

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

***Request to Approve Regulation Modifications for the Sales and Use Tax Exclusion Program
for Manufacturers and Recyclers under the Emergency Rulemaking Process***

November 19, 2019

Prepared By: *Ashley Emery, Program Manager*

REQUEST

CAEATFA staff (“Staff”) request approval of regulations for the Sales and Use Tax Exclusion (“STE”) Program (the “Program”) to address the 2019 over-subscription in July and incorporate lessons learned from Program implementation (see Attachment A for full text of proposed regulations).

SUMMARY

BACKGROUND AND PUBLIC PROCESS

Program statute limits CAEATFA to awarding \$100 million in STE each calendar year, and by July 2019, the \$100 million had been exhausted, the first time in Program history for it to be fully awarded prior to the December Board meeting, and the first time the Program’s competitive criteria were used to determine which Applicants would be considered first. Given the limited resources and recent competitive nature of the Program, the CAEATFA Board requested that Staff evaluate CAEATFA and Program goals and priorities to determine how best to effectuate the purpose of the Program.

Staff has been identifying lessons learned throughout implementation, and began the process by educating the new Board members on the Program background; providing an overview of the legislative statutory goals, historical data on the Program’s portfolio of Applications, and characteristics of the projects; and summarizing the various policy issues and potential regulatory modifications. After briefing the CAEATFA Board members to get initial goals and priorities, Staff presented historical background and data on the Program, and provided a summary of policy issues and potential modifications to the Program’s regulations that could be considered for a public discussion at the September 9, 2019 Board meeting. The three general goals discussed were: (1) strategic investment of STE awards to strengthen promotion of policy goals, (2) maximize the number of eligible companies receiving an award, and (3) streamline administration and user experience. Staff also solicited written public comments on the potential modifications through September 20th (see Attachment B).

Based on the discussions with the Board representatives and stakeholders at the September Board meeting and the written comments received, Staff prepared draft regulations that were the subject of a public workshop on October 22, 2019, and a written comment period until October 29th (see Attachment C for a comparison of the current existing regulations, the initial draft regulation text,

and the current proposed regulations, and Attachment D for the written comments received on the initial draft regulation text).

The proposed regulations before the Board today reflect the feedback received from the Board and Staff's stakeholder outreach process. As was recommended by the Board at the September 9, 2019 Board meeting, Staff's approach to the regulations has been to make some incremental changes to address more immediate Program and Board priorities at this time, while reserving some of the more complex issues for the regular rulemaking process next year after Staff has been able to take more time to solicit input and thoughtfully consider the issues.

PROGRAM HISTORY

In March 2010, Senate Bill 71 (Padilla, Chapter 10, Statutes of 2010) directed CAEATFA to implement the Sales and Use Tax Exclusion Program. The legislation authorized CAEATFA to approve eligible projects for a sales and use tax exclusion on equipment and machinery ("Qualified Property") used for the "design, manufacture, production, or assembly" of either advanced transportation technologies or alternative energy source products, components or systems, as defined. The purpose of this program is twofold: to promote the creation of California-based manufacturing jobs that will stimulate the California economy and to incentivize the manufacturing of green technologies that will help reduce greenhouse gases, as well as reductions in air and water pollution or energy consumption.

In September 2012, Senate Bill 1128 (Padilla, Chapter 677, Statutes of 2012) expanded the Program to include Advanced Manufacturing projects. The legislation also placed an annual limit of \$100 million in STE awards for each calendar year. In October 2015, AB 199 (Eggman, Chapter 768, Statutes of 2015) further expanded the scope of the Program to include projects that process or utilize recycled feedstock.

In 2015, the STE Program became oversubscribed for the first time by \$66.1 million in application requests for projects under the three pre-existing pathways to eligibility (Alternative Source, Advanced Transportation, and Advanced Manufacturing), and again was oversubscribed in 2016. In August 2016, CAEATFA adopted regulations to incorporate an evaluation process for recycling projects under AB 199, as well as a \$20 million per Applicant cap and a competitive process whereby Applications are ranked based on specific objective criteria to determine the order of priority for consideration if the Program became oversubscribed in a given month.

In 2018, regulations incorporating program modifications to assist companies affected by emergency disasters such as fires, floods, storms, or earthquakes were approved by the Board at the June Board meeting, and were approved by OAL and became July 1, 2019. These amendments provide affected Applicants an Application Fee waiver and priority when the Program becomes competitive.¹

Most recently, in October 2019 Governor Newsom signed into law AB 1583, The California Recycling Market Development Act (Eggman, Chapter 690, Statutes of 2019), which extends the

¹ Because these regulations became effective July 1, 2019, after the Applications for the July 16, 2019 Board meeting were submitted in May, the points for Applicants affected by natural disasters were not incorporated in the competitive process, although no Applicant would have received the points.

sunset date of the Program from January 1, 2021 to January 1, 2026, and AB 176 (Cervantes, Chapter 672, Statutes of 2019), which add to the Application evaluation criteria, the extent to which a Project will result in the loss of permanent, full-time jobs in California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained. There have been previous legislative efforts to increase the \$100 million cap and allow for carryforward of unawarded or unused STE, but those have not been successful to date.

PROPOSED MODIFICATIONS TO THE REGULATIONS

CAEATFA staff is requesting approval of regulations to address the 2019 over-subscription in July and incorporate lessons learned to help improve Program efficiency and effectiveness.

On the following page is a summary of the substantive recommended regulatory changes. The full text of the proposed amended regulations can be found in Attachment A.

Competitive Criteria – § 10032(a)(7)

Current regulations provide that Applications will be accepted on a rolling basis, and in the event that CAEATFA receives applications in excess of the statutory \$100 million cap for that calendar year, the order in which the Applications shall be considered in the same month will be ranked based on five criteria:

- (1) Up to five points for the unemployment rate in the county of the facility,
- (2) One point for the presence of corporate headquarters in California,
- (3) One point if Applicant is a small business,
- (4) Five points if the Applicant is new to the Program, and
- (5) Five points if the Project is to rebuild or relocate due a natural disaster.

These criteria were chosen for two purposes. First, each of the criteria prioritizes Applicants that provide a benefit to the state. Secondly, the criteria are objective and verifiable by Staff at the time of application.

Staff recommends maintaining the status-quo of accepting Applications on a rolling basis until competitive. Accepting Applications on a rolling basis provides more flexibility to Applicants to meet their needs and business-decision timelines. Although CAEATFA was oversubscribed by July this year, this was the first year for such an early oversubscription so it is unclear if this was an anomaly. As mentioned above, Staff is recommending incremental modifications at this time and will consider and recommend additional changes, if needed.

In the event the Program does become oversubscribed, the proposed regulations amend the competitive criteria as follows:

- Environmental Benefits: 100 points for Applicants with Total Pollution Benefits (TPB) points greater than zero as calculated pursuant to Section 10033(c)(4).
- Unemployment: The Unemployment Score as calculated pursuant to Section 10033(c)(5)(A) (up to 50 points based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployment rate).

- Job Creation: The New Jobs Score as calculated pursuant to Section 10033(c)(5)(B) (up to 75 points based on cost of STE per job created).
- Natural Disaster Relief: 50 points for Applicants that can demonstrate the Project is to relocate or rebuild the Applicant’s Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application.
- California Headquarters: 15 points for Applicants with a California Corporate Headquarters as defined in Section 10031(l).

Although the existing competitive criteria were adopted by CAEATFA in August of 2016, they were not implemented until the July 2019 Board meeting, during which time Staff and the Board recognized the competitive criteria did not best reflect current policy goals and priorities. The proposed criteria are described in more detail below.

- Environmental Benefits (100 Points). Staff considered the Program’s statutory purpose and the Board’s interest in prioritizing projects with environmental benefits by awarding 100 points to projects with a TPB score greater than zero, generally Alternative Source, Advanced Transportation, and recycling projects that have quantifiable environmental benefits.
- Unemployment (Up to 50 Points). Staff also looked to statute and the Board’s interest in prioritizing job creation and projects located in areas of high employment by importing the points already awarded in the Application’s “Additional Points” section for unemployment and job creation. Applications will receive up to 50 points based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployed rate pursuant to the following formula: $\text{Points} = ((\text{local rate}/\text{state rate}) * 100) - 100$. For example, if the annual average statewide unemployment rate is 5.23%, and the local unemployment rate for the project is 7.5%, the project would earn 43 points as follows: $((7.5\%/5.23\%) * 100) - 100 = 43$ points.
- Job Creation (up to 75 Points). Applications will also receive up to 75 points based on the cost of the sales tax exclusion per job created as a result of the estimated marginal increase in equipment purchased from the STE.

Points for Job Creation
1 Job \leq \$50,000 in STE = 75 points
\$50,000 in STE < 1 Job \leq \$100,000 in STE = 60 points
\$100,000 in STE < 1 Job \leq \$150,000 in STE = 55 points
\$150,000 in STE < 1 Job \leq \$200,000 in STE = 45 points
\$200,000 in STE < 1 Job \leq \$300,000 in STE = 40 points
\$300,000 in STE < 1 Job \leq \$400,000 in STE = 35 points
\$400,000 in STE < 1 Job \leq \$750,000 in STE = 30 points
\$750,000 in STE < 1 Job \leq \$1,500,000 in STE = 20 points
1 Job > \$1,500,000 in STE, or 0 jobs created = 0 points

For example, if an Application requests \$7,000,000 in STE and the Project is anticipated to create 10 jobs as a result of the STE, 1 job created “costs” \$700,000 in STE, therefore 30 points would be awarded.

When selecting the existing competitive criteria in 2016, CAEATFA opted for criteria that were objective and verifiable by Staff at the time of application in an attempt to avoid relying on estimates when allocating the STE. However, Staff recognizes that the Program, by its nature as a front-end incentive to help Applicants make business decisions to move to or go in California must grant awards prior to investments and business plans being implemented, therefore Application information is based on projections. During the Application review process, Staff works to determine that all Application information is reasonable and internally consistent. Therefore, given the policy goal of job creation, Staff recommends including the points already used in the Application scoring process as part of the competitive criteria scores.

- Natural Disaster Relief (50 Points). In recognition of the benefit to the state to retain manufacturing facilities and manufacturing jobs impacted by certain emergency disasters, the proposed amendments would keep the competitive criterion that for a Project if the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application. To scale the points consistent with the other criteria and priorities, this proposed criterion is worth 50 points.
- California Headquarters (15 Points). The proposed regulations recommend keeping the competitive criterion for Applicants with Corporate Headquarters located in California because the presence of a corporate headquarters in California brings jobs for California residents and tax revenue that can be reinvested back into the state. The amendments scale the points consistent with the other criteria and priorities to increase from one point to fifteen points.

\$10 Million in STE Per Applicant Cap and Distribution of Additional STE Based on Project Benefits - § 10032(a)(4)

Current regulations limit Applicants to receiving \$20 million in STE each calendar year and provide Applicants the opportunity to receive additional STE at the end of the year if any of the \$100 million cap remains. The Board must announce if any STE will be available, and interested Applicants may submit an updated Application for consideration by the Board. STE is split evenly among eligible Applicants. If an Applicant requires additional STE for the Project, it may apply for additional STE in subsequent calendar years.

The proposed regulations lower the per-Applicant cap to \$10 million in STE each calendar year and award additional STE, if available, proportionally based on points earned from the same criteria as under the proposed competitive criteria process:

- Environmental Benefits: 100 points for Applicants with Total Pollution Benefits (TPB) points greater than zero as calculated pursuant to Section 10033(c)(4).
- Job Creation: The New Jobs Score as calculated pursuant to Section 10033(c)(5)(B) (up to 75 points based on cost of STE per job created).

- Unemployment: The Unemployment Score as calculated pursuant to Section 10033(c)(5)(A) (up to 50 points based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployment rate).
- Natural Disaster Assistance: 50 points for Applicants that can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application.
- California Headquarters: 15 points for Applicants with a California Corporate Headquarters, as defined in Section 10031(l).

The proposed amendments also enable the Executive Director to announce end-of-the-year availability of STE, rather than requiring a Board to vote to streamline the process. The Board will retain its authority to vote on whether to grant each interested Applicant additional STE.

The \$20 million STE cap amount was originally chosen based on historical data at the time, and was determined to most effectively balance the competing needs to (1) ensure a broad distribution of awards, and (2) incentivize large transformational projects that may have correspondingly large benefits to the state. Given the increased participation and competition in the Program, the \$20 million cap no longer effectively balances the need to ensure equitable distribution of awards. Based on award amounts to date, 90% of Applications have been for less than \$10 million in STE. Lowering the cap helps maximize the number of eligible Applicants receiving an award, but still enables the vast majority of Applications to be fully awarded with a sizable award (ability to purchase over \$119 million in equipment and machinery). Additionally, Applicants with larger projects may still receive additional STE if any remains at the end of the year, or by coming back to the Board for consideration in subsequent calendar years, effectively limiting the project to spending about \$119 million in a calendar year, but not capping the overall project size.

By allocating the additional STE at the end of the year proportionally based on points earned from the five proposed criteria, the Program can better strategically invest STE awards to strengthen promotion of policy goals, as compared to dividing the STE evenly among the eligible Applicants.

15% Purchase Requirement – § 10035(b)

The proposed regulations extend the timeframe to purchase 15% of Qualified Property from 1 year to 18 months, include execution of purchase orders as counting toward the 15%, and allow the Board to extend/waive the timeframe upon a finding of extraordinary circumstances.

Since implementing the 15% purchase requirement in October 2016, when the first Applications under the new regulations were considered, Staff has learned that many Projects have significant lead-times for equipment purchases, with equipment sometimes not arriving and being paid for until six months to a year after a purchase order has been executed. The purpose of the 15% purchase requirement was to help maximize the Program's benefit to the state by encouraging Applicants to apply when they have more certainty of the Project's feasibility and likelihood of moving forward. Providing a standard 18 month timeframe and allowing purchase orders to count toward the 15% helps accommodate Projects with equipment purchases that long lead-times while still encouraging Applicants not to apply too soon. Staff believes that the execution of a purchase order also demonstrates an Applicant's intent and readiness to move forward, and does not go

against the purpose of the purchase requirement, which is to avoid Applicants from being approved but not moving forward at all with the Project.

Staff also recommends allowing the Board to waive or extend the 15% purchase requirement under extraordinary circumstances, which may include unforeseen permitting issues, but does not include a current lack of funding. In 2019, two approved Projects for a total of \$21 million in STE were from previously approved Applicants that did not meet the 15% purchase requirement. To help provide some additional flexibility for unforeseen circumstances, such as permitting delays, the proposed regulations give the Board the ability to consider requests for an extension of the timeframe. However, to help maintain the requirement’s purpose of discouraging Applicants from applying before they are ready, the ability to waive is limited to extraordinary circumstances and does not include a current lack of funding.

Eligibility and Scoring - § 10032(c), 10033(b)-(c)

Review of Legal Status Questionnaire - § 10032(c)(2), § 10033(b)(3)

Currently, Staff looks at the totality of the circumstances when reviewing workplace safety allegations in Legal Status Questionnaires (“LSQ”), including the cause of an incident, any mitigating factors, subsequent preventative/corrective steps to prevent future similar events, the frequency of incidents, industry trends, etc.

The proposed regulations would make Applicants ineligible for an STE award if the LSQ includes a finding of guilty of a willful violation by Occupational Safety and Health Administration (“OSHA”) or a case under the OSHA Severe Violator Enforcement Program. Given the wide range of the types of Applicants CAEATFA sees (different industries, years in business, etc.), Staff believes that reviewing LSQ’s based on the totality of circumstances generally works best, but that the severity of being found guilty of a willful violation by OSHA or having a case under the OSHA Severe Violator Enforcement Program justifies a bright-line eligibility requirement. The proposed regulations also update the LSQ version date.

Additional Benefits Points § 10032(c)(4)(F), § 10032(c)(5)(E)

Existing regulations provide that Advanced Manufacturing Applicants can receive 25 points for having a facility that performs research and development in California, 25 points for partnerships with educational institutions to train employees or potential future workers, and 25 points for being part of an industry cluster. In recognition of the benefits of these factors, and that they may apply to all types of Applicants, the proposed regulations open up these points to all eligibility pathways, not just Advanced Manufacturers. Additionally, the proposed regulations add more specificity to the types of training opportunities that qualify for the workforce partnership points, including training opportunities for workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans.

The proposed amendments also remove the caveat that CAEATFA will not use these points to adjust an Applicant’s score if it already exceeds the points-threshold requirement so that the CAEATFA Board has a full scope of the benefits of a Project when reviewing an Application.

Other Changes

Administrative Changes

The proposed regulations amend Sections 10032(a)(2), 10032(b)(4)-(5), and 10036(a)(3)) to no longer require Applicants to provide a hard copy of their Applications. Section 10032(b)(4) is also amended to fix a section reference.

Clarifying Language

- §§ 10031(a) and 10036(b)(5) – Amended to clarify when Administrative Fees are due and how they are calculated and paid with each semi-annual report.
- § 10032(a)(7) – Amended to clarify the competitive criteria only apply to the Applications submitted for the Board meeting at which the Program becomes oversubscribed, and not also to Applications already under review for an earlier Board meeting.
- § 10033(c)(4) – Amended to clarify that Advanced Manufacturing Applications do not receive a “Total Pollution Benefits” dollar amount calculation pursuant to Sections 10033(c)(4)(C) and 10033(c)(4)(E) as Alternative Source, Advanced Transportation and Recycled Resource Extraction Applications do. This section is also amended to update a section reference.

Updates to Definitions and Section References, and Other Technical Changes

- § 10032(p) – Updated definition of Facility to include Advanced Manufacturing and recycling projects.
- § 10031(v) – Updated statutory section reference.
- § 10031(w) – Updated definition of Qualified Property to include recycling projects
- § 10032(a)(1) – Updated section references to also include § 10032(a)(9), which also is an exception to allowing Applications to be submitted for consideration at any time.
- § 10032(c)(4)(F)(iii) – Fixed numbering.
- § 10033(b)(1)-(2) – Reworded because the proposed amendments add another eligibility requirement that applies to the Applicant and not necessarily the Facility.
- § 10033(c)(5)(D) – Updated regulation section reference.
- § 10033(c)(5)(F) – Updated regulation section reference.
- § 10034(e)(2) – Updated statutory section reference.

RULEMAKING PROCESS

CAEATFA is granted emergency rulemaking authority under Public Resources Code Section 26009. 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. CAEATFA will undertake the regular rulemaking process during this time-period, which will provide additional opportunity to consider and assess more complex modifications to the Program and incorporate AB 176.

TENTATIVE TIMELINE

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

August 2019	Staff briefs Board to provide background information and solicit input on goals and policy priorities.
September 9, 2019	Board meeting to discuss potential modifications to the Program regulations and solicit public input.
September 20, 2019	Written comments on the potential modifications to the Program regulations due.
October 22, 2019	Public workshop to discuss draft regulation text.
October 29, 2019	Written comments on draft regulations due.
November 19, 2019	Board considers the proposed amendments to the regulations. If approved, begin five-day Notice of Emergency Regulations.
November 27, 2019	Submit emergency rulemaking package to Office of Administrative Law for review and approval (10-day review period).
December 9, 2019	Regulations become effective for 180 days. Begin accepting applications for the 2020 calendar year.
December 20, 2019	Application deadline for February 18, 2020 Board meeting.

RECOMMENDATION

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

ATTACHMENTS

Attachment A: Text of Current Proposed Amendments to Program Regulations

Agenda Item – 4.C

- Attachment B: Written Public Comments on the Potential Modifications Discussed at the September 9, 2019 Board Meeting
- Attachment C: Comparison of Current Existing Regulations, Initial Draft Regulations, and Current Proposed Regulations
- Attachment D: Written Public Comments on Initial Draft Regulations Discussed at the October 22, 2019 Public Workshop

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

November 19, 2019

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (“Authority”) is authorized by California Public Resources Code Section 26009 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 (the “Regulations”) relating to its implementation of the Sales and Use Tax Exclusion Program (the “Program”), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to implement the 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 emergency regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting regular regulations to the Office of Administrative Law.

Section 3. 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 4. This resolution shall take effect immediately upon its approval.

**ATTACHMENT A – TEXT OF CURRENT PROPOSED AMENDMENTS TO
PROGRAM REGULATIONS**

**TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS**

Title 4. Business Regulations

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

Article 2. MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM

§ 10031. Definitions.

- (a) “Administrative Fee” means the fee payable ~~following approval of an Application upon~~
the execution of the Regulatory Agreement between the Applicant and the Authority and 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).

(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 Manufacturing, Advanced Transportation Technologies or Alternative Source products, components, or systems, or a facility that includes or will include tangible personal property that 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. 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.

(s) “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 Project resides.

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

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

(v) “Project” is defined as stated in Section ~~26003(a)(8)(B)~~26011.8(b)(1) of the Public Resources Code. Project does not include machinery or equipment that utilizes or is designed to utilize an Alternative Source.

(w) “Qualified Product” means an Advanced Transportation Technology or Alternative Source product, component or system, ~~or~~ a product produced with an Advanced Manufacturing Process, or a product made by processing Recycled feedstock or utilizing Recycled feedstock.

(x) “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. 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.

(y) “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.

(ab) “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 subparagraphs (3) and (9) 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), (8), and (9) 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~~ \$10 million of sales and use tax exclusions (STEs) per Applicant, per calendar year, based on the average statewide sales tax rate at time of Application. For any Applicant which has a parent company with an ownership interest greater than 50%, the ~~\$20 million~~ \$10 million cap also applies to the Applicant’s parent company and the parent company’s subsidiaries or affiliates.

(A) If STE will be available at the last Authority board meeting of the calendar year, the Authority may provide additional STE to Applicants that qualified for additional STE but were capped at ~~\$20 million~~ \$10 million of STE. Applicants wishing to exceed

the ~~\$20 million~~\$10 million cap shall bring a revised Project Application or a new Application before the Authority for consideration in December of the same calendar year in which the original Application was approved. The revised or new Application shall include updated information requested in Section 10032 and will be evaluated pursuant to Section 10033. The ~~Authority~~Executive Director 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 seeking an STE award above the \$10 million cap shall be determined as follows: by the Executive Director, and shall be the amount of the Applicant's approved award, plus an amount calculated by taking the unawarded STE for that calendar year and dividing it evenly between all Applicants that wish to exceed the \$20 million Project cap, but not to exceed the requested STE for any Applicant. For each Applicant seeking additional STE above the \$10 million cap, an additional award score shall be calculated pursuant to the following formula:~~

The additional award score will be the sum of the following:

100 points for Applicants with Total Pollution Benefits (TPB) points greater than zero as calculated pursuant to Section 10033(c)(4)

The Unemployment Score as calculated pursuant to Section 10033(c)(5)(A)

The New Jobs Score as calculated pursuant to Section 10033(c)(5)(B)

50 points for Applicants that can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application

15 points for Applicants with a California Corporate Headquarters as defined in Section 10031(l)

The proportionate share of total points awarded for all Applicants seeking an additional award shall be calculated by dividing the Applicant's additional award score by the sum of the scores for all Applicants seeking an additional award. The additional award for each Applicant shall be calculated by multiplying each Applicant's proportionate share of points by the total unawarded STE.

In the event that an Applicant's additional award exceeds the requested STE amount for that Applicant, the excess STE above the amount requested shall be reallocated to the remaining Applicants based on the remaining Applicants' proportionate share of total points.

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).

(5) To the extent that total sales and use tax exclusions awarded during the calendar year reach \$100 million (the statutory cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the statutory cap will be placed on a waiting list. 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 are ranked, based on Competitive Criteria. 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.

(6) 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 by the deadline for a particular Board meeting represent STEs in excess of the statutory cap for that calendar year, the order in which the Applications submitted for that particular Board meeting 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:~~

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

- ~~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.~~
- ~~(v) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two year of the time of application, the Project shall receive five points.~~(i) The competitive criteria score will be the sum of the following:

100 points for Applicants with Total Pollution Benefits (TPB) points greater than zero as calculated pursuant to Section 10033(c)(4)

The Unemployment Score as calculated pursuant to Section 10033(c)(5)(A)

The New Jobs Score as calculated pursuant to Section 10033(c)(5)(B)

50 points for Applicants that can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application

15 points for Applicants with a Corporate Headquarters, as defined in Section 10031(l), located in California

(8) 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.

(9) 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 if the Application Fee is not received within five (5) business days of submission of the Application, unless an Application is a resubmission pursuant to Section 10032(a)(~~54~~)(A).

~~(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~~August 14, 2018).

(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.

(vii) Address of the Applicant's Corporate Headquarters as defined in Section 10031(l).

(viii) If applicable, documentation demonstrating the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application.

(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, 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.

(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.

- (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.

(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.
- (ii) Estimated average annual number of Qualified Products produced or amount of recycled material to be produced.
- (iii) Estimated per unit sales price.
- (iv) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.
- (v) Estimated percent of production costs from California Suppliers.
- (vi) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.
- (vii) For Alternative Source and Advanced Transportation Projects, the 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) For Alternative Source or Advanced Transportation Projects, 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 CO₂ (or equivalent) emitted per MWh or equivalent.

- c. Lbs. of SO₂ emitted per MWh or equivalent.
 - d. Lbs. of NO_x emitted per MWh or equivalent.
 - e. Amount of other pollutants emitted per MWh or equivalent.
 - f. Pollution cost of other pollutants emitted per MWh or equivalent.
- (ii) For Facilities producing the Green Component of Alternative Source energy efficiency products, components or systems:
- a. Type and units of energy conserved.
 - b. 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:

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, including workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans, 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.

~~(iviii)~~ 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 Facility must 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.

(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 part of an Advanced Manufacturing process; or to process Recycled feedstock more than 50.0 percent of the time.

(2) ~~Produce~~The Facility must produce benefits to the State of California, as determined by the Authority subject to the criteria and evaluation process identified herein.

(3) The Applicant must not have disclosed as part of its Legal Status Questionnaire a finding of guilty of a willful violation by the Occupational Safety and Health Administration or a case under the Occupational Safety and Health Administration’s Severe Violator Enforcement Program.

(c) Evaluation. Applications shall be scored according to the benefits provided to the state by the marginal increase in Qualified Property purchases resulting from the sales and use tax exclusion. Applicants must demonstrate that the benefits of the marginal increase in Qualified Property purchases exceed the cost to the state of the sales and use tax exclusion. Benefits can be a combination of fiscal, environmental and other benefits, as specified. Each Application will be evaluated based on these elements as specified below.

(1) Fiscal Benefits

(A) The estimated percent increase in capital investment (PICI) resulting from sales and use tax exclusion. The increase in capital investment will be calculated based on the factor share of capital (ω), the price elasticity of demand for output (η), the elasticity of substitution between capital and labor (σ), and the change in user cost from the sales tax exclusion (equal to the current statewide average sales tax rate or STR) according to the following formula:

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

(i) The factor share of capital (ω) is calculated for each Applicant depending on the capital stock's contribution to the firm's value-added output. To calculate the factor share of capital, Applicant-provided information about estimated annual sales value (Sales), production-related purchases from suppliers (Supplies), labor costs

(Labor), the value of the capital stock (VCS), and determinations made by the Executive Director based on the relevant research literature and consultation with outside experts of the cost of employee benefits (EB) and the cost of capital (\$CAP) are used in the following formula:

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

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

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

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

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

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

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

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

(ii) The price elasticity of demand for output (η) and the elasticity of substitution between capital and labor (σ) are determined by the Executive Director based on the relevant research literature and consultation with outside experts.

(iii) The change in user cost is the same as the sales tax rate (STR) as determined by the Executive Director based on information collected by 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).

$$TFB = DFB + IFB$$

(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.

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

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

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

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:

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

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

c. The ICIT paid by the company on its profits is the present value of the estimated annual tax liability that is attributable to the Qualified Property.

i. The ICIT is calculated using 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:

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

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.

(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:

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

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.

(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:

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

(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 to the POSCA.

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

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

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

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

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.

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.

$$\text{LPB} = \text{NAPB} * \$\text{CO}_2$$

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

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

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

(iii) Net change in use of 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:

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

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:

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

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

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

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

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

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

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

(i) Applicants may receive points for the following:

a. Applicants with an environmental sustainability plan that describes the Applicant's plans to reduce energy use or water use and reduce solid waste, hazardous waste, or air pollutant emissions at the Facility will receive 20 points.

b. Applicants with Facilities that reduce energy use by at least five percent relative to the baseline identified in the Application will receive 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:

$$PCPC = EA / PVPC$$

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:

$$PIR = PCPC * (SE * DE) / (SE + DE)$$

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:

$$CAR = PIR * (1 - PIR) * ARM$$

(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, information from other state agencies, or the Federal Environmental Protection Agency Waste Reduction Model (WARM). Where the California Air Resources Board (CARB) has made modifications or developed an alternative to the WARM model, the CARB measurements will be used.

(iii) The dollar value of pollution costs associated with emission of a unit of CO₂ (\$CO₂) 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 \$CO₂ as follows:

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

- 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.

(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, 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)(~~23~~)(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:

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

- 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 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(jm). The Executive Director will determine if an Applicant's industry is an Emerging Strategic Industry and award points to those Applicants that qualify.

(E) ~~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, including workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans, will receive 25 points.
- c. Applicants in Industry Clusters, as defined, will receive 25 points.

~~(G)~~(F) Out-of-state environmental benefits score. An Application may be awarded points for non-greenhouse gas environmental benefits attributable to Advanced Transportation Technologies or Alternative Source products, components, or systems sold outside of California, pursuant to the following:

(i) The Executive Director will calculate the value of the non-greenhouse gas environmental benefits resulting from the marginal increase in out-of-state product sales due to the sales and use tax exclusion, pursuant to the following equations:

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

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

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

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

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

- d. The total value of out-of-state non-greenhouse gas pollution benefits (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 20 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)~~26011.8(b)(1)).

(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~~ eighteen (18) months of approval by the Authority, the Applicant must make purchases or have executed purchase orders of Qualified Property totaling not less than fifteen percent (15.0%) of the total amount listed in the approval resolution; Except as noted in subparagraph (B) below, 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 of extraordinary circumstances and that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the Applicant make purchases or have executed purchase orders of Qualified Property totaling not less than fifteen percent (15.0%) of the total amount of Qualified Property listed in the approval resolution within eighteen (18) months of Application approval. Extraordinary circumstances may include, but are not limited to, unforeseen permitting delays, but do not include a current lack of funding.

~~(A)(B)~~ Upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that all purchases of Qualified Property be made within three years of Application approval.

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

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

(3) Certification letter and compliance report. During the term of the Regulatory Agreement, Applicants must submit an annual certification and compliance report. The certification letter must document that the Qualified Property was used for the purposes specified in the Application for the entire period since 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) Except as provided in paragraph (5) below, 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~~received by CAEATFA within five (5) business days of the Application submission.

(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.

(5) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application, the Executive Director shall waive the Application Fee.

(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~~ until the total Administrative Fee has been paid.

(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.

Agenda Item – 4.C

(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.

ATTACHMENT B –

**WRITTEN PUBLIC COMMENTS ON THE
POTENTIAL MODIFICATIONS
DISCUSSED AT THE
SEPTEMBER 9, 2019 BOARD MEETING**



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

Solidarity House

8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000

GARY R. JONES, *PRESIDENT* RAY CURRY, *SECRETARY-TREASURER*
VICE-PRESIDENTS: TERRY DITTES • CINDY ESTRADA • RORY L. GAMBLE

September 20, 2019

Treasurer Fiona Ma
CAEATFA Executive Director and Board Members
915 Capitol Mall, Room 538
Sacramento, CA 95814

Dear Treasurer Ma, CAEATFA Executive Director and Board Members,

On behalf of the one million active and retired members of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers (UAW) — and our tens of thousands of California members and retirees — we appreciate the opportunity to share our views on CAEATFA program changes.

We appreciate CAEATFA's mission to support environmental innovations in manufacturing and commend the Board for considering program adjustments through rulemaking. In our view, it is important for California to continue to pursue policies that stimulate growth in green technologies however it must design programs that incentivize the creation of high-quality jobs that provide safe working conditions, free exercise of workers' rights, stable career paths and economic stability for families.

Currently, CAEATFA has very limited information about the types of jobs applicants' projects will create, making it difficult to assess the value-add for the communities directly affected, much less California more broadly. By strengthening job quality provisions, CAEATFA could get closer to ensuring the State reaps net benefits.

An essential component of quality jobs criteria are specific occupational health and safety requirements, which would provide CAEATFA clarity that could streamline the evaluation of projects and ensure that awards are granted to applicants who comply with relevant laws and regulations.

Additionally, CAEATFA appears hindered by inadequate tools to address problems that arise after a project has been awarded a sales tax exclusion (STE). CAEATFA should have clearer authority to terminate contracts or issue claw backs from companies that fail to maintain and operate in accordance with the Master Agreement or applicable local, state, and federal laws and regulations.

We are encouraged by the board’s consideration of Jobs/Workforce criteria as part of the Proposed Changes to Program Regulations presented on Sept 9.¹ In this letter we will suggest ways CAEATFA could enhance job quality and workforce development, which complement and strengthen some of the ideas currently under consideration.

Evaluate Applicants Based on Job Quality

CAEATFA should require an affirmative finding that proposed projects will create “high-quality jobs” as part of the evaluation of whether a proposal will produce net benefits for the state, with meaningful weight on job quality in the scoring.

High quality jobs should be evaluated based on specified criteria, including, among others:

- The extent to which the project will create new, permanent, direct-hire jobs in the State
- Wages, including the minimum and average wage for each classification of employees
- Description and average value of benefits and fringe benefits for each classification of full-time employees proposed to be hired or retained, including the type of, and amount contributed to, any employee retirement plan and the amount of health care benefit premium employees are required to pay, and the average costs employees pay versus the amount paid by the health care plan²
- A requirement that projects not rely on workers employed through temporary agencies or subcontractors
- Disclosure of the expected number, percentage, and duration of any portion of the work that is expected to be performed by temporary workers employed through temporary agencies
- Applicant’s compliance history with applicable labor, employment, health and safety laws, and environmental laws as well as any history of serious, repeated, willful, and/or pervasive violations of such laws with inadequate remediation
- A narrative description of the manufacturer’s efforts to provide job access and training to workers from disadvantaged communities including women, racial minorities, formerly incarcerated individuals, and veterans
- A disclosure of Health & Safety violations, injury rates and the entity’s OSHA 300 and 300A logs (or comparable data if the company is not otherwise required to keep OSHA 300 logs)
- Absence of any requirement that employees sign pre-dispute arbitration agreements

¹ <https://www.treasurer.ca.gov/caeatfa/meeting/2019/20190909/staff/4a.pdf>

² For example, see CalCompetes:

[https://govt.westlaw.com/calregs/Document/1F162D06EBA6D48ADA91BD982FA5675B5?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1&ignorebhwarn=ignoreWarns](https://govt.westlaw.com/calregs/Document/1F162D06EBA6D48ADA91BD982FA5675B5?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1&ignorebhwarn=ignoreWarns)

These changes would likely require amending “Application Requirements” regulation (Cal Code Regs. tit. 4, §10032, “Eligibility Requirements and Application Evaluation” regulation (Cal. Code Regs. tit. 4, §10033) and “Approval of Applications by the Authority” regulation (Cal. Code Regs. tit. 4, §10034).

Require evaluation health and safety violations

CAEATFA rules should make an applicant ineligible if it has an unacceptable health and safety record, even if applicant has the minimum required points. An “unacceptable health and safety record” should be defined as being cited by Cal-OSHA or federal OSHA for more than three “serious” violations in the previous five years.

CAEATFA should also assign meaningful weight to the evaluation of an applicant’s track record on workplace safety, based on disclosure of:

- OSHA citations, violations and penalties from past five years, including serious and/or repeat violations
- Past five years of OSHA 300 injury and illness logs and OSHA 300A Summary of Work-Related Injuries and Illnesses (or comparable data if the manufacturer is not otherwise required to keep OSHA 300 logs), and injury rates compared to industry average (based on 300A)
- Applicant’s health and safety plan based on California’s Injury and Illness Prevention Program template

These changes would likely require amending “Application Requirements” regulation (Cal Code Regs. tit. 4, §10032, “Eligibility Requirements and Application Evaluation” regulation (Cal. Code Regs. tit. 4, §10033) and “Approval of Applications by the Authority” regulation (Cal. Code Regs. tit. 4, §10034).

Post-Award Tools for Failure to Comply with Law

To ensure that CAEATFA is benefiting law-abiding companies, the Authority needs additional tools to suspend Master Agreements or claw back awards in the event a STE recipient commits legal violations subsequent to the award.

CAEATFA rules should be amended to require that if a STE recipient is found to have violated applicable labor, employment, health and safety, or environmental laws, the Qualifying Property will be deemed not to have been “installed, maintained and operated in accordance with all applicable local, state and federal laws and regulations,” as required by the Regulatory Agreement.

Regulation should require the Executive Director to determine that the recipient has violated the terms of the Agreement in the case of a citation for a “serious” health and safety violation, or a failure to comply with other applicable labor, employment, and environmental laws, and that the

Executive Director may therefore either suspend the Agreement until the Executive Director certifies that the Applicant is once again in compliance or begin processes to terminate the Agreement and recover the financial benefit awarded to the applicant.

These changes would require amending “Regulatory Agreement and Compliance” regulation (Cal. Code Regs. tit. 4, §10035).

Conclusion

By adopting enhanced job quality standards, CAEATFA could ensure that the State’s investment in environmental innovations supports the creation of high-quality jobs that in turn generate long-term benefits for workers, their families and California communities.

Thank you for considering our comments, we look forward to further engagement.

Sincerely,

A handwritten signature in blue ink, appearing to be "JN", with a long horizontal flourish extending to the right.

Josh Nassar
Legislative Director
United Auto Workers

JN:rk
opeiu494/aficio



September 20, 2019

Mr. Matthew Parsons
CAEATFA
915 Capitol Mall, Rm 538
Sacramento, CA 95814

**Re: Comments on Proposed Modifications to CAEATFA's Sales & Use
Tax Exclusion Program**

Dear Mr. Parsons:

I am writing on behalf of the Bioenergy Association of California (BAC) to provide comments on the proposed modifications to the Sales & Use Tax Exclusion Program. BAC strongly supports the program and supported its reauthorization in the Legislature this year. Several bioenergy projects have benefitted from the tax exclusion program and those projects are now supplying low carbon transportation fuels and distributed generation, renewable power in California. As CAEATFA considers changes to the program, BAC recommends one important change, which is to add the Short-Lived Climate Pollutant Reduction as a separate and heavily weighted scoring criterion. Doing so will ensure that the program maximizes benefits for the climate, air quality, waste reduction, wildfire prevention, and community resilience.

BAC represents more than 70 local government agencies, private companies, utilities, environmental groups, investors, and others working to convert organic waste to energy. BAC members are developing community scale bioenergy projects using advanced technologies such as gasification and anaerobic digestion, that are cleaner and more efficient than direct combustion and also produce beneficial co-products including biochar and compost.

Bioenergy projects are critical to reduce the most damaging climate pollutants, known as Short-Lived Climate Pollutants (SLCP's). SLCP's don't remain in the atmosphere for long, but their global warming impact is tens to thousands of times more damaging to the climate on a 20-year time horizon than carbon dioxide. Reducing SLCP's is a critical part of the state's climate strategy as it is the only measure that immediately begins to reverse climate change and its impacts.¹ In fact, California is counting on

¹ *Short-Lived Climate Pollution Reduction Strategy*, adopted by the California Air Resources Board in March 2017. Available at: https://www.arb.ca.gov/cc/shortlived/meetings/03142017/final_slcp_report.pdf.

SLCP reductions to achieve more than one-third of all the climate reductions required by 2030 to comply with SB 32.² In addition, SB 1383 (Lara, 2016) requires 40 percent reductions in methane and anthropogenic black carbon by 2030. The state's *Short-Lived Climate Pollutant Reduction Strategy* in turn relies heavily on converting organic waste to energy (bioenergy) to reduce methane from landfill waste and dairies and to reduce black carbon from wildfires and controlled burns of agricultural and forest waste.³

Increasing bioenergy production is also important for air quality. Biogas made from organic waste can be used in near-zero emission trucks in place of far more polluting diesel trucks. According to the California Air Resources Board, biogas powered heavy duty trucks can cut air pollution – including toxic air contaminants from diesel – by 90 percent or more and can cut climate pollution by more than 100 percent. Bioenergy can also reduce the pollution from open burning of agricultural and forest waste and from wildfire, which is now one of the largest sources of air pollution in California.

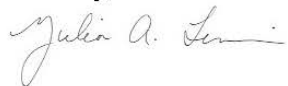
Bioenergy can also produce very low carbon, renewable gas. That gas will be critical to maintain manufacturing in California as many industrial processes rely on gas and cannot be electrified. Increasing biogas production will, therefore, help California to maintain manufacturing and industrial jobs while decarbonizing our economy.

Finally, bioenergy can convert local organic waste into local energy supplies, which will be increasingly important to ensure community resilience in the face of wildfires, more severe storms and heat waves, flooding, and mandatory power shut-offs. Every community produces organic waste and biogas from landfills and wastewater treatment facilities. That organic waste and biogas can help provide power, heating and cooling when other energy supplies are not available.

For all of these reasons, BAC urges CAEATFA to add one additional criterion to the sales & use tax exclusion program, which is to prioritize projects that reduce SLCP emissions. Given that SLCP reduction is the only measure that impacts the climate right away, and that it also has significant benefits for public health and safety, including SLCP reduction as a criterion will ensure that program participants are developing the most urgently needed projects to meet the state's climate and air quality requirements.

Thank for your consideration of these comments.

Sincerely,



Julia A. Levin
Executive Director

² *California's 2017 Climate Change Scoping Plan*, adopted by the California Air Resources Board in November 2017, at 28, Figure 7

³ *Short-Lived Climate Pollution Reduction Strategy*, footnote 1 above. See, eg, pages 3, 4, 28, 29, 125.



September 20, 2019

Matthew Parsons
CAEATFA
915 Capitol Mall, Rm 538
Sacramento, CA 95814

Re: Proposed Modifications to the STE Program

Dear Mr. Parsons:

The California Manufacturers & Technology Association (CMTA) appreciates the opportunity to comment on the potential modifications to the Sales & Use Tax Exclusion Program proposed on September 9, 2019.

CMTA represents 400 businesses from the entire manufacturing spectrum – including large, medium, and small manufacturers – generating more than \$285 billion every year and employing more than 1.3 million Californians. Many of California's 30,000 manufacturing firms have found immense value in CAEATFA's STE Program; as stakeholders, manufacturers have been able to work in tandem with the state to further important public policy goals while also spurring their own innovation.

As you know, manufacturers' participation in the CAEATFA program, for example, has supported projects that have developed the next generation of electric vehicles, lithium batteries, biogas capture and production technology, solar photovoltaic manufacturing, and new methods of recycling plastic and medical waste, producing a net fiscal and environmental benefits for the state of tens of millions dollars.¹

The manufacturing industry views CAEATFA as a resounding success, as well as a model for well structured, well regulated state incentive program. As a reminder, when this program was evaluated in November 2018 by an independent consulting firm, the scoring criteria for applicants was found to be sound and the the study advised that potential adjustments to the scoring process would likely produce inferior results. CAEATFA's Board has, historically, wisely chosen a deliberative, thoughtful, and reserved approach when considering modifications to the program. Which is why we would encourage the Board to take more time to study any potential modifications in depth before enacting any changes.

Manufacturers would encourage the Board to consider scoring additional points to applicants that are headquartered in California or who procure qualified equipment for their project from suppliers headquartered in California. This modification is consistent with the recommendations of the November study, which found that the companies that received the STE award that either failed to produce any benefits or produced less than the anticipated benefits were those that "were either sold, went out of business. . . , or were moved out of state." Companies that have chosen to commit to placing their headquarters in California or purchase a meaningful share of their equipment from California are more likely to stay in the state long enough to produce the desired benefits the STE program.

¹ Blue Sky Group, "The CAEATFA Sales Tax Exclusion Program: Assessment of Program Performance to Date, p.4-5 (Nov. 13, 2018) (available at <https://www.treasurer.ca.gov/caeatfa/meeting/2018/20181113/staff/3.a.1.pdf>)

Manufacturers would encourage scoring additional points to companies that have local partnerships with educational institutions to train current or future workers. According to the same study, “[t]hese partnerships contribute to local employment by developing a match between the skills of the local labor pool and those needed by local employers.” This furthers the goal of the CAEATFA program by addressing the most serious problem facing manufacturers, especially those attempting to innovate and adopt advanced technology: California manufacturers are currently experiencing a shortage of skilled workers like engineers, shift production supervisors, and systems architects that will only get worse as the industry’s existing labor force continues to retire. Building out California’s skilled labor force would allow for the STE program to produce an indirect, non-monetary benefit for the entire state.

Manufacturers agree that safety is important. We support the exclusion of companies that are on Cal-OSHA’s Severe Violator Enforcement Program list or guilty of a willful OSHA violation. We would encourage the Board to consider prospectively incorporating safety concerns their evaluation criteria instead of looking retroactively or in an ad-hoc fashion after safety concerns have been alleged. We support providing additional points to applicants that create plans that detail the ways manufacturers are incorporating safety into the design of their processes and facilities.

Manufacturers are concerned about considering permanent full-time jobs lost as a result of the program. We believe that such a criteria should be carefully defined and understood before adoption. Often, manufacturers have found that claims of the connection between the loss of certain jobs and the development of the next generation of opportunities in manufacturing is often tenuous. Jobs losses linked to automation or invention often have other external pressures influencing outcomes. We are concerned that this method of scoring may unduly punish manufacturers for responding to larger changes to the economy that they are not responsible for creating, but must respond.

This criteria may also run counter to the purpose of the CAEATFA program. Advanced manufacturing requires the adoption of new technology, equipment, and processes that reduces the demand for or efficiency of certain positions. The innovation that CAEATFA intends to foster spurs the sort of economic churn that may result in the loss of jobs. Rather than potentially punish manufacturers, we recommend that this provision be recast to provide additional points for manufacturers whose application includes plans to retain and retrain their workforce.

Manufacturers strongly discourage the proposed modifications related to jobs and wages. First, the potential new criterion that would award points to applicants whose production employees have a higher median wage than the median wage in the county is counterproductive. In lower-income areas of the state, manufacturing jobs already pay more, on average, than other industries. However, in areas of the state with a high concentration of highly educated, highly skilled workers in well-paying jobs — like Silicon Valley, San Diego, and the Bay Area — even manufacturing job paying \$80,000-\$120,000 may not meet that standard.

But the benefit of the jobs provided by the manufacturing industry — even “advanced” manufacturing jobs — is that it provides access to this relatively high level of pay without necessarily requiring the same level of education. The industry has a much lower barrier to entry and is much more accessible through technical training than other career paths with equal or greater compensation. Manufacturing has long provided a path to the middle class for the two-thirds of Californians that do not have a college education. The Board should not put a thumb on the scale in a manner that discourages opportunities away from Californians in high income areas that need the opportunity that manufacturing provides.

Second, the Board should not move forward on collecting minimum and average wage by job classification. Efforts to collect this information — and the risk that it will be made public — will discourage manufacturers’ participation in the program. Such information may seem benign to those outside of the industry, but it is treated as a valuable proprietary trade secrets within the industry. The types of job classifications and the number of individuals who occupy them are often not publicly available beyond aggregate data because it can reveal the capacity and capabilities of a company to its competitors.

Sharing workforce information with the potential of it becoming publicly available will lead to increased poaching. In the absence of abundant, industry-aligned career and technical training programs, many

companies have resorted to creating their own incumbent training programs. They have invested resources and capital to train up the next generation of industrial workers. Other companies are often willing to take advantage of another's investment, poaching individuals once they are properly trained. This risk is compounded for small, innovative manufacturers implementing cutting edge technology and procedures.

Manufacturers are also concerned that this information could be misleading if taken out of context, or — even worse — potentially risk our employees' privacy rights. Similar job classifications or titles are not always the same: For example, a "manager" position in one part of the state could be project-based while a "manager" in the same company located in a different part of the state could focus on personnel. The differences in responsibilities and performance outcomes could create a confusing evaluation scheme with inconsistent scoring between manufacturers applying for the award. Additionally, some manufacturers may have only one or two employees under a particular job title or description. Including the salaries of such employees by job classification will essentially disclose such employees' personal information. Given California's expanding protection of employee's personal information, we are concerned that incorporating this information may unnecessarily expose manufacturers to increased obligations and liability.

The purpose of CAEATFA's STE program is to encourage manufacturers to invest in production processes that are more risky and uncertain relative to traditional methods. This potential modification would discourage such investment — or at least the participation of such manufacturers in the program. Collecting minimum and average wage information by job classification does little to further the program's purpose while posing a meaningful risk to manufacturers that would consider participating.

Manufacturers strongly discourage including workforce housing as part of the application to the program. Manufacturers care a great deal about our workers having affordable housing options — it is a key driver of our investment decisions. But we are concerned about misplacing the burden of planning for housing on to manufacturers, who are not in a position to make the necessary decisions to solve the state's housing issues. CAEATFA should not create disincentivize companies providing communities with middle class jobs; this criterion seems like it would only encourage applicants to focus on smaller projects to avoid this additional scrutiny. Manufacturers believe that they should be part of any housing and redevelopment strategy, but STE program seems to be the wrong place to have this housing discussion.

Please do not hesitate to contact CMTA if you have any questions or concerns regarding our comments. We would be happy to discuss any of the issues we have raised in more detail, or connect you and the members of your Board with our members that have participated in the STE program so that they may offer the benefit of their perspective.

Sincerely,



Jarrell Cook
Policy Director, Government Relations
California Manufacturers & Technology Association
916.498.356
jcook@cmta.net

Tesla, Inc. Written Comments re: Proposed CAEATFA Program Changes

Thank you for the opportunity to comment on regulatory revisions recommended by CAEATFA Staff for the Sales and Use Tax Exclusion (STE) program. Tesla is greatly appreciative of the STE awards granted by the CAEATFA Board since we first acquired the NUMMI factory in Fremont in 2010, where all of our vehicles are produced. Since 2010, our Fremont factory workforce has grown to over 10,000 employees today, becoming the state's largest manufacturing employer, and producing over 600,000 zero-emission vehicles globally to help the state meet its air quality and GHG emission goals. We recently announced that we will be producing the Model Y in Fremont, which will contribute to even more job growth and economic development for the region, and respectfully submit the following comments about the proposed changes:

- The reduction in the annual STE threshold per applicant from \$20 million to \$10 million or lower will send the wrong message to manufacturing businesses considering locating or expanding in our state and it would decrease one of the tools that California uses to successfully attract such businesses. According to the Staff presentation at the September 9, 2019 Board meeting, more than 84% of STE awards are below \$5 million, while fewer than 10% of awards exceed \$10 million. The Staff also indicated that the applicant pool has expanded in recent years and that the distribution of awards is geographically diverse. Moreover, while the Advanced Manufacturing and Advanced Transportation sectors have received the largest number of awards, they have also created the most cost-efficient jobs. This suggests that the STE program at current thresholds appears to be benefiting a wide swath of eligible industries and thus it may not be "broken."
- We agree with the comments of some CAEATFA Board members at the September 9 meeting that one year (2019) does not make a trend, so fundamental revisions to the program may be premature. Moreover, as expressed by another Board member, we encourage the Staff to differentiate between the need to provide larger awards for industries trying to scale certain technologies compared to the needs of new market entrants.
- If the applicant cap is lowered, we believe the Board should have the discretion to raise it if a project significantly helps achieve the state's air pollution, public health and GHG reduction goals. We believe this is consistent with the desire by some Board members to create a greater nexus between an award and the achievement of state policy goals.
- We support prioritizing applications with a high number of jobs, but believe it is more appropriate to compare compensation within an industry rather than prioritizing higher paying jobs compared to the area median income. High wage earners in expensive regions like the San Francisco Bay Area can disproportionately skew area median income. In addition, manufacturing jobs in the Bay Area, such as at the Fremont factory, draw upon a large pool of qualified applicants who commute in from communities outside of the Bay Area where the median income may not be as high. We encourage the Board to also consider the positive impact of compensation in the region in which the employee resides.
- The proposal to require disclosure of potential jobs lost due to a project can be very challenging to implement, as suggested by one Board member. Would this penalize applicants who transfer

workers to an open position unrelated to the project? What if the project reduced the risks of injury by automating a certain process, while creating jobs to maintain the equipment?

- We appreciate the desire to address the state's dire housing crisis. However, we are concerned with the proposal to require companies with at least 5,000 employees to submit a description of employee housing options, especially for those companies located in regions with high housing costs or in localities that may not be meeting their housing goals. The Governor and Legislature have recently approved or passed numerous measures to address this crisis, so we encourage the Board to allow more time for these measures to be implemented.
- We support extending the required timeframe to purchase 15% of equipment from one to two years. However, the discretion to waive or extend the timeframe should not be indefinite. We believe CAEATFA should be reasonably sure that taxpayers receive a return on their investment.
- We support the proposal that an awardee cannot be on Cal-OSHA's Severe Violator Enforcement Program list or guilty of a willful OSHA violation. We also strongly encourage the Board to look beyond "lagging indicators" of safety and prioritize or award additional points to those applicants who have implemented pro-active "beyond compliance" safety programs incorporating ergonomics into employee training, or those that empower employees to identify and propose solutions to safety issues.

Thank you for the opportunity to provide our comments. We look forward to continue working with the Board and Staff during development of these regulations.

Please contact Erin Bradley at er Bradley@tesla.com for any questions.



September 20, 2019

CAEATFA

Attn: Matthew Parsons
915 Capitol Mall, Rm 538
Sacramento, CA 95814

RE: Regulatory Suggestions/Comments – CAEATFA Sales & Use Tax Exclusion Program

Without speaking on behalf of any of our current clients, please see below for our observations and suggestions based on our experience with this program as well as incentive programs across California and the U.S.

1) CAEATFA Application, Admin & Extension Fees

- a. **Extension Fees** - In fairness to the cost of Staff's time, this fee should be equal to the Application Fee rate x the remaining amount of QP being pursued via extension. In our experience, no matter how small the business, \$500 for every \$84,000 (approximately) to be saved is not an amount that would cause a business to not pursue an extension. Alternatively, increase the current \$500 flat rate by 3 or 4 times.
- b. **Admin Fees** – without any change to the maximum admin fee per MRA, if the program reduces the STE cap to \$10M per applicant, additional Admin Fees would be due for any awardee who needs more than \$10M in STE and has to seek an additional MRA. For example, a business that would have been able to receive a \$20M STE under the old cap, but now has to pursue a 2nd separate MRA, has effectively seen their Admin Fee doubled to \$700,000 (\$350K x 2 MRAs).

We are not suggesting that the program reduce the Admin Fee cap in exact proportion to the STE cap reduction (CAEATFA deserves more fees), but something in between would make sense. Perhaps \$200,000 or \$250,000.

2) 15% Rule & 3 Year MRAs

- a. **15% Rule** - In our experience talking to many potential clients/applicants on a monthly basis, the "15% Rule" is by far the program's strongest tool that creates accountability in keeping an applicant/awardee honest in their projections. We find that businesses are often overly zealous in terms of their projected growth and corresponding capital investments and rarely actually reach their projected milestones. The 15% Rule limits this issue, because the thought of losing at least 85.9% of their entire incentive is a real concern. If the 15% Rule was eliminated or modified to be over two years, our experience has shown us that utilization of awarded funds will likely decrease over time as the aforementioned concern will be drastically reduced. Businesses will seek more funding that won't actually be utilized. We've seen this in a number of other programs. If some modification had to be made, we would suggest increasing to 18 months at the very most (as opposed to 24 months).

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6790 Embarcadero Lane, Suite 100, Carlsbad, CA 92011
+1 760 334 8300 | www.CALincentives.com



- b. **3 Year MRAs** – Same issue as above, there are several programs that we work with, including one from GO-Biz that use a 5-year lifespan on their contracts. This creates the very same issues. We suggest keeping it at 3 years.

If one of the two revisions had to be made, we would respectfully suggest that MRAs last 4 years with no changes to the 15% Rule.

3) Competitive Versus First-Come-First-Serve

- a. As discussed by many at the September board meeting, we would suggest keeping the FCFS (and competitive criteria only when funding is almost exhausted) nature intact. 2019 was a statistical anomaly and any over-correction with something like this could significantly reduce not only funding utilization, but the amount actually granted. Moreover, the program already utilizes a competitive nature in the sense that there is already a minimum scoring (1,000 + environment score) requirement that weeds out subpar applicants.

4) Electronic Signatures

- a. Please accept electronic signatures during the application process, it may seem silly, but gathering original/wet signatures from executives can be extremely difficult.

5) Calculation & Description of New Jobs, Lost jobs and Wages

- a. Other programs often make this a very cumbersome calculation that results in less businesses applying. Suggest there be a question in the application that asks, “what percentage of your current workforce will be downsized due to the addition of Qualified Property”. The app could then use that % as a reduction in the overall score.

Please do not hesitate to reach out to us with any follow up questions or if you want to discuss any of our thoughts above—particularly #2 above. Thank you for your time and allowing us to share our experiences with your office.

Sincerely,

Alex Tran, CPA
Managing Partner – California Incentives Group
+1 858 722 4580
alex.tran@CALincentives.com

CALIFORNIA INCENTIVES GROUP
6790 Embarcadero Lane, Suite 100, Carlsbad, CA 92011
+1 760 334 8300 | www.CALincentives.com



September 9, 2019

Matthew Parsons (mparsons@sto.ca.gov)
CAEATFA
915 Capitol Mall, Room 538
Sacramento, CA 95814

RE: Discussion of Proposed Changes to Program Regulations for the Sales and Use Tax Exclusion Program

Dear Mr. Parsons:

Momentum (formerly The Grant Farm) has a long history of successfully supporting companies seeking to partner with the California Alternative Energy and Advanced Transportation Financing Authority. Since 2012, we've assisted 23 partners in developing and managing advanced energy, transportation and manufacturing projects that utilize the CAEATFA program for one element of solving their project finance equation. Among these are Weber Metals, Waste Management, Aemetis, Anaergia, Hitachi, Pacific Ethanol, Efficient Drivetrains (now Cummins Engine), and others. Cumulatively, our partners have purchased \$1+ billion in eligible equipment included in the CAEATFA program. We believe that this depth and breadth of experience in supporting successful CAEATFA projects from the perspective of the customer may be valuable to the agency as it considers changes in the program.

Our company routinely works with a myriad of state agencies that manage grant, loan, credit and other incentive programs designed to support state energy and waste management solutions. Since 2004, we've organized and coordinated more than 300 projects that utilize some form of state financial assistance. We have a particular insight on which programs work, and which programs are in need of repair or reform. With that, we will take this opportunity to communicate in no uncertain terms that this program ranks above all others for its effectiveness and simplicity.

In our opinion, but for a few minor changes, the Sales and Use Tax Exclusion Program does not call out for significant change or reform. We are concerned that some of the changes being discussed would undermine a truly successful model for program design and implementation, and we worry that doing so could dramatically shift the audience for this program away from the small- and medium-sized businesses working to implement projects by introducing uncertainty, programmatic delays and the opportunity to game the system. That said, our recommendations are below:

1. **Retain Rolling Applications.** One of the strongest features of the current program is that is available to applicants when the applicant is ready to apply. This is in direct contrast to the vast majority of state incentive programs that require applicants to prepare applications on the timeline of the agency, rather than the applicant. This feature benefits solid decision-making by a prospective applicant who can apply when AND IF they are truly prepared to do so. It also reduces "gaming" by applicants who otherwise feel pressured to develop an application prematurely simply in order to meet a due date that might not occur again for another 6 months to a year – *or worse yet, project applicants that need to artificially slow down a ready-to-go project in order to wait for a distant deadline in order to ensure that the entirety of the project budget is covered under CAEATFA.*

801 K Street, Suite 2700
Sacramento, California 95814
www.buildmomentum.io
916.444.FUND (3863)



2. Retain Project Finance Certainty. Currently, once a project applicant understands that it has an eligible project by using the easily accessible Part B Worksheet, the applicant can utilize the relative certainty of a successful CAEATFA application in financial models required for internal decision-making as well to obtain additional public and private financing. Private investment and GO decisions can be made faster and with more certainty, with lower risk and a lower cost of capital. Our experience is that this can and does happen even prior to many applicants ever submitting a proposal to the agency.

Any changes to the process that introduces uncertainty or risk associated with utilizing CAEATFA as a project finance line-item devalues the existing value and utility of the program. Introducing a semi-annual competition for awards effectively means that any particular applicant would no longer present in a financial model the relative certainty of a CAEATFA application based solely on their self-scoring evaluation. Given that this program can effectively reduce the cost of capital for a project by between 8 and 10 percent, the impact on financing projects would be significant and, in some cases, traumatic.

In addition, a semi-annual competitive process would add significant delays to the program. For instance, an Applicant that gains CEQA approval in January would hypothetically have to wait until July to apply and another 90-120 days for an award notification and contracting – adding in excess of 9 months to a process that currently takes 45 days.

3. Retain Ability to Self-Evaluate. Currently, the Part B Worksheet allows a prospective applicant to reasonably evaluate the eligibility of a given project with relatively modest time or financial resources. This ability to understand the eligibility of their project allows an applicant to choose whether to invest additional resources in coordinating a (costly, with application fees) full submission package. Any modifications to the program that would have a prospective applicant need to develop a now-competitive application would substantially increase the cost of developing the application itself and would likely deter smaller and mid-sized businesses from applying altogether.
4. Solve the Problem. The problem in 2019 was a scarcity of resources. Other than that, we've not seen much evidence that the overall management and administration of this program requires significant changes. We would posit that limiting maximum STE awards to \$5M would cover the entirety of the equipment budget for 84 percent of project awardees, while still allowing for applicants with budgets in excess of \$40-\$50M to apply for a full exemption on the first \$40-\$50M. This single change would effectively solve the problem of scarce financial resources without a need for other more dramatic and arguably counterproductive changes to the successful core program.

In short, we believe it is significantly better to retain the financial model reliability of the program with a lower maximum cap than it is to offer a higher maximum cap that introduces uncertainty such that the program can no longer be utilized in financial models.

Of course, the other way to solve the problem is to continue to work to increase the existing \$100M annual allocation and include new types of equipment that are also the subject of state environmental goals, such as off-road zero emission equipment (forklifts,

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loaders, gantries) deployed at air, land and sea ports and distribution centers to distribute products throughout California.

5. Support for Purchase Requirements. Our team strongly supports eliminating, or extending to two years, the 15% purchase requirements. With our experience supporting 36 bioenergy, compost and recycling projects in California, delays caused by project siting, project permitting, and project finance are routine and are in general out of the control of the awardee. With the application and administrative costs paid to the STE program, this turns what initially was a benefit into an additional cost burden on awardees. For the same reasons, we urge you to extend the project duration from 3 to 5 years.
6. Industry Turmoil. While our team supports a number of excellent recycling projects in California, we question the need to prioritize these projects because of "industry turmoil". We can attest confidently that *most of the applicants seeking CAEATFA support are working to complete projects that can easily be described as being victim to industry turmoil*. We would be hard pressed to assert that developing a new recycling project is any more subject to "industry turmoil" than, for instance, building a manufacturing facility to manufacture electric trucks--themselves subject to a labyrinth of constantly changing regulations and rule-making, consumer appetite, technological uncertainty and new trade regulations and tariffs.

Thank you for the opportunity to comment on this important program. Your team should be proud of the work that you have supported, and we urge you to preserve what is one of the most simple, transparent, elegant, well-managed and meaningful state incentives. We are available to discuss further at your convenience.

Sincerely,

Shawn
Garvey

Digitally signed by
Shawn Garvey
Date: 2019.09.11
11:35:39 -07'00'

801 K Street, Suite 2700
Sacramento, California 95814
www.buildmomentum.io
916.444.FUND (3863)

ATTACHMENT C – COMPARISON OF CURRENT EXISTING REGULATIONS, INITIAL DRAFT REGULATIONS, AND CURRENT PROPOSED REGULATIONS

Existing Regulations	Initial Draft Regulations (October 22, 2019)	Current Proposed Regulations (November 19, 2019)
Goal: Strategic Investment of STE Awards to Better Promote Policy Goals		
Competitive criteria: <ul style="list-style-type: none"> • New Applicant (5 points) • Unemployment Rate (up to 5 points) • Small Business (1 points) • California HQ (1 point) • Rebuilding or relocating due to natural disaster (5 points) 	Competitive Criteria: <ul style="list-style-type: none"> • Environmental Benefits: (100 points) • Cost of STE per Job Created (up to 75 points) • Unemployment Rate (up to 50 points) • California HQ (15 points) • Rebuilding or relocating due to natural disaster (50 points) 	No Changes
If STE is made available, capped Applicants submit updated Applications for Board consideration in December. STE is split evenly among approved Applicants	If STE is available, capped Applicants submit updated Applications for Board consideration in December. STE is split proportionally among approved Applicants based on points earned from specific criteria: <ul style="list-style-type: none"> • Environmental Benefits: (100 points) • Cost of STE per Job Created (up to 75 points) • Unemployment Rate (up to 50 points) • California HQ (15 points) • Rebuilding or relocating due to natural disaster (50 points) 	No Changes
Advanced Manufacturers receive points for R&D in California, partnerships with educational institutions to train workers or future workers, and being part of an industry cluster Points only used to adjust score if Applicant is not meeting minimum point-threshold requirement	Open up these points for all eligibility pathways, not just Advanced Manufacturers. Points will be used to adjust score, even if Applicant is meeting minimum point-threshold requirement	Open up points for all eligibility pathways and specify that eligible partnerships with educational institutions includes training opportunities for workers from disadvantaged communities. Points used to adjust score, even if Applicant is meeting minimum point-threshold requirement
Goal: Maximize the Number of Eligible Companies Receiving an Award		
\$20 million in STE cap per Applicant each calendar year	\$10 million cap in STE cap per Applicant each calendar year	No Changes

Agenda Item – 4.C

Existing Regulations	Initial Draft Regulations (October 22, 2019)	Current Proposed Regulations (November 19, 2019)
Goal: Streamline Program Administration and User Experience		
Accept Applications on a rolling basis, until competitive	No Changes	No Changes
If any STE is available at the end of the year, Board votes to make STE available to capped Applicants	If any STE is available at the end of the year, the ED announces if STE is available	No Changes
Applicants must purchase at least 15% of the total Qualified Property amount approved within one year of approval – Board does not have the ability to waive/extend	Applicants must purchase at least 15% of the total Qualified Property amount within 18 months of approval – Board has the ability to waive/extend upon a finding of extraordinary circumstances, which may include unforeseen permitting delays, but does not include a lack of funding	Applicants must purchase or have executed purchase orders for at least 15% of the total Qualified Property amount within 18 months of approval – Board has ability to waive/extend upon a finding of extraordinary circumstances, which may include unforeseen permitting delays, but does not include a current lack of funding
Applications must be submitted by E-mail by Application deadline and by hardcopy within five business days of electronic submission	No hardcopy of the Application required	No changes
Additional Application Requirements		
N/A	Application must include an indication as to whether there will be a net reduction in jobs at the Facility resulting from the purchase and use of the Qualified Property	Removed for additional consideration
N/A	Applicant ineligible for an STE award if found guilty of a willful violation by OSHA or has a case under the OSHA Severe Violator Enforcement Program	No Changes

ATTACHMENT D –

**WRITTEN PUBLIC COMMENTS ON
INITIAL DRAFT REGULATIONS DISCUSSED AT
THE OCTOBER 22, 2019 PUBLIC WORKSHOP**



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

Solidarity House

8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000

GARY R. JONES, *PRESIDENT* RAY CURRY, *SECRETARY-TREASURER*
VICE-PRESIDENTS: TERRY DITTES • CINDY ESTRADA • RORY L. GAMBLE

October 29, 2019

Treasurer Fiona Ma, CAEATFA Board Members & Executive Director
915 Capitol Mall, Room 538
Sacramento, CA 95814

Dear Treasurer Ma, CAEATFA Board Members and Executive Director,

On behalf of the one million active and retired members of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers (UAW) — including our tens of thousands of California members and retirees — we appreciate the opportunity to share our views on the Proposed Regulations for CAEATFA.

California should continue to pursue policies that both stimulate growth in green technologies and incentivize the creation of high-quality jobs which provide safe working conditions, free exercise of workers' rights, stable career paths and economic stability for families. We agree that the CAEATFA program needs updating, and the rulemaking process creates the opportunity to make amendments that will promote good manufacturing jobs.

In this letter we discuss our recommendations on job quality and workplace safety that help CAEATFA get closer to ensuring the State reaps net benefits.

AB 176

Currently, CAEATFA has very limited information about the types of jobs applicants' projects will create, making it difficult to assess the value-add for the communities directly affected, much less California more broadly. AB 176, which was signed into law by Governor Newsom on October 9, launches some initial program improvements. It adds two new requirements related to job loss and job quality to the list of criteria CAEATFA shall evaluate in project applications.

Jobs Created or Lost

AB 176 modifies criteria for project evaluations to require consideration not only of the extent to which the project will create new jobs, but also whether it will "result in the loss of, permanent, full-time jobs in California."¹ The Proposed Regulation Text² is not aligned with the bill text, it instead adds a requirement that applicants report an "Indication of whether there will be a net reduction in jobs at the Facility resulting from the purchase and use of the Qualified Property."

¹ http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20190200AB176

² <https://www.treasurer.ca.gov/caeatfa/ste/regulations/ste-proposed-regulations.pdf>

This proposed language should be amended to match the language of AB 176, giving applicants the opportunity to describe both jobs created and those lost as a result of the qualifying equipment purchase. In its rulemaking, CAEATFA is not precluded from adding a requirement to report net reduction in jobs, but there is crucial information about the extent and nature of jobs created and lost that may not be included if the only question is about *net* reduction.

Wage Disclosure

The second addition to the application evaluation provided by AB 176 is “including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained.”³

CAEATFA Staff has indicated the intent is to complete the regulatory amendments process on an accelerated timeline to be effective December 9, 2019 for 2020 applications.⁴ However, the Proposed Regulation does not incorporate the wage disclosure requirement, noting instead that it will be considered under “other potential modifications.”⁵

Any delay or omission of wage disclosure requirements creates potential confusion for applicants in 2020, given that AB 176 will be effective starting January 1, 2020. Moreover, failing to collect information about average and minimum wages for each classification will necessarily cause CAEATFA to be out of compliance with the statutory mandate that this information be considered in the evaluation of applications. Therefore, the proposed regulations should incorporate the wage disclosure requirement now to ensure compliance with the statute and avoid confusion.

Wage disclosure for a project benefiting from public subsidy is a baseline transparency requirement common across other California policies. It provides agencies a basic metric to gauge the impact of a project in a community, and whether awardees of public dollars are creating jobs that generate broader economic benefits and support workers’ ability to cover the cost of living in the relevant area. Examples of other wage disclosure requirements in existing California program policies are CalCompetes, Los Angeles Metro, Employment Training Panel, and High Speed Rail Authority.

Health & Safety

We commend CAEATFA for seeking to strengthen its evaluation of health & safety criteria for applicants. In the proposed regulation, CAEATFA seeks to require that, “The Applicant must not have disclosed as part of its Legal Status Questionnaire a finding of guilty of a willful violation by the Occupational Safety and Health Administration or a case under the Occupational Safety and Health Administration’s Severe Violator Enforcement Program.”

It is appropriate to exclude applicants deemed Severe Violators of OSHA, and it seems that such a disclosure in the Legal Status Questionnaire should be detrimental to an application even without advancing this regulation.

³ http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB176

⁴ <https://www.treasurer.ca.gov/caeatfa/ste/regulations/regs-workshop-presentation.pdf>

⁵ <https://www.treasurer.ca.gov/caeatfa/ste/regulations/regs-workshop-presentation.pdf>

A determination of Severe Violator is relatively rare; only one California employer has been assigned that label since 2010, according to federal OSHA data.⁶ Willful violations are also uncommon – a determination reached in only 0.1 percent of hazards identified by Cal/OSHA in 2018.⁷

Given the rare occurrence of severe or willful violations, we recommend CAEATFA apply additional criteria based on “serious” violations that would provide meaningful and clear metrics to screen applicants with working conditions that expose workers to preventable injuries and illnesses in violation of state or federal OSHA regulations.

Specifically, we urge the Board to adopt a rule that permits CAEATFA to determine that an applicant can be deemed ineligible if it has been cited by Cal/OSHA or federal OSHA for more than three “serious” violations in the previous five years. Serious violations are reserved for hazards with “a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation” and where the employer knew or should have known about the hazard, per Cal/OSHA regulations.⁸ Of the 1.6 million business establishments in California,⁹ in 2018 Cal/OSHA conducted 8,000 inspections identifying workplace hazards, of which 23% were deemed serious.¹⁰

We further recommend that CAEATFA assign meaningful weight to the evaluation of an applicant’s workplace safety track record, based on disclosures of the established quantitative and qualitative safety information metrics:

- All OSHA citations, violations and penalties from past five years, including serious and/or repeat violations
- Past five years of OSHA 300 injury and illness logs and OSHA 300A Summary of Work-Related Injuries and Illnesses (or comparable data if the manufacturer is not otherwise required to keep OSHA 300 logs), and injury rates compared to industry average (based on 300A)
- The applicant’s health and safety plan based on California’s Injury and Illness Prevention Program template

Job Quality

As we recommended in our September 20 letter, CAEATFA should require an affirmative finding that proposed projects will create “high-quality jobs” as part of the evaluation of whether a proposal will produce net benefits for the state, with meaningful weight on job quality in the scoring.

High quality jobs should be evaluated based on specified criteria, including, among others:

- The extent to which the project will create new, or result in the loss of, permanent, full-time jobs, permanent, direct-hire jobs in the State
- Wages, including the minimum and average wage for each classification of employees
- Description and average value of benefit and fringe benefit for each classification of full-time employee proposed to be hired or retained, including the type of, and amount contributed to,

⁶ <https://www.osha.gov/dep/>

⁷ https://www.osha.gov/sites/default/files/2019-06/california_2018.pdf

⁸ <https://www.dir.ca.gov/title8/334.html>

⁹ https://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data_for_CA.html

¹⁰ https://www.osha.gov/sites/default/files/2019-06/california_2018.pdf

any employee retirement plan and the amount of health care benefit premium employees are required to pay, and the average costs employees pay versus the amount paid by the health care plan¹¹

- A requirement that Projects not rely on workers employed through temporary agencies or subcontractors, or if a portion of the work is expected on a limited basis to be done by temporary workers, applicants should disclose the number, percent, and expected duration of workers expected to be employed through temporary agencies
- Whether applicants have a history of compliance with applicable labor, employment, health and safety laws, and environmental laws or whether the applicant has a history of serious, repeated, willful, and/or pervasive violations of such laws with inadequate remediation
- A narrative description of the manufacturer's efforts to provide job access and training to workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans
- A disclosure of Health & Safety violations, injury rates and the entity's OSHA 300 and 300A logs (or comparable data if the company is not otherwise required to keep OSHA 300 logs)
- Absence of any requirement that employees sign pre-dispute arbitration agreements

Post-Award Tools for Failure to Comply with Law

To ensure that CAEATFA is benefiting law-abiding companies, we reiterate our recommendation that the Authority adopt additional tools to suspend Master Agreements or claw back awards in the event a STE recipient commits legal violations subsequent to the award.

CAEATFA rules should be amended to require that if a STE recipient is found to have violated applicable labor, employment, health and safety, or environmental laws, the Qualifying Property will be deemed not to have been "installed, maintained and operated in accordance with all applicable local, state and federal laws and regulations," as required by the Regulatory Agreement.

Regulations should require the Executive Director to determine that the recipient has violated the terms of the Agreement in the case of a citation for a "serious" health and safety violation, or a failure to comply with other applicable labor, employment, and environmental laws, and that the Executive Director may therefore either suspend the Agreement until the Executive Director certifies that the Applicant is once again in compliance or begin processes to terminate the Agreement and recover the financial benefit awarded to the applicant.

Conclusion

We encourage CAEATFA to use the rulemaking authority it is granted under Public Resources Code Sections 26009 and 26011.8 and Revenue and Taxation Code Section 6010.8 as a timely opportunity to harmonize with AB 176 to comply with statutory requirements and provide clarity to applicants.

Additionally, by adopting enhanced job quality standards and meaningful health & safety criteria, CAEATFA could ensure that the State's investment in environmental innovations supports the creation of

¹¹ For example, see CalCompetes:

[https://govt.westlaw.com/calregs/Document/F162D06EBA6D48ADA91BD982FA5675B5?viewType=FullText&originContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1&ignorebhwar=n&ignoreWarns](https://govt.westlaw.com/calregs/Document/F162D06EBA6D48ADA91BD982FA5675B5?viewType=FullText&originContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1&ignorebhwar=n&ignoreWarns)

high-quality jobs that in turn generate long-term benefits for workers, their families and California communities.

Thank you for considering our comments, we look forward to further engagement.

Sincerely,



Josh Nassar
Legislative Director

JN:rk
opeiu494/oficio



CAEATFA

Treasurer Fiona Ma, Board Members & Executive Director
915 Capitol Mall, Room 538
Sacramento, CA 95814

October 29, 2019

Dear Treasurer Ma, CAEATFA Board Members, and Executive Director,

AB 176, which was signed into law by Governor Newsom on October 9th, adds new, important job quality criteria to the process of CAEATFA program approval. These requirements hold that CAEATFA projects must be evaluated based on the extent to which CAEATFA projects create new jobs and “result in the loss of, permanent, full-time jobs in California”.¹ AB 176 also requires that CAEATFA projects be evaluated on “average and minimum wage for each classification of full-time employees proposed to be hired or not retained.”²

We support the intent of AB 176. Further, we encourage CAEATFA to amend the Proposed Regulation³ so that it aligns with AB 176 bill text, as passed, in implementing new, key criteria.

- **Jobs Created and Lost:** The Proposed Regulation requires that applicants report an “Indication of whether there will be a net reduction in jobs at the Facility resulting from the purchase and use of the Qualified Property.” This language does not match bill language, which indicates that applicants should describe both jobs created *and those lost* as a result of the qualifying equipment purchase.
- **Wage Disclosure:** *the Proposed Regulation fails to incorporate the wage disclosure requirement at all*, noting instead that wage disclosure will be considered under “other potential modifications.”⁴ Wage disclosure will not only ensure compliance, but also ensure baseline transparency in California’s public subsidy programs.

Furthermore, we urge CAEATFA to consider the following means by which the Authority might strengthen job quality outcomes delivered through its programs:

- The Board should adopt a rule that permits CAEATFA to determine that an applicant can be deemed ineligible if it has been cited by Cal/OSHA or federal OSHA for more than three “serious” health and safety violations in the previous five years. Serious violations are reserved for hazards with “a realistic possibility that death or serious physical harm could result from the actual hazard created by and where the employer knew or should have known about the hazard, the violation,” per Cal/OSHA regulations.⁵
- CAEATFA should require an affirmative finding that proposed projects will create “high-quality jobs” as part of the evaluation of whether a proposal will produce net benefits for

¹ http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB176

² http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB176

³ <https://www.treasurer.ca.gov/caeatfa/ste/regulations/ste-proposed-regulations.pdf>

⁴ <https://www.treasurer.ca.gov/caeatfa/ste/regulations/regs-workshop-presentation.pdf>

⁵ <https://www.dir.ca.gov/title8/334.html>

the state, with meaningful weight on job quality in scoring. “High quality jobs” criteria should include:

- The extent to which the project supports direct-hire jobs in California.
- Full fringe benefits for all full-time employees proposed to be hired or retained, including retirement and health care.
- Minimal utilization of temporary workers.
- Historical compliance with labor, employment, health and safety laws, and environmental laws or whether the applicant has a history of serious, repeated, willful, and/or pervasive violations of such laws with inadequate remediation.
- Job access and training to workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans.
- A strong health and safety record.

Thank you for considering our comments.

Sincerely,

JB Tengco
West Coast Director
BlueGreen Alliance

Roxana Tynan
Executive Director
Los Angeles Alliance for a New Economy

Elly Matsumura
California Director
Partnership for Working Families



October 29, 2019

Xee Moua, STE Analyst
CAEATFA
915 Capitol Mall, Rm 538
Sacramento, CA 95814

Re: Comments on Proposed Amendments to the STE Program Regulation

Dear Xee Moua:

The California Manufacturers & Technology Association (CMTA) appreciates the opportunity to comment on the potential modifications to the Sales & Use Tax Exclusion Program proposed on September 9, 2019.

CMTA represents 400 businesses from the entire manufacturing spectrum – including large, medium, and small manufacturers – generating more than \$285 billion every year and employing more than 1.3 million Californians. Many of California's 30,000 manufacturing firms have found immense value in CAEATFA's STE Program; as stakeholders, manufacturers have been able to work in tandem with the state to further important public policy goals while also spurring their own innovation.

The manufacturing industry views CAEATFA as a resounding success that has produced net economic and non-economic benefits to the state, as well as a model for well structured, well-regulated state incentive program.

Manufacturers respectfully urge the Board to postpone the reduction of the STE threshold per applicant until after 2020. The proposed changes to Section 10032(a)(4) would lower the per applicant cap from \$20 million to \$10 million.

Manufacturers are very interested in the long-term sustainability and effectiveness of the STE Program and understand how the lack of resources the program faced in 2019 may indicate a need to lower the award amount per applicant to ensure that CAEATFA can support as many enterprises as possible. However, we do not yet know if 2019 was an isolated spike or representative of an increased demand. If the trend continues through 2020, then the Board should consider proposals to better allocate resources – including lowering the cap.

But lowering the cap is, in effect, punishing CAEATFA and the applicants it supports for success. Manufacturers believe that the better solution to this problem would be to pursue an increase in funding for the STE Program from the legislature.

Manufacturers support the use of competitive criteria that awards points for applicants with their corporate headquarters in California. Section 10032(a)(4)(i)'s proposed scoring would help maximize the benefits of the STE award. Companies that have committed to placing their headquarters in California are much more likely to stay in the state long enough to produce the desired benefits the STE program.

We encourage the Board to consider awarding points for applicants that can establish that procure all or a substantial amount of qualified equipment for their project from California suppliers. Extending the reach of the award throughout the manufacturing supply chain would maximize its benefit.

Manufacturers are concerned by the proposal to require applicants to assess whether the use of the award to purchase and use qualified property will result in a "net reduction in jobs." We are unsure of how to calculate the requirement in Section 10032(c)(4)(B)(i)(k) and are concerned that uncertainty will lead to inconsistency that may unfairly disadvantage some applicants. We believe that such a criterion should be carefully defined and understood before adoption.

In our experience, state programs that require "net" calculations of job loss or creation employ complicated formulas that deter manufacturer participation. More guidance is needed to ensure that a reported job loss that occurs after equipment is purchased is not too attenuated from the purchase and use of the equipment. We encourage revisions to the language that, instead, requires manufacturers to only indicate the creation or loss of a job where the equipment is used in a manner that eliminates a full-time position that is comparable to the new work performed by the qualified property.

As an alternative to this language, manufacturers suggest that the regulation simply mirror the language in AB 176 (Cervantes) and require a manufacturer to report the number of jobs they expect to establish or eliminate as a result of completing this project. The Board should also consider allowing manufacturers to provide a narrative explanation that identifies whether the elimination of a position improves the overall health, safety, or environmental impact of the facility.

Manufacturers believe safety is important. Section 10033(b)(3) strikes the appropriate balance that holds bad actors accountable but does not cause CAEATFA to creep into assessing health and safety issues better handled by other state agencies. Relying on their expertise We support the exclusion of companies that are on Cal-OSHA's Severe Violator Enforcement Program list or guilty of a willful OSHA violation.

Other potential proposals would create uncertainty for applicants as well as significant administrative issues for CAEATFA staff. CAEATFA should not include violations, penalties, and citations from other agencies because those decisions may be contested or settled.

CAEATFA should satisfy the jobs and wage reporting requirements of AB 176 by permitting manufacturers to report aggregate information and employing strong trade secret protections where appropriate. Minimum and average wage by job classification is treated as a valuable proprietary information within the manufacturing industry. The types of job classifications and the number of individuals who occupy them are often not publicly available beyond aggregate data because it can reveal the capacity and capabilities of a company to its competitors.

Manufacturers are also concerned that this information could be misleading if taken out of context, or — even worse — potentially risk our employees' privacy rights. Some manufacturers may have only one or two employees under a particular job title or description. Including the salaries of such employees by job classification will essentially disclose such employees' personal information. Given California's expanding protection of employee's personal information, we are concerned that incorporating this information may unnecessarily expose manufacturers to increased obligations and liability.

Allowing manufacturers to report minimum and average wage in the aggregate mitigates both privacy and competitive concerns. We also encourage the Board to, where appropriate, protect this information as a trade secret.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jarrell Cook".

Jarrell A. Cook
Consultant, Government Relations
California Manufacturers & Technology Association



NORTHERN DISTRICT

October 29, 2019

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First Vice President:
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Paul W. Madsen, 74-75
Lawrence A. Zunino, 72-73
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"Rudy" Vaccarezza, 68-69
A.J. Annigoni, 66-67
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Executive Director:
Trish Roath

Xee Moua
CAEATFA
915 Capitol Mall, Rm 538
Sacramento, CA 95814
Email: xee.moua@treasurer.ca.gov

Re: Sales Tax Exclusion (STE) Proposed Regulations/Current Regulatory Actions

Dear Ms. Moua,

The California Refuse Recycling Council (CRRC), Northern District is a trade association representing 34 solid waste collection and recycling companies across Northern California dedicated to meeting California's ambitious landfill diversion goals. We strongly support the Sales Tax Exclusion (STE) program and thank the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) for administering this program.

Our members have engaged in a number of project types available for financing under STE and supported the extended authorization of the program with the passage of AB 1583 this year. We recently participated in the October 22, 2019 CAEATFA monthly meeting and appreciate staff's presentation of proposed amendments to the STE program regulations. The incremental changes are sensible at this stage and provide the opportunity to make additional changes in the future.

Because the STE program was oversubscribed by July of this year, we support the reduction of the STE cap to \$10 million. Lowering the STE cap should offer more applicants a financing opportunity in 2020. We also encourage applicants receiving additional points when headquartered in California, safeguarding the likelihood that anticipated in-state STE program benefits are achieved.

Additionally, health and safety, in any industry is critical. We support the disclosure of a willful violation, or a case under the Occupational Safety and Health Administration's Severe Violator Enforcement Program, as part of the Legal Status Questionnaire. The STE program intends to support manufacturers in industries that have inherent risks. Therefore, anything more stringent than currently proposed could inadvertently disqualify applications by good-acting manufacturers for whom the program is designed.

Finally, we support the initial proposed changes in order to finalize the regulations in a timely manner. Expediting the process will allow applicants to apply as early as December

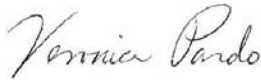
1121 L Street, Suite 505 | Sacramento, California 95814
Phone: 916-444-CRRC (2772) | Fax: 916-442-0623 | www.crrcnorth.org
Affiliate of West Coast Refuse & Recycling Coalition (WCRRC)

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of this year and to be considered for financing in February 2020.

We thank you for considering our comments to the proposed STE regulatory text. The STE program is meaningful to our members and their local communities, serving as a critical driver in achieving the waste diversion goals of California. Please do not hesitate to reach out to us with any additional questions or follow-up.

Sincerely,



Veronica Pardo
Regulatory Affairs Director
veronica@ccrcnorth.org
Tel: 916-420-3914



Laura Ferrante
Governmental Affairs Advocate
laura@wastealts.com
Tel: 203-209-3302

Tesla supports the Sales Tax Exclusion (“STE”) program, especially for providing a benefit to manufacturers that is similar to what is available in many other states. The program has helped companies to meet the state’s environmental goals, which are critical to building a greener and greater future. Tesla, for example, has produced hundreds of thousands of zero emissions electric vehicles at our Fremont factory, accelerating the world’s transition to sustainable energy. We are concerned that the proposed regulatory changes to the STE program based only on one year of oversubscription may lead to an overcorrection and negatively affect the competitiveness of future California-based projects and job creation efforts in these sectors.

To the extent that there must be changes to the program and the application process, we propose the following based on the prior slides from Staff and conversations with various Board members.

- According to the Staff presentation at the September 9 Board meeting, over 84% of STE awards are under \$5 million, while fewer than 10% of awards exceed \$10 million. Rather than limit the annual amount of STE available for all applicants, create two buckets of funds.
 - One bucket of \$60 million for large projects with an STE of \$5 million or higher and a total annual cap of \$20 million.
 - The second bucket of \$40 million for projects below \$5 million in STE, with a total annual cap of \$5 million.
 - To the extent there is leftover from either bucket at the end of the year, it can be opened up to any applicant using competitive criteria.
- More application points should be awarded to applicants that commit to spending a fixed percentage with California-based suppliers. This will help ensure the resources CAEATFA uses to support these projects benefit California by encouraging applicants to keep as much of the STE as possible in the state.
- In addition to spending money with California suppliers, application points could be granted to taxpayers that partner with in-state educational institutions to source talent for jobs, similar to Tesla’s START program that partners with two community colleges in California.
- Tesla supports the proposed competitive criteria that provides points based on the cost of STE per job created.

The parts of the proposed regulatory changes that will be difficult to implement and may have an adverse impact on qualified projects in the state include:

- Collecting more detailed information about employees may lead to some unintended consequences. Companies closely guard employees’ privacy because it is both legally required and the right thing to do. Even seemingly innocuous information and data can lead to poaching of highly skilled employees by competitors or use of data out-of-context. We believe that any employee data and information that is required to be collected be done so by aggregation or making the data as anonymous as possible.
- The proposal to require disclosure of potential jobs lost due to a project can be very challenging to implement, as suggested by one Board member. Would this penalize applicants who transfer workers to an open position unrelated to the project? What if the project reduced the risks of injury by automating a certain process, while creating jobs to maintain the equipment?
- We support the proposal that an awardee cannot be on Cal-OSHA’s Severe Violator Enforcement Program list or guilty of a willful OSHA violation. We also strongly encourage the Board to look beyond “lagging indicators” of safety (stick) and prioritize or award additional points to those applicants who have implemented pro-active “beyond compliance” safety programs and incorporated ergonomics into employee training, or those that empower employees to identify and propose solutions to safety issues (carrot).
- Some have suggested that applicants should be blocked from the program with three or more serious OSHA violations in five years. Tesla operates California’s largest manufacturing facilities, and while it strives for zero incidents, an arbitrary cap unfairly targets large scale manufacturing

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operations. For example, the suggested cap would disqualify most other U.S. automobile factories and other major manufacturing operations across the U.S. This proposal should be dismissed in favor of proposals that encourage participation in the OSHA voluntary protection program, which opens the doors to OSHA consultancy regularly and illustrates commitment to the health and safety of workers.

Thank you for the opportunity to provide our comments. We look forward to continuing to work with the Board and Staff during development of these regulations.

Please contact Erin Bradley at ebradley@tesla.com for any questions.

From: [Alex Tran](#)
To: [Mous, Yee](#)
Subject: Proposed CAEATFA STE Regs
Date: Wednesday, October 30, 2019 11:45:04 AM
Attachments: [image001.png](#)

Hi Xee – I had two comments on the proposed regs.

1. Sec. 10032(a)(4)(A)(i) – the last paragraph in this section states that: “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).”

Just so I’m clear, this is not saying that an applicant simply SEEKING additional STE in the same calendar year in which they already received \$10M is precluded from applying for funding in the next year correct? I may not be reading it properly, but just wanted to be sure as that would be a fairly harsh rule for an applicant seeking more funding in the same year but didn’t actually receive any additional.

2. Similar to our first letter sent in, I believe that there should be some sort of balance in terms of the Admin Fee and the 50% reduction in the STE cap. Again, an Applicant that becomes successful across two years for \$10M each (previously could have received \$20M in one app) would now be required to pay double or \$700,000 in admin fee and application fees. While I partially agree with the logic that the same amount of work has to be performed across two MRAs, there are certainly some economies of scale and efficiencies gained during the semi-annual review process. Previously the \$350,000 would have been paid across 6 (assuming no extension) semi-annual compliance reports. While in the fact pattern of a 2x \$10M awardee would make that 12 semi-annual compliance reports—I would imagine that there would be some efficiencies gained by Staff as they review two semi-annual reports certs that have very similar if not identical responses and two Exhibit As that are effectively one Exhibit A cut into two excel spreadsheets. The categories, locations, PO #s and other Exhibit A items would be identical.

Perhaps as a compromise, there could be a provision in the regs that provides an Admin Fee “exception” (on the 2nd MRA) for an awardee that receives two MRAs in back-to-back years. The reg language could say something like: “In the event a Participating Party receives another MRA in the immediately subsequent calendar year, the Administrative Fee limitation pursuant to Section 100036(b)(3) shall be calculated across both MRAs”. Alternatively, the exception could be a 50% reduction on the 2nd MRA so the total fee paid across both MRAs would be \$525,000 (\$350K + \$175K).

Ultimately and respectfully, I’m just not seeing that the work/cost of Staff doubles across two \$10M MRAs for the same business—versus a single \$20M MRA.

Thank you!

Agenda Item – 4.C

Best Regards,
Alex

Alex Tran, CPA
Partner | [California Incentives Group](#)
6790 Embarcadero Lane, Suite 100
Carlsbad, CA 92011
Office: (760) 334-8300 | Mobile: (858) 722-4580
alex.tran@CALincentives.com
www.CALincentives.com



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