POT * FCC$$

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

(B) For Facilities producing the Green Component of Alternative Source or Advanced Transportation Technology products, excluding Biofuels, the estimated impact of pollution from a gallon of gasoline equivalent (GGE) or a MWh of electricity or equivalent. GGE refers to the number of gallons of a fuel that has the equivalent amount of energy to one gallon of gasoline.~~(B) The estimated impact of pollution from a gallon of gasoline equivalent (GGE) or a MWh of electricity. GGE refers to the number of gallons of a fuel that has the equivalent amount of energy to one gallon of gasoline.~~

(i) The dollar value of pollution costs associated with a GGE (\$GGE) is calculated based on the percent of sales in California (POSCA) as provided by the Applicant and the pollution cost per unit of volatile organic compounds (VOCs), nitrous oxide (NOx), and carbon dioxide or carbon dioxide equivalent (CO2) as determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies, pursuant to the following formula:

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

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

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

(iii) The dollar value per pound of any other offsetting energy pollutants (\$OP) shall be determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies.

a. Any non-greenhouse gas emissions benefits will be weighted according the POSCA.

(C) The total pollution benefit (TPB) will be calculated based on the marginal increase in product sales due to the sales and use tax exclusion in the following areas:

(i) Net change in use of electricity generated from alternative sources (increased use of alternative sources). The total pollution benefit (TPB) resulting from the net change in electricity generated from alternative sources is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

a. The LPB is calculated using information on the annual net electricity generation per unit (MWhG), the annual emissions per MWh of offsetting pollutants (OP) as provided by the Applicant, and estimates of the pollution cost in dollars of avoided MWh (\$MWh) and the pollution cost in dollars of any offsetting energy pollutants (\$OP) as determined by the Executive Director, pursuant to the following formula:

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

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.

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.

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

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

b. For Biofuels, the LPB is determined based on the net annual pollution benefit per unit (NAPB) as calculated by the Executive Director based on information from the California Air Resources Board or other state agencies, expert analysis, relevant research literature, and applicant provided information with respect to the net change in greenhouse gas emissions resulting from production and use of the alternative source product and the dollar value of pollution costs avoided by use of Biofuels as calculated based on the pollution cost per unit of carbon dioxide or carbon dioxide equivalent (\$CO2) as determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies multiplied by the NAPB pursuant to the following formula.

$$\text{LPB} = \text{NAPB} * \$\text{CO2}$$

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

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

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

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

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 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

TPB = Present Value (LPB \* AS \* MIU)

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

(v) Other environmental benefits. Any other environmental benefits asserted by the Applicant shall be evaluated by the Executive Director based on verification of Applicant-provided information regarding the methodology for calculating such benefits and shall be added to the appropriate Total Pollution Benefit (TPB) amount determined pursuant to these regulations.

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

(E) For Recycled Resource Extraction Projects, the environmental benefits score will be calculated based on the estimated greenhouse gas reduction due to increased use of recycled materials as follows.

(i) The estimated change in amount recycled (CAR) will be calculated as follows.

a. Annual production costs (APC) will be calculated as the sum of annual labor costs, production-related purchase costs, and the CAP.

b. The present value of production costs (PVPC) will be calculated based on APC, the 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.

$$\text{PVPC} = \text{Present Value}(\text{APC})$$

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.

c. The percentage change in production costs (PCPC) due to the sales and use tax exclusion will be calculated from the value of the sales and use tax exclusion (exclusion amount, or EA) and the present value of production costs (PVPC) using the following formula:

$$\text{PCPC} = \text{EA} / \text{PVPC}$$

d. The percent increase in recycling (PIR) is the estimated increase in the amount of material recycled due to the sales and use tax exclusion. The PIR is calculated from the PCPC, the price elasticity of supply (SE) for the recycled material, and the price elasticity of demand (DE) for the recycled material using the following formula:

$$\text{PIR} = \text{PCPC} * (\text{SE} * \text{DE}) / (\text{SE} + \text{DE})$$

i. The SE and DE will be determined by the Executive Director based on the relevant research literature or consultation with outside experts.

e. The CAR is calculated based on the PIR and the projected average annual amount of recycled material sold or shipped (ARM), as provided by the Applicant as follows:

$$\text{CAR} = \text{PIR} * (1 - \text{PIR}) * \text{ARM}$$

(ii) The greenhouse gas benefit (GGB) for each unit of material recycled will be determined by the Executive Director based on the relevant research literature, consultation with outside experts, or information provided by the California Air Resources Board or the Federal Environmental Protection Agency.

(iii) The dollar value of pollution costs associated with emission of a unit of CO<sub>2</sub> (\$CO<sub>2</sub>) will be determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies

(iv) The TPB will be determined based on the present value of the GGB and \$CO<sub>2</sub> as follows:

$$\text{TPB} = \text{Present Value}(\text{GGB} * \$\text{CO}_2)$$

a. 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.

~~(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, and Recycled Resource Extraction 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. Additional points shall be awarded as follows:

(A) Unemployment score. An Applicant may earn up to 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:



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

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 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:

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.

(C) Construction or installation jobs score. An Applicant may earn up to 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

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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.

(D) Emerging Strategic Industry score. An Applicant may earn up to 40 points if the Applicant's industry is in an Emerging Strategic Industry as defined in Section 10031(j). The Executive Director will determine if an Applicant's industry is an Emerging Strategic Industry and award points to those Applicants that qualify.

~~(E) Process improvement score. 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.~~

~~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.~~

(FE) For Advanced Manufacturing Applicants only, 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.

c. Applicants in Industry Clusters, as defined, will receive ~~40~~25 points.

(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:

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

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

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

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

c. The dollar value per unit of any other offsetting pollutants (\$OP) be weighted by the POSCA and incorporated by the Executive Director into the calculation of the out-of-state environmental benefits score.

d. The total value of out-of-state non-greenhouse gas pollution benefits (TOB) due to electricity generated from alternative sources (increased use of alternative sources excluding Biofuels) is calculated pursuant to the following formula:

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

and

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

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:

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

or

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

and

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

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:

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

and

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

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

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

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 greater than ~~100-20 for Advanced Transportation or Alternative Source Applications or 20 for Advanced Manufacturing Applications~~ will may be recommended for a sales and use tax exclusion. Notwithstanding the foregoing, where a project receives a score less than 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 any of the threshold values set forth in Section 10033(c)(6).

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

**§ 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(a)(7)).

(2) The equipment proposed for the sales and use tax exclusion to be a “project” (Pub. Res. Code Sec. 26003(a)(8)(B)).

(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 of the Qualified Property approved by the Authority will be stated in the letter.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

**§ 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 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 (a)(3)(C) 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) 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 subparagraph (A) below, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than fifteen percent (15.0%) of the total amount listed in the approval resolution; all purchases of Qualified Property must be made within three years of Application approval. ~~All purchases of Qualified Property must be made within three years of Application approval.~~ Regulatory Agreements for Facilities not meeting these requirements will be 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 all purchases of Qualified Property be made within three years of Application approval.



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(2) Obligation to inform the Authority. During the term of the Regulatory Agreement, Applicants must inform the Authority if the Qualified Property is moved out of the State of California or of any change in the ownership of the Qualified Property, including the name, ownership percentage, and mailing address of the new owners.

(A) Any transfer of Qualified Property ownership prior to the expiration of the Regulatory Agreement shall be evidenced by a written agreement between the parties to the transfer. Such sale or transfer may require Applicant to repay the amount of the sales and use tax exclusion if the new owner of the Qualified Property does not enter into a Regulatory Agreement with the Authority within 30 calendar days of the close of the transaction in which the owner acquires title to the Qualified Property.

(3) Certification letter and compliance report. During the term of the Regulatory Agreement, Applicants must submit an annual certification and compliance report. The certification letter must document that the Qualified Property was used for the purposes specified in the Application for the entire period since 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 Qualified Products;

(G) the amount spent on supplier purchases for 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 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 has not notified the Authority in writing, the Authority may, after written notice to the Applicant, rescind the approval resolution, 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, 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 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.

(8) Suspension. If the Applicant violates statute, regulations, or the terms of the Regulatory Agreement, the Executive Director may suspend the Regulatory Agreement until the Executive Director certifies that the Applicant is once again in compliance. Purchases made during this suspension will not be excluded from the imposition of sales and use tax.

(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).

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

**§ 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 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, except in the event an Application is not reviewed by staff due to oversubscription of the \$100 million annual program cap.

(b) Administrative Fee.

(1) The Authority shall charge an Administrative Fee to cover the costs associated with the Program, including the costs of compliance monitoring.

(2) The total Administrative Fee amount shall be .004 (four tenths of one percent) of the total amount of the Qualified Property purchased.

(3) In no case shall the total Administrative Fee be less than \$15,000 nor more than \$350,000.

(4) \$15,000 of the total Administrative Fee shall be due upon the execution of the Regulatory Agreement between the Applicant and the Authority.

(5) The balance of an Applicant's Administrative Fee shall be payable 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 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.

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(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.

(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.

(6) The initial \$15,000 paid by the Applicant at the time of executing the Regulatory Agreement will be credited to the Applicant's total Administrative Fee upon a determination of total amount of Qualified Property actually purchased.

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

(8) The Administrative Fee is not refundable, except as indicated in section (5)(B) above.

### (c) Other fees

(1) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution that must be approved by the Authority shall pay an additional administrative fee of \$500.

(2) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution that requires a revised application to be considered by the Authority shall pay .00005 (one two hundredth of one percent) of the total amount of Qualified Property identified in the Authority resolution approved by the board.

(A) In no case shall this fee be less than \$500 nor more than \$2,000.

(3) This fee shall be paid in checks payable to the Authority.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.