

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

***Request to Approve Emergency Regulations for the Sales and Use Tax
Exclusion Program (Article 2 (commencing with Section 10030) of
Division 13 of Title 4 of the California Code of Regulations)***

Tuesday, October 19, 2021

Prepared By: *Ashley Emery, Program Manager*

REQUEST

CAEATFA staff (“Staff”) request the approval of emergency regulations for the Sales and Use Tax Exclusion (“STE”) Program (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations) to improve and streamline the STE Program administration and incorporate lessons learned from program implementation (see Attachment A for full text of proposed regulations).

BACKGROUND AND PUBLIC PROCESS

The calendar year 2021 was the first year CAEATFA reviewed Applications¹ under the emergency regulations that became effective in early November 2020 and included the implementation of the \$20 million in STE small-project set-aside and \$15 million in STE for larger projects. Staff has been assessing the benefits and challenges of the modifications and is now proposing further amendments to the STE Program regulations as emergency regulations to help improve and streamline program administration and incorporate lessons learned. The proposed emergency regulations were released for public comment from September 20, 2021, to October 1, 2021, and CAEATFA received one comment, which is included in Attachment B. After the public comment period, Staff made a few, mostly technical, changes to the proposed emergency regulations, which are indicated in Attachment A.

If the proposed emergency regulations are approved, Staff intends to incorporate the amendments in a new emergency rulemaking package, which would become effective in November in time for the 2022 STE Program Application process.

Below is a tentative timeline for the emergency rulemaking process.

¹ All capitalized terms not defined in this document are defined in the STE Program’s statutes and regulations.

Agenda Item 4.A
Resolution No. 21-10-4.A

Tentative Dates	Emergency Rulemaking Process
October 19, 2021	Board Considers Amended Regulations for Approval
October 21, 2021	Issue Notice of Proposed Emergency Regulations with Amended Regulations
October 29, 2021	Submit Emergency Rulemaking Package to Office of Administrative Law (OAL) for Review
November 9, 2021	Emergency Regulations Effective
May 8, 2022	Certificate of Compliance Due

PROPOSED MODIFICATIONS TO THE REGULATIONS

Staff is requesting the approval of emergency regulations to improve and streamline the STE Program administration and incorporate lessons learned from program implementation.

The following is a summary of the recommended amendments to the STE Program regulations (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations). The full text of the proposed amended emergency regulations can be found in Attachment A.

Streamlining Application Review and Program Administration

Switch to Application Periods that Are Announced Prior to Each Calendar Year

Current regulations provide that Applications will be accepted on a rolling basis but must be submitted at least 60 days prior to the Board meeting at which the Applicant would like to be considered. In recent years, CAEATFA has received more Applications each month than in previous years, particularly in the last two years where the STE Program was oversubscribed after the first Application deadline. Additionally, the implementation of the different pools of STE and determining the order of consideration and review of Applications has increased the time it takes for Staff to review Applications. As a result, Staff has required more than 60 days to review and prepare Applications to bring before the Board for consideration.

The proposed regulations provide that the Executive Director will announce application periods prior to the start of each calendar year. The announcement will include the

Agenda Item 4.A
Resolution No. 21-10-4.A

(1) application periods, (2) deadline to submit Applications for each application period, (3) tentative dates when the Authority will hold Board meetings to consider Applications, and (4) amount of STE available to award during each application period. The Executive Director can reschedule or amend any previously announced application period with at least 10 days of notice. The proposed regulations also specify that requests for STE from the \$15 million in STE available to larger projects must be submitted during the first application period.

By allowing the Executive Director to announce application periods prior to the start of each calendar year, CAEATFA can adapt and respond to program demand by lengthening or shortening the Application review period. This flexibility will provide Staff sufficient time to review Applications and more certainty to Applicants as to when their Applications will be brought before the Board. Specific application periods that are properly spaced also prevents Applications from being submitted after an Application deadline and sitting un-reviewed for long amounts of time before Staff knows how much STE is available.

Order of Consideration of All Applications to be Based on Competitive Criteria Scores and Small Project Pool Applications Considered First

Current regulations provide that Applications will be considered on a first-come, first-served basis until the STE Program becomes oversubscribed, at which point Applications will be considered in order based on Competitive Criteria scores. The regulations also establish a \$20 million in STE set-aside for smaller projects of \$2 million or less in STE and a pool of \$15 million in STE for larger projects that apply to exceed the \$10 million in STE cap. The regulations provide that if those pools of STE are oversubscribed, the Applications will be considered in order based on Competitive Criteria scores within the respective pools of STE. However, the regulations do not specify whether a specific pool of STE will be considered first before the others and how to determine the order of review among all Applicants if not all of the pools of STE are oversubscribed.

The proposed regulation text provides that the order of consideration of all Applications will be based on Competitive Criteria scores. The regulations also make the Small Project Pool a defined term and specify that Small Project Pool Applications will be considered first.

If the STE Program is not oversubscribed, the order of consideration of Applications is immaterial to whether an Applicant will receive an award. However, by using Competitive Criteria scores to determine the order of review for all Applications, regardless of whether the pool is oversubscribed and establishing that the Small Project Pool will be considered first, Staff can more quickly and easily determine the order of review and consideration for Applications.

Limits to when Applicants May Reduce or Increase Qualified Property Amounts Listed in the Application

Qualified Property amounts sometimes change during the review process for various reasons, such as: (1) including ineligible items, (2) incorrectly reporting costs, and (3) updating cost estimates. When Qualified Property amounts change, this can affect the amount of STE being

Agenda Item 4.A
Resolution No. 21-10-4.A

requested from each pool and whether that pool is competitive, which in turn affects the order of Application review and Application review timeframes. To help limit Qualified Property amount changes from extending the Application review time, the proposed regulations provide that Applicants may not reduce Qualified Property amounts after an Application is submitted to qualify for consideration in the Small Project Pool, and Applicants may not increase Qualified Property amounts if the STE Program is oversubscribed.

Updates to Competitive Criteria and Application Scoring

Clarification of Competitive Criterion for Projects that Produce a Product with Quantifiable Environmental Benefits

Current regulations provide 100 points to projects with environmental benefits points greater than zero as calculated pursuant to the method for calculating points for environmental benefits for Advanced Transportation, Alternative Source, and Recycled Resource Extraction Applications in Section 10033(c)(4). This criterion was adopted in 2019 in recognition of the STE Program's statutory purpose and to prioritize projects with quantifiable environmental benefits, generally Alternative Source, Advanced Transportation, and recycling projects. The proposed regulations simplify the language and award the 100 points to Recycled Resource Extraction Projects and to Projects that produce an Advanced Transportation Technology or an Alternative Source product, component, or system. The proposed modification also enables Applicants that apply under Advanced Manufacturing but qualify under one of the other eligibility pathways to receive the 100 points.

New Competitive Criterion for Emerging Strategic Industries

Existing regulations allow the Executive Director to develop a list of Emerging Strategic Industries, which are innovative industries, technologies, or products 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. Existing regulations provide that Applicants in an Emerging Strategic Industry will receive 40 points to their Application score. To date, the program has not had an Emerging Strategic Industry list established.

To recognize in the Competitive Criteria scoring process the potential benefits of an Emerging Strategic Industry, the proposed regulations add a new competitive criterion that awards 75 points to an Applicant if the Project is in an Emerging Strategic Industry. The proposed regulations also add to the information requested in the Application the Applicant's North American Industry Classification System (NAICS) code to determine eligibility for the points.

Reduction of Estimated Fiscal Benefits if Applicant's Product does not Generate Sales Tax Revenue

Part of the estimated fiscal benefits calculation for Applications includes the estimated sales and use taxes paid by consumers of the product produced by the Project. Existing regulations

Agenda Item 4.A
Resolution No. 21-10-4.A

provide that if an Applicant produces a Biofuel and uses a fraction of the Biofuel to operate the Facility, the estimated sales and use tax revenue will be reduced based on the fraction of the Applicant's Biofuel production that will offset external fuel purchases in order to more accurately estimate the sales and use tax revenue from this type of Project. However, the current regulations do not account for all Applicants that produce a product that does not generate sales and use tax revenue. Therefore, the proposed regulations provide that if the Applicant produces a product that does not generate sales and use tax revenue, the estimated increase in sales and use taxes will be reduced based on the fraction of production that does not generate sales and use tax revenue.

Reduction of Points Awarded for Having an Environmental Sustainability Plan

Existing regulations require Applicants to score more than 20 environmental benefit points to receive a positive Staff recommendation. Existing regulations award Advanced Manufacturers environmental benefit points for having 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, and for making reductions in energy use, water use, solid waste, hazardous waste, air pollutant emissions, or emissions of other pollutants. Applicants with Facilities that make reductions by at least 5% 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. Current regulations also award 20 points for having an environmental sustainability plan.

The proposed regulations reduce the points earned for having an environmental sustainability plan to five points to better scale the points relative to the minimum point threshold of 21 points and the points earned for the Facility's environmental impact reductions.

Updates to Application Fee and Administration Fees

Refunding the Application Fee

Existing regulations require Applicants to pay an Application Fee to cover the costs of reviewing the Application. Current regulations provide that the Application Fee is not refundable unless an Application is not reviewed by Staff due to the STE Program being oversubscribed.

Because the proposed regulations switch the STE Program to specific application periods that will enable CAEATFA to know whether the program is oversubscribed before a subsequent application period, CAEATFA will no longer accept Applications if there is no STE available to award. Therefore, all Applications will at least be reviewed to determine Competitive Criteria scores. Determining the Competitive Criteria score of an Application requires Staff to review the Qualified Property list, estimated number of employees, and production-related information provided in the Application. To reflect the amount of time spent on this initial review of the Application, the proposed regulations provide that 75% of the Application Fee will be refunded if the Application is (1) reviewed to only determine its Competitive Criteria

Agenda Item 4.A
Resolution No. 21-10-4.A

ranking and (2) not fully reviewed by Staff due to the Applicant's Competitive Criteria ranking and the oversubscription of the statutory cap.

Administrative Fee for Requests to Extend the Initial Term and the 15% Purchase Requirement Timeframe

Existing regulations require Applicants to pay an administrative fee of \$1,500 for requests to extend the 15% purchase requirement timeframe and an administrative fee of \$2,000 for requests to extend the three-year initial term to use the STE award. Recently, some Applicants have requested consideration of an extension of both 15% purchase requirement and initial term at the same meeting, which requires additional Staff time relative to a request only to extend the three-year initial term. To adjust the fees to better reflect the reasonable amount of time spent reviewing and processing these requests, the proposed regulations establish an administrative fee of \$2,250 if an Applicant requests an extension of the 15% purchase requirement timeframe and the three-year initial term for consideration at the same CAEATFA Board meeting.

Other Clarifying and Technical Changes

The proposed regulations make other clarifying and technical changes, such as:

- updating language to reflect that the program will have specific application periods;
- clarifying that if an Applicant fixes an incomplete Application, the date of submission will be considered the date of the resubmitted Application; and
- adding "Statutory Cap" as a defined term rather than referring to the existing \$100 million statutory cap in the event the program cap is increased in statute and updating any reference to the Statutory Cap to reflect that it is a defined term.

RECOMMENDATION

Staff recommends the adoption of a resolution to authorize the Executive Director to make effective emergency regulations for the STE Program (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations) to improve and streamline the STE Program administration and incorporate lessons learned from program implementation.

ATTACHMENTS

Attachment A: Text of Proposed Modifications to Program Regulations
Attachment B: Written Public Comments on the Proposed Regulation Text

**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY
AND ADVANCED TRANSPORTATION FINANCING AUTHORITY
TO READOPT EMERGENCY REGULATIONS FOR THE
SALES AND USE TAX EXCLUSION PROGRAM**

October 19, 2021

WHEREAS, Section 26009 of the Public Resources Code authorizes the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) to adopt regulations to implement the California Alternative Energy and Advanced Transportation Financing Authority Act (Division 16 (commencing with Section 26000) of the Public Resources Code) and declares the adoption, amendment, repeal, or readoption of a regulation by CAEATFA as deemed to be an emergency for the purposes of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Title 2 of the Government Code); and

WHEREAS, Section 26011.8 of the Public Resources Code establishes the Sales and Use Tax Exclusion Program (“Program”) to be administered by CAEATFA; and

WHEREAS, CAEATFA has determined that amendments to CAEATFA’s regulations for the Program (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations) are necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code;

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

Section 1. The Executive Director is authorized to take the actions necessary to make effective these emergency regulations for the Program (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations);

Section 2. The Executive Director is authorized to execute and deliver any documents and take any steps, including making any changes to the emergency regulations to secure approval by the Office of Administrative Law, the Executive Director may deem necessary or advisable to effectuate the purposes of this resolution.

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

**ATTACHMENT A – TEXT OF PROPOSED MODIFICATIONS
TO PROGRAM REGULATIONS**

Proposed modifications are shown in **red text**. Single underline text are additions and ~~single strikethrough~~ text are deletions that were included in the proposed regulation text noticed to the public on September 20, 2021. ~~Single underline with single strikethrough~~ text are deletions made after the public comment period of initially proposed additions. Double underline text are additions made after the public comment period.

The current STE Text of Regulations can be found [here on the CAEATFA website](#).

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 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)(8)(B), which are measurable at the time of application.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 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, 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.

Agenda Item 4.A
Resolution No. 21-10-4.A

(ac) "Small Project Pool" is the twenty million dollars (\$20,000,000) in sales and use tax exclusion available to award only to Applications requesting two million dollars (\$2,000,000) or less in sales and use tax exclusion through September each year as established in Section 10032(a)(4).

(ad) "Soil amendments" is defined as stated in Section 26011.8(b)(3) of the Public Resources Code.

(ae) "Statutory Cap" means the maximum amount of sales and use tax exclusion the Authority may grant pursuant to Section 26011.8(h) 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), (9), and (10) below. The Executive Director will announce the application periods for the sales and use tax exclusion prior to the start of each calendar year on the Authority website found at www.treasurer.ca.gov/CAEATFA.

(A) The announcement will include the (1) application periods, (2) deadline to submit Applications for each application period, (3) tentative dates when the Authority will hold Board meetings to consider Applications, and (4) amount of sales and use tax exclusion available to award during each application period.

(B) The Executive Director may reschedule or amend any previously announced application period by providing notice on the Authority website and may reschedule or relocate any previously announced Authority Board meeting so long as the information is posted on the Authority website at least ten (10) days before the scheduled meeting.

(2) Applications must be submitted via e-mail to CAEATFA@treasurer.ca.gov.

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

(4) \$20 million in sales and use tax exclusions shall be available to award only to Applications requesting \$2 million or less in sales and use tax exclusion through September each year. If any of the \$20 million in sales and use tax exclusion remains after September, it shall be made available to award to all Applicants. ~~In the event that the Applications received by CAEATFA requesting \$2 million or less in STE by the deadline for a particular Board meeting represent~~

Agenda Item 4.A
Resolution No. 21-10-4.A

~~STE in excess of the \$20 million set aside for that calendar year, the Applications submitted for that particular Board meeting~~Applications being considered under the Small Project Pool will be reviewed and presented to the CAEATFA Board for approval in the order in which ~~they~~the Applications are ranked based on Competitive Criteria, as established in Section 10032(a)(8)(B) ~~below, and will be heard before Applications being considered for an award under the general pool of STE.~~ When the amount requested in the Application exceeds the STE available from the ~~\$20 million set aside~~Small Project Pool, the Authority shall award the remaining STE request using STE from the general pool of STE allocation, if any remains. Any Applicant requesting \$2 million or less in STE that is not awarded from the ~~\$20 million in STE set aside~~Small Project Pool will be considered for an award from the general pool of STE allocation, if any remains.

(5) Except as provided in subparagraphs (A) and (B) below, Applications shall be capped at \$10 million of sales and use tax exclusions 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 \$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~~application period of the calendar year ~~after all Applications are considered,~~ the Authority may provide additional STE to Applicants that qualified for additional STE but were capped pursuant to this paragraph. The remaining STE available will be awarded first to the last Applicant considered for additional STE pursuant to subparagraph (B), below, if ~~it~~the Applicant did not receive its full STE request, then to any additional Applicants wishing to exceed the \$10 million cap that were not awarded pursuant to subparagraph (B), below. The Applications will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria. If there is still additional STE available, then Applicants wishing to exceed \$20 million in STE will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria. Applicants wishing to exceed ~~the cap shall~~that cap must bring a revised Project Application or a new Application before the Authority Board for consideration in ~~December~~the last application period of the same calendar year in which the original Application was approved. The revised or new Application ~~shall~~must include updated information requested as in Section 10032 and will be evaluated pursuant to Section 10033. The Executive Director will announce end-~~of-the-year~~ availability of sales and use tax exclusion no later than 28 days prior to the ~~December last~~ Authority Board meeting of the calendar year.

(B) For Applicants wishing to exceed the \$10 million in STE cap, \$15 million in STE will be available to award to Applicants in addition to the \$10 million in STE cap ~~at the first Board meeting of the calendar year~~in the first application period of the calendar year. Requests for STE in addition to the \$10 million in STE cap shall be capped at \$10 million in STE, for a potential total award of \$20 million in STE, ~~and must be submitted during the first application period of the calendar year.~~ The Applications will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked based on Competitive Criteria, as established in Section 10032(a)(8)(B) below. If the

Agenda Item 4.A
Resolution No. 21-10-4.A

amount requested in the last Application considered exceeds the STE available from the \$15 million in STE set-aside, the Applicant shall only receive the amount remaining from the \$15 million in STE set-aside. If any of the \$15 million in STE is not awarded, ~~it shall~~ the remaining STE will be made available to award to all Applicants.

(6) To the extent ~~that the~~ total sales and use tax exclusions awarded during the calendar year reaches ~~\$100 million (the statutory cap) the Statutory Cap~~, ~~no~~ additional Applications will ~~not~~ be reviewed during that calendar year. Applications that are received but not awarded due to the ~~statutory cap~~ Statutory Cap will be placed on a waiting list. To the extent that additional STEs becomes available during the calendar year, it will be awarded first to the last Applicant considered, if ~~it that~~ that Applicant did not receive its full STE request. If the last Applicant considered received its full STE request, ~~then~~ Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which ~~they~~ those Applications are ranked based on Competitive Criteria. The waiting list shall expire at midnight on January 1 of the year following the calendar year the list is established.

(7) ~~Complete Applications will be reviewed in the order in which they are received, except as noted in paragraph (8) 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.~~

~~(8) 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. Except as provided in paragraph (4), the order in which Applications will be reviewed and considered by the Authority will be based on a ranking of Competitive Criteria, as established in subparagraphs (A) and (B) below.~~

(A) 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, up to \$2 million in STE. Any remaining Applications shall be placed on the waiting list.

(B) Competitive Criteria.

(i) The competitive criteria score will be the sum of all of the following:

a. 100 points for Applicants with ~~environmental benefits points greater than zero as calculated pursuant to the method for calculating points for environmental benefits for Advanced Transportation, Alternative Source, and Recycled Resource Extraction Applications in Section 10033(e)(4)~~ Recycled Resource Extraction

Agenda Item 4.A
Resolution No. 21-10-4.A

Projects or Projects that produce an Advanced Transportation Technology or an Alternative Source product, component, or system;

b. ~~The~~the Unemployment Score as calculated pursuant to Section 10033(c)(5)(A);

c. ~~The~~the New Jobs Score as calculated pursuant to Section 10033(c)(5)(B);

d. 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;

e. 15 points for Applicants with a Corporate Headquarters, as defined in Section 10031(l), located in California; ~~and~~

f. 50 points for Applicants that are not eligible to use any of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code. The Authority staff will consult with the California Department of Tax and Fee Administration regarding questions of eligibility for any of the exemptions established pursuant to Section 6377.1 of the Revenue and Taxation Code; ~~and~~

g. 75 points if the Applicant's Project's industry is in an Emerging Strategic Industry.

~~(9) 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.~~

~~(4098)~~ 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 the Applicant 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 with the date of submission determined based on the date the Authority receives the resubmitted Application.

(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

Agenda Item 4.A
Resolution No. 21-10-4.A

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 determining the date the 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 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)(5)(B).

(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;

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 August 14, 2018), which is hereby incorporated by reference.

(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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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.

(ix) Whether the Applicant meets at least one of the following size requirements, on average, over the past 3 years:

- a. 100 or fewer employees, including affiliates;
- b. Annual revenues of less than \$15 million, including affiliates; or
- c. The U.S. Small Business Administration's size standards for a Small Business matched to the North American Industry Classification System, found in Part 121.201 of Title 13 of the Code of Federal Regulations (1-1-20 Edition), which is hereby incorporated by reference.

(x) How the Applicant learned about the Sales and Use Tax Exclusion Program.

(xi) The Applicant's North American Industry Classification System (NAICS) code.

(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

Agenda Item 4.A
Resolution No. 21-10-4.A

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, as well as any state incentives or state financing the Applicant has applied for or received.

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 the product produced and of the end of supply chain product for purposes of generating sales taxes.

k. Projected average number of employees at the Facility, measured in full time equivalents, assuming the Qualified Property is not utilized.

l. Average and minimum wage of each classification of full-time employees proposed to be hired or not retained using the following wage categories: up to \$20,000; \$20,001–\$30,000; \$30,001–\$40,000; \$40,001–\$50,000; \$50,001–\$60,000; \$60,001–\$70,000; \$70,001–\$80,000; \$80,001–\$90,000; \$90,001–\$100,000; \$100,001–\$110,000; \$110,001–\$120,000; and over \$120,000. Wages include monetary compensation paid to the employee each year, not including tips, commissions, bonuses, stock options, overtime, or other compensation of any kind.

m. An explanation of why each classification is being eliminated and if any existing employees in the classification will be retrained or reclassified.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 the submission of the 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. An Applicant is not to reduce the amount of Qualified Property listed in the Application to qualify for consideration under the Small Project Pool. An Applicant is not increase the amount of Qualified Property listed in the Application if the total amount of sales and use tax exclusion requested in the Application period for which the Application was submitted represent sales and use tax exclusion in excess of the Statutory Cap.

(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.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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.

(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) 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

Agenda Item 4.A
Resolution No. 21-10-4.A

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.

d. Applicants that provide benefits and fringe benefits to their employees may submit information on the types of benefits and fringe benefits provided, submission of which may increase an Applicant's score. Benefits include medical, health, dental, and vision premiums paid by the Applicant on behalf an employee, an employee's spouse or dependents. Fringe benefits include, but are not limited to, bonuses, pension plans, retirement contributions, profit-sharing programs, dependent care and assistance reimbursement, transportation subsidies, education reimbursement, gym subsidies, employee discounts, and paid leave.

(iii) Additional documentation only for Applicants claiming that without the exclusion the proposed Facility will not be sited in California. Determination of Facility benefits, as further delineated in Section 10033, may be increased for Facilities that would not locate production Facilities in California absent the grant of the sales and use tax exclusion. For Applicants claiming that Facility location or expansion decisions are dependent upon receipt of the sales and use tax exclusion, Applications must provide evidence to support the claim. Such evidence may include the following:

a. Internal financial analysis demonstrating the extent of an advantage for a non-California site.

b. Location consultant report demonstrating the extent of an advantage for a non-California site.

c. Other internal or external analyses demonstrating that, absent the grant of the sales and use tax exclusion, the proposed Facility will not proceed at the California site.

(G) Calculations and assumptions relied upon by the Applicant. For any calculation performed by or assumption relied upon by the Applicant in completing the Application, the Applicant must provide an explanation of the basis for the value resulting from the calculation or reasonableness of the assumption relied upon. Applicants may be asked to provide additional supporting information, including business plans, pro forma financial statements or other comparable documents used for the purpose of soliciting investors to

Agenda Item 4.A
Resolution No. 21-10-4.A

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:

(1) 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) 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

Agenda Item 4.A
Resolution No. 21-10-4.A

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:

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

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 Department of Tax and Fee Administration.

(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:

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

Agenda Item 4.A
Resolution No. 21-10-4.A

(F) The estimated marginal increase in state economic output (MISO) resulting from the sales and use tax exclusion. The MISO will be calculated using the MIS, the AIEW resulting from the marginal increase in sales, the marginal increase in in-state supplier purchases (MISP) and a multiplier effect (Multiplier) to be determined by the Executive Director based on the relevant research literature, consultation with outside experts, or information provided by other state agencies, pursuant to the following formulas:

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

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

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

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

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

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

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

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

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

If the Applicant produces a product that does not generate sales tax revenue, the IST will be reduced based on the fraction of production that does not generate sales tax revenue. 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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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

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

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

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

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

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

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 Department of Tax and Fee Administration, 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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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:

$$IFB = PVMISO * GRSO$$

(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:

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

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.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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:

$$\text{\$GGE} = \text{Pollution cost of CO2 per GGE} + (\text{POSCA} * (\text{pollution cost of VOC per GGE} + \text{pollution cost of NOx per GGE}))$$

(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:

$$\text{\$MWh} = (\text{POSCA} * (\text{pollution cost of CA CO2 per MWh} + \text{pollution cost of CA NOx per MWh} + \text{pollution cost of CA SO2 per MWh})) + ((1-\text{POSCA}) * \text{pollution cost of US CO2 per MWh})$$

(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:

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

Agenda Item 4.A
Resolution No. 21-10-4.A

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:

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

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

(ii) Net change in fossil fuel consumption resulting from increased use of Alternative Source fuels. The TPB resulting from the net change in 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:

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

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.

$$LPB = NAPB * \$CO_2$$

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

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

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

Agenda Item 4.A
Resolution No. 21-10-4.A

(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:

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

- 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

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

- i. The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate determined by the Executive Director.
- (v) Other environmental benefits. Any other environmental benefits asserted by the Applicant shall be evaluated by the Executive Director based on verification of Applicant-provided information regarding the methodology for calculating such benefits and shall be added to the appropriate Total Pollution Benefit (TPB) amount determined pursuant to these regulations.

(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~~25 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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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.

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

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

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 (SCO₂) 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 SCO₂ as follows:

$$TPB = \text{Present Value}(GGB * SCO_2)$$

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

Agenda Item 4.A
Resolution No. 21-10-4.A

benefits (TPB) by the value of the sales and use tax exclusion and multiplying the result by 1,000. Points for environmental benefits 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)(3)(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 for the New Jobs Score 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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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.

(ii) The Executive Director will calculate the decrease in Facility jobs, if any, due to the sales and use tax exclusion. The number of jobs reduced by the Applicant as a result of the sales and use tax exclusion will be calculated by subtracting the total Facility jobs as reported by the Applicant assuming the Qualified Property is not used from the total Facility jobs assuming the Qualified Property is used. If the result is a negative value, the New Jobs Score will be set to zero regardless of the results of the calculation in Section 10033(c)(5)(B)(1)(i). If this value is negative, Lost Jobs Points will be calculated by (a) subtracting the total Facility jobs as reported by the Applicant assuming the Qualified Property is not used from the total Facility jobs assuming the Qualified Property is used, (b) dividing the result by the number of Facility jobs assuming the Qualified Property is used, and (c) multiplying the result by 100.

(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.

Agenda Item 4.A
Resolution No. 21-10-4.A

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

(E) 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.
- d. Applicants that provide benefits and fringe benefits to employees will receive 5 points for each type of benefit or fringe benefit provided, up to 25 points.

(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:

Agenda Item 4.A
Resolution No. 21-10-4.A

(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

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

Agenda Item 4.A
Resolution No. 21-10-4.A

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

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

and

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

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

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

a. Non-integer point totals will be rounded to the nearest whole integer for scoring. A maximum of 40 points may be awarded for out-of-state pollution benefits.

(6) Total Score. The total number of additional points not to exceed 200 determined pursuant to Section 10033(c)(5) shall be added to the number of points determined 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.

§ 10036. Fees.

(a) Application Fee.

(1) Except as provided in paragraph (5) below, every Applicant shall be required to pay an Application Fee.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 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~~ (1) only reviewed to determine its Competitive Criteria ranking and (2) is not fully reviewed by staff due to the Applicant's Competitive Criteria ranking and the oversubscription of the statutory cap ~~Statutory Cap. Then 75% of the Application Fee will be refunded.~~

(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) 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

Agenda Item 4.A
Resolution No. 21-10-4.A

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) Except as provided below, 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.

(A) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution to waive the 15% purchase requirement pursuant to Section 10035(b)(1) above, shall pay an additional administrative fee of \$1,500.

(B) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution to waive the three-year initial term pursuant to Section 10035(b)(1) above, shall pay an additional administrative fee of \$2,000.

(C) An Applicant that requests a modification to its Regulatory Agreement or authorizing resolution to ~~waive~~ waive the 15% purchase requirement and the three-year initial term pursuant to Section 10035(b)(1) for consideration at the same Authority Board meeting shall pay an additional administrative fee of \$2,250.

(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.

Agenda Item 4.A
Resolution No. 21-10-4.A

(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 and received by the Authority within five (5) business days of the submission of the request.

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
PROPOSED REGULATION TEXT**

From: Alex Tran <alex.tran@calincentives.com>
Sent: Friday, October 1, 2021 4:43 PM
To: Jumps, Matthew
Cc: CAEATFA; Emery, Ashley; Sarah Hoyt
Subject: STE Proposed Regulation Mod Comments

Importance: High

CAUTION: EXTERNAL MAIL Do not click on links or open attachments unless you trust the sender and know the content is safe.

Hi Matt,

We appreciate the ability to provide comments on the proposed modifications to the STE program. The program continues to offer critical support to qualified California businesses. After reviewing the proposed regulations, we had comments on two primary areas: **(1) 10032(a) Timing of Application Submissions & (2) the new addition of competitive points for "Emerging Strategic Industries"**.

Timing of Application Submissions – Thinking back to last year and Staff's compressed time for app review, Board Meeting rescheduling, etc. we fully support adjustments for 2022 that will provide Staff the flexibility needed to diligently and efficiently review and present applications for Board approval.

However, we have some concerns that the proposed revisions related to rescheduling and/or amendments may create unwanted scenarios where:

- Staff would be required to calculate or re-calculate competitive criteria scoring in the late stages of an application period; and/or
- Inequities could potentially be created between Applicants in terms of which Applicants would be considered for approval at a specific Board Meeting.

For clarity, we laid out some example scenarios below. The example dates below are for illustrative purposes only.

Scenario 1: For the first application period of the year, 20 apps are submitted by the December 15, 2021 deadline to tentatively be considered at the February 15, 2022 Board Meeting. **Collectively, the 20 apps did not exceed the STE Statutory Cap.**

- In mid-January 2022, Staff determine additional time is required to review the 20 apps and the ED amends the original announcement and dates (pursuant to 10032(a)(1)(B)) so that the 20 will be considered in March 2022.
- In the first week of January, CAEATFA receives 6 additional apps. Aggregated with prior 20, these 26 apps now exceed the Statutory Cap, making the program Competitive. Thus, all 26 apps must now be re-analyzed to each have a competitive criteria score and potentially all considered together at the March Board Meeting.

Scenario 2: Same facts as Scenario 1, except collectively the 20 original apps received by the December 15 deadline did in fact exceed the Statutory Cap—requiring all 20 apps to be scored competitively. With the same mid-January 2022 rescheduling the additional 6 apps would also require competitive scoring and subsequently ranked against the prior 20 apps.

Both scenarios create additional last-minute work for Staff (Competitive Criteria scoring) and inequities to the original 20 apps since they now would compete against the later submitted 6 Applicants. While the Authority could choose to

Agenda Item 4.A Resolution No. 21-10-4.A

separate the two “buckets” of apps, there is nothing currently written in the proposed regulations that would prevent the 2nd bucket of 6 Applicants from claiming that they should be given the same consideration as the original 20 Applicants.

Further, it appears that Staff did an excellent job preventing these potential issues in its revisions in 10032(c)(4)(C) with its “Applicant is not to increase the amount of QP if the total STE requested causes the Statutory Cap to be exceeded.” We surmise, this was written to prevent late app period competitive scoring calculations. To continue this theme created by Staff, we suggest the following revision language *[underlined sections are our additions to existing proposed regulations]*.

10032(a)(1)(B) The Executive Director may reschedule or amend any previously announced application period by providing notice on the Authority website and may reschedule or relocate any previously announced Authority Board meeting so long as the information is posted on the Authority website at least ten (10) days before the scheduled meeting. No rescheduling or amendments pursuant to (A)(1)-(3) shall, in and of itself cause a Board Meeting that will require the Authority to consider an amount of sales and use tax exclusion greater than the Statutory Cap.

Alternatively, the same section could be written:

10032(a)(1)(B) The Executive Director may reschedule or amend any previously announced application period by providing notice on the Authority website and may reschedule or relocate any previously announced Authority Board meeting so long as the information is posted on the Authority website at least ten (10) days before the scheduled meeting. In the event a rescheduling or amendment occurs pursuant to (A)(1)-(3) causes the Statutory Cap to be exceeded, the Board shall first consider for approval those applications that were timely submitted as if such rescheduling or amendments did not occur.

Finally, to resolve Scenario 2:

10032(a)(7) [...] Except as provided in paragraph (4), the order in which Applications will be reviewed and considered by the Authority will be based on a ranking of Competitive Criteria of only the Applications that were timely submitted in the original application period in which the Statutory Cap was exceeded, notwithstanding rescheduling or amendments pursuant to paragraph (1)(A)(1)-(3), as established in subparagraphs (A) and (B) below.

The above revisions will only allow timely submitted applications to be scored against other applications submitted by the same deadline even in the event of an amendment to the application period, deadline, or timing of Board meeting. Neither of these revisions will restrict or limit CAEATFA’s ability to extend the time needed for Staff review or Board consideration.

Emerging Industries – We believe that the creation of Competitive points for Applicants considered to be in one of these industries will create “subjectivity issues”. NAICS codes are not regulated, enforced or required to be accurate. Moreover, we have seen examples of businesses that operate primarily in one industry code but perform activities in other industry codes. We have also seen those other activities be the entire reason why a “Project” and capital expenditures occur. I.e. if an aircraft manufacturer got into the business of manufacturing AI-driven robotics.

Our suggestion would be to have the 10032(a)(7)(B)(i)g read: “75 points if the Project of the Applicant is related to an Emerging Strategic Industry.”

The above allows for more flexibility and still incentivizes businesses, even those who are not historically within an Emerging Industry, to perform and develop products that are within an Emerging Industry.

Please let us know if you have any questions on the above, and if you are open to scheduling a brief call with us to discuss. Have a great weekend and thank you again for your time.

Best Regards,

Agenda Item 4.A
Resolution No. 21-10-4.A

Alex

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