

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

***Request to Approve Second Readoption of 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) Initially Effective on November 4, 2020***

Tuesday, October 19, 2021

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REQUEST

CAEATFA staff (“Staff”) request the approval of a second readoption of the 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) that initially became effective on November 4, 2020.

BACKGROUND

In 2019 for the first time in STE Program history, CAEATFA exhausted the \$100 million STE statutory cap for the calendar year by the July 2019 CAEATFA Board meeting rather than the December meeting. Also in 2019 for the first time, the STE Program’s Competitive Criteria¹ were used to determine which Applicants would be considered. Given the limited resources and recent competitive nature of the STE Program, the CAEATFA Board requested that Staff re-evaluate program goals and priorities to determine how best to effectuate the purpose of the STE Program. Additionally, Staff had been identifying lessons learned throughout STE Program implementation.

At the November 19, 2019, CAEATFA Board meeting, Staff presented proposed amended emergency regulations reflecting feedback from the CAEATFA Board and Staff’s stakeholder outreach. The modified emergency regulations made incremental changes to address more immediate STE Program priorities at the time, while reserving some of the more complex issues for when Staff could take more time to solicit input and thoughtfully consider the issues and policy trade-offs.

After the initial emergency regulations were approved by the Office of Administrative Law (“OAL”) and became effective on December 16, 2019, CAEATFA began accepting STE Applications for the 2020 calendar year. By the first Application deadline, the STE Program was oversubscribed for the 2020 calendar year. In March 2020, the CAEATFA Board approved

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

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18 Applications, fully awarding the \$100 million in STE. Six Applicants requesting approximately \$10 million in STE remained on the waitlist.

Subsequently, the COVID-19 pandemic spread throughout the world, affecting purchase timeframes, financing, feedstock supply, revenue, construction, and operations for previously approved applicants. However, the ultimate market impact of the COVID-19 pandemic remains unknown.

Given the significant STE Program and market changes after the December 2019 emergency regulations first took effect, CAEATFA conducted additional stakeholder outreach and discussions to determine what lessons learned could be applied to the regulations going forward. Proposed emergency regulations addressing the STE Program's oversubscription and the unprecedented economic impact of the COVID-19 pandemic were presented to and approved by the CAEATFA Board at its September 15, 2020, meeting, and became effective on November 4, 2020. The repeal date for the November 2020 emergency regulations was extended on September 1, 2021.

Staff is seeking Board approval to readopt the emergency regulations that initially became effective in November 2020 for a second time before they repeal on November 30, 2021.

Additionally, as detailed under Agenda Item 4.C, Staff is concurrently working to begin the regular rulemaking process for (1) the amendments to the November 2020 emergency regulations proposed under Agenda Item 4.A, and (2) the STE Program emergency regulations that became effective November 2020 detailed under this agenda item. The readoption of emergency regulations initially effective November 2020 is necessary to ensure the amendments remain in effect until the regular rulemaking is complete. Below is a tentative timeline for the emergency rulemaking readoption process:

Tentative Dates	Emergency Rulemaking Process
November 10, 2021	Issue Notice of Second Readoption of Emergency Regulations for the Emergency Regulations Initially Adopted November 2020
November 18, 2021	Submit Emergency Readoption Package to OAL for Review
November 30, 2021	Second Readoption of Emergency Regulations Effective
February 28, 2022	Certificate of Compliance Due for November 2020 Emergency Regulations

RECOMMENDATION

Staff recommends the adoption of a resolution to authorize the Executive Director to readopt the emergency regulations for the STE Program (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations) that initially became effective on November 4, 2020.

ATTACHMENTS

Attachment A: Text of Regulations

**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 emergency regulations for the Program (Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations) are necessary to be readopted at this time;

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 for the readoption of the Program’s emergency regulations in Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations set to repeal on November 30, 2021;

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 REGULATIONS

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

Underlined and strikeout text reflect the regulation modifications initially adopted on November 4, 2020.

TEXT OF REGULATIONS **CALIFORNIA CODE OF REGULATIONS**

Title 4. Business Regulations

Division 13. California Alternative Energy and Advanced Transportation Financing Authority

Article 2. MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM

§ 10031. Definitions.

(a) "Administrative Fee" means the fee payable ~~following approval of an Application upon the execution of the Regulatory Agreement between the Applicant and the Authority and~~ at the time of submitting the semi-annual report to CAEATFA.

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

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

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

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

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

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

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

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

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

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

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(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.

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

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

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

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

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

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

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

(aa) "Recycled Resource Extraction Project" is a project that converts Recycled feedstock into materials that are used in subsequent manufacturing processes.

(ab) "Regulatory Agreement" means the agreement specified in Section 10035.

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

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

§ 10032. Application Requirements.

(a) Timing of Application submissions.

(1) Except as otherwise provided by the Authority pursuant to subparagraphs (3) ~~and (9)~~ below, Applications may be submitted for consideration at any time. Applications will be presented at the first meeting at which Applications will be considered occurring at least 60 calendar days after the receipt of the Complete Application, except as noted in paragraphs (3), ~~(8)~~, and ~~(9)~~ below.

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

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

(4) \$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 STE in excess of the \$20 million set-aside for that calendar year, the Applications submitted for that particular Board meeting 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. When the amount requested in the Application exceeds the STE available from the \$20 million set-aside, 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 will be considered for an award from the general pool of STE allocation, if any remains.

(45) Except as provided in subparagraphs (A) and (B) below, Applications shall be capped at ~~\$20 million~~ \$10 million of sales and use tax exclusions ~~(STEs)~~ per Applicant, per calendar year, based on the average statewide sales tax rate at time of Application. For any Applicant which has a parent company with an ownership interest greater than 50%, the ~~\$20 million~~ \$10 million cap also applies to the Applicant's parent company and the parent company's subsidiaries or affiliates.

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(A) If STE will be available at the last Authority board meeting of the calendar year, the Authority may provide additional STE to Applicants that qualified for additional STE but were capped at \$20 million of STE 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 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 \$20 million cap shall bring a revised Project Application or a new Application before the Authority for consideration in December of the same calendar year in which the original Application was approved. The revised or new Application shall include updated information requested in Section 10032 and will be evaluated pursuant to Section 10033. The Authority Executive Director will announce end of the year availability no later than 28 days prior to the December Authority meeting.

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

(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. 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. 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 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 be made available to award to all Applicants.

(5) To the extent that total sales and use tax exclusions awarded during the calendar year reach \$100 million (the statutory cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the statutory cap will be placed on a waiting list. To the extent that additional STEs become available during the calendar year, Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked, based on Competitive Criteria. Applications that are on the waiting list but are not evaluated by staff due to the statutory cap will be considered in the subsequent calendar year it will be awarded first to the

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last Applicant considered, if it 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 are ranked based on Competitive Criteria. The waiting list shall expire at midnight on January 1 of the year following the year the list is established.

~~(67)~~ Complete Applications will be reviewed in the order in which they are received, except as noted in paragraph ~~(78)~~ 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.

~~(78)~~ In the event that Applications received by CAEATFA by the deadline for a particular Board meeting represent STEs in excess of the statutory cap for that calendar year, the order in which the Applications submitted for that particular Board meeting shall be considered by the Authority will be based on a ranking of Competitive Criteria ~~of all Projects moving forward before the board within the same month~~, as established in subparagraphs (A) and (B) below.

~~(A) Each criterion that the Application meets shall be worth between one and five points.~~ The Projects with the greatest point score will be reviewed and presented to the CAEATFA Board. In the event of a tie, the Application representing the smaller STE award will move forward to consideration before the Authority. If the STE amounts are identical, the Application that was received by CAEATFA first shall be heard first. When the amount requested in the Application exceeds the STE available in the calendar year, the Authority shall award the remaining STE request using STE from the following calendar year, up to \$2 million in STE. Any remaining Applications shall be placed on the waiting list.

(B) Competitive Criteria.

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

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

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

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

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- ~~e. The local unemployment rate means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The highest unemployment rate in the state is unemployment rate for the county with the highest countywide rate reported. The most current annual average unemployment rate information available at the time of the Application submission shall be used.~~
- ~~(ii) If the Applicant has its Corporate Headquarters located in California, the Project shall receive one point, provided that:~~
 - ~~a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also have its Corporate Headquarters in California.~~
- ~~(iii) If the Applicant is classified as small businesses under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and has fewer than 500 employees, the Project shall receive one point, provided that:~~
 - ~~a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also be classified as small business under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and have fewer than 500 employees.~~
- ~~(iv) If the Applicant has not previously been approved for an award by the Authority, the Project shall receive five points, provided that:~~
 - ~~a. If the Applicant has a parent company with an ownership interest greater than 50%, neither the parent company, nor its subsidiaries or affiliates may have been previously approved for an award by the Authority.~~
- ~~(v) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two year of the time of application, the Project shall receive five points.~~
- (i) The competitive criteria score will be the sum of the following:
 - 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(c)(4);
 - b. The Unemployment Score as calculated pursuant to Section 10033(c)(5)(A);
 - c. 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

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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.

(82) 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.

(910) The Authority may, upon a finding that it is in the public interest and advances the purposes of the Program, at any time announce that it is not accepting further Applications.

(b) Application. Applicants shall submit to the Authority the information required by this section.

(1) Applications not meeting all requirements shall be considered incomplete. An Applicant shall be notified by the Authority should its Application be deemed incomplete and may correct any deficiency and resubmit the Application. Resubmitted Applications will be reviewed for completeness and, if complete, will be further reviewed by staff and presented to the Authority pursuant to the regular review and evaluation process and timeline.

(2) Determination of completeness, compliance with all requirements, and the scoring of the Application shall be based entirely on the documents contained in the Application as of the date on which the Application was submitted. Any additional documents pertaining to the requirements or scoring categories that the Applicant chooses to submit shall be accepted after the Application-filing date only with the understanding that, for purposes of calculating the 60 calendar days to determine the earliest meeting at which the Application will be heard and the date on which a complete application is deemed to have been received, the date the additional documentation is received shall be the date of receipt of the Application. In the event the Authority asks an Applicant for additional information or requests clarification or correction of errors, Applicants shall be given up to three (3) business days from the date of receipt of staff notification to submit said documents to complete the Application. A timely response shall not cause a redetermination of the date of receipt. The Authority may request additional clarifying information from third party sources, such as local government entities, other state agencies, or subject matter experts. To the extent that third party information is received that contradicts or otherwise calls into question information provided in the Application or otherwise may result in a reduction in the score that an Application would

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receive, the Applicant will be notified and will be given three (3) business days to respond to the third party information received.

(3) An Application may not be changed, nor may any additional information with respect to scoring be submitted subsequent to the Application filing date, except as noted above.

(4) Applications ~~not submitted with the Application Fee~~ will be considered incomplete if the Application Fee is not received within five (5) business days of submission of the Application, unless an Application is a resubmission pursuant to Section 10032(a)(5)(B).

~~(5) To be considered complete, a paper copy of the filled-out Application and any supporting documentation, including original signatures as required on part A of the Application form, must be received at the Authority's Sacramento office.~~

(c) Documentation. The following documentation relevant to the proposed Facility is required to be submitted with all Applications:

(1) Applicant Certification. A signed statement certifying the responsibility of the Applicant to:

(A) provide Application-related documentation to the Authority upon request;

(B) be familiar with and comply with Program statutes and regulations;

(C) hold the Authority and its employees and consultants harmless from any and all issues arising from the Applicant's participation in the Program;

(D) agree to comply with and remain in compliance with all applicable laws and regulations during the term of the Regulatory Agreement;

(E) acknowledge that the Authority has recommended the Applicant seek tax advice;

(F) acknowledge that the Application will be evaluated according to Authority regulations;

(G) acknowledge that continued compliance with Program requirements, including ongoing reporting requirements and any costs associated with such requirements for the term of the Regulatory Agreement, is the responsibility of the Applicant;

(H) acknowledge that information submitted to the Authority may be subject to disclosure pursuant to the Public Records Act (Government Code Section 6250, et seq.);

(I) agree to enter with the Authority into a Regulatory Agreement if the Application is approved; and,

(J) acknowledge, under penalty of perjury, that all information provided to the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Authority of

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any material changes to the information submitted in the Application during the Application process and the term of the Regulatory Agreement.

(2) Legal Information. Applicants shall complete the Legal Status Questionnaire (as revised on ~~October 1, 2010~~ August 14, 2018), 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.

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.

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(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.

(B) Facility Information.

(i) Brief description of Facility and product(s) to be produced, including the following:

- a. Physical location of the Facility.
- b. A description of the Facility, including the design, manufacturing, or assembly process to be employed, the product to be produced, and the intended or likely customers.
- c. Identification of the Advanced Transportation Technology or Alternative Source product, component or system to be produced, the Advanced Manufacturing process to be utilized, or the type of Recycled Resource Extraction Project. In the case of a Facility producing property or products that, after further manufacture, will become the Green Component of an Advanced Transportation Technology or Alternative Source product or system, the Applicant must describe both the property or product produced by the Facility and the Green Component of the Advanced Transportation Technology or Alternative Source product or system for which the product produced will be used.
- d. Current Facility status and a schedule indicating the estimated Facility construction start date through the placed-in-service date for the Qualified Property identified in the Application, including the expected date of any needed permits.

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e. Description of the sources of financing necessary for Facility completion, including the provision of financial assistance from any local governments for the project, 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 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.

(C) Qualified Property Information. Completed provisional Qualified Property list to include the following information for each piece of property to be subject to the sales and use tax exclusion. Good faith estimates are acceptable if specific property characteristics are not available at the time of Application. Individual items of Qualified Property can be grouped together provided that the individual items are reasonably related, such as items that will be used together to produce a particular sub-component or perform a discrete function in the manufacturing process.

(i) Brief description of Qualified Property to be purchased and its use in the manufacturing, production, assembly, or design process.

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- (ii) Estimated cost of the Qualified Property to be purchased.
 - (iii) Average Estimated Useful Lifespan of the Qualified Property, weighted by cost.
 - (iv) Estimated percent of time Qualified Property will be (a) used to make Advanced Transportation Technologies or Alternative Source products, components, or systems, (b) utilized in an Advanced Manufacturing process, or (c) utilized in a Recycled Resource Extraction Project.
- (D) Product information (all information must relate solely to the Facility or product to be produced with Qualified Property if the Applicant produces other goods or services):
- (i) Brief description and name of the product to be produced with Qualified Property and within California.
 - (ii) Estimated average annual number of Qualified Products produced or amount of recycled material to be produced.
 - (iii) Estimated per unit sales price.
 - (iv) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.
 - (v) Estimated percent of production costs from California Suppliers.
 - (vi) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.
 - (vii) For Alternative Source and Advanced Transportation Projects, the Estimated Useful Lifespan of product, component, or system.
 - (viii) Estimated percent of total Qualified Products to be sold in California.
 - (ix) For Alternative Source or Advanced Transportation Projects, statement as to whether the technology, product, component, or system is a subcomponent of a Qualified Product or an end-of-supply-chain product.
 - (x) For Alternative Source or Advanced Transportation Projects, total value of the end-of-supply-chain Green Component.
 - (xi) Estimated percent of total end of supply chain product sales in California.
- (E) Environmental Benefit Information.
- (i) For Facilities producing the Green Component of Alternative Source products, components or systems:

- a. Annual energy generation capacity or energy content per unit.
 - b. Lbs. of CO₂ (or equivalent) emitted per MWh or equivalent.
 - c. Lbs. of SO₂ emitted per MWh or equivalent.
 - d. Lbs. of NO_x emitted per MWh or equivalent.
 - e. Amount of other pollutants emitted per MWh or equivalent.
 - f. Pollution cost of other pollutants emitted per MWh or equivalent.
- (ii) For Facilities producing the Green Component of Alternative Source energy efficiency products, components or systems:
- a. Type and units of energy conserved.
 - b. Applicable Recognized Energy Efficiency Standard.
 - c. Annual baseline system consumption of energy per unit.
 - d. Annual improved system consumption of energy per unit.
- (iii) For Facilities producing the Green Component of Advanced Transportation Technology products, components, or systems:
- a. Annual baseline system consumption of energy per unit.
 - b. Annual improved system consumption of energy per unit.
 - c. Annual consumption of any offsetting energy required to achieve improved system performance.
- (iv) For Facilities producing the Green Component of Alternative Source or Advanced Transportation Technology products, components, or systems that do not fall within the above categories of products, the Applicant shall explain and quantify the following:
- a. Description of environmental benefits.
 - b. Annual value of environmental benefits associated with use of the product.
 - c. Annual pollution cost of any off-setting energy use or other pollutants emitted.
- (v) For Advanced Manufacturing Facilities:
- a. Description of environmental benefits.

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b. Estimated reduction in energy or water use; solid waste, hazardous waste, or air pollution emissions.

c. Description of any environmental sustainability plans.

(vi) For Recycled Resource Extraction Projects:

a. Description of environmental benefits.

b. Marginal increase in total amount of material recycled due to the sales and use tax exclusion.

(F) Optional Supplemental Information. The following information may be submitted with an Application. Submission of this information may increase an Applicant's score, as specified in Section 10033, ~~however, the Authority will not use this information to adjust an Applicant's score if an Applicant's score, based on the required information listed above, exceeds the established points threshold.~~

(i) Applicants claiming any additional significant environmental benefits associated with use of their product beyond those associated with reduced energy consumption or increased Alternative Source energy generation may provide a description of these benefits, including the amount of pollution avoided and a quantification of the impact of the pollution reduction in dollars if possible.

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

a. Applicants with facilities located in California that perform research and development functions related to the product or production process at the Facility that is the subject of the Application may submit information establishing the location of the research and development facility and the connection between the research and development and the Facility, submission of which may increase an Applicant's score.

b. Applicants that have partnerships with educational institutions either for the purpose of training the workers at the Facility or for purposes of assisting in the training of potential future workers, including workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans, may submit information documenting this partnership, submission of which may increase an Applicant's score.

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

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.

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

- a. Internal financial analysis demonstrating the extent of an advantage for a non-California site.
- b. Location consultant report demonstrating the extent of an advantage for a non-California site.
- c. Other internal or external analyses demonstrating that, absent the grant of the sales and use tax exclusion, the proposed Facility will not proceed at the California site.

(G) Calculations and assumptions relied upon by the Applicant. For any calculation performed by or assumption relied upon by the Applicant in completing the Application, the Applicant must provide an explanation of the basis for the value resulting from the calculation or reasonableness of the assumption relied upon. Applicants may be asked to provide additional supporting information, including business plans, pro forma financial statements or other comparable documents used for the purpose of soliciting investors to verify responses contained in the Application. Applications that do not adequately document any calculations or assumptions relied upon will be considered incomplete.

(5) Application materials and supporting documentation in excess of thirty pages will not be considered or reviewed except to the extent that documentation in excess of this page limit is provided in response to a direct request for additional information from the Authority.

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

§ 10033. Eligibility Requirements and Application Evaluation.

(a) Staff summary and recommendation. Following receipt of a complete Application, Authority staff will review each Application and prepare a summary and recommendation to the Authority.

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The summary and recommendation will include a calculation of the benefits of the Facility and an assessment of whether the proposed Facility meets the eligibility requirements.

(b) Eligibility. To be eligible for the sales and use tax exclusion, ~~a Facility must:~~

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

(A) For this purpose, “used substantially” shall mean that the Qualified Property must be used for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems; as part of an Advanced Manufacturing process; or to process Recycled feedstock more than 50.0 percent of the time.

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

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

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

(1) Fiscal Benefits

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

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

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(i) The factor share of capital (ω) is calculated for each Applicant depending on the capital stock's contribution to the firm's value-added output. To calculate the factor share of capital, Applicant-provided information about estimated annual sales value (Sales), production-related purchases from suppliers (Supplies), labor costs (Labor), the value of the capital stock (VCS), and determinations made by the Executive Director based on the relevant research literature and consultation with outside experts of the cost of employee benefits (EB) and the cost of capital (\$CAP) are used in the following formula:

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

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

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

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

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

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

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

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

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

(iii) The change in user cost is the same as the sales tax rate (STR) as determined by the Executive Director based on information collected by the California ~~State Board of Equalization~~ 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

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Applicant-provided information on the total value of the Qualified Property (VQP) and the estimated percent increase in capital investment (PICI). The MIQP will be calculated pursuant to the following formula:

$$\text{MIQP} = (\text{VQP} / (1 + \text{PICI}) * \text{PICI})$$

(C) The estimated marginal increase in sales (MIS) resulting from sales and use tax exclusion. The increase in sales will be calculated by multiplying MIQP times the ratio of the estimated annual units of production times the average per unit sales price to the value of the capital stock (VCS) used to produce the product, pursuant to the following formula:

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

(i) The present value of the MIS (PVMIS) will be calculated based on the weighted average life span (WALS) of the Qualified Property as provided by the Applicant and a discount rate determined by the Executive Director based on the relevant research literature; consultation with outside experts, or information provided by other state agencies and approved by the Authority.

(D) The estimated annual marginal increase in units (MIU) resulting from sales and use tax exclusion. The increase will be calculated using the marginal increase in sales (MIS) and Applicant-provided data on the sales price per unit (\$Unit), pursuant to the following formula:

$$\text{MIU} = (\text{MIS} / \$\text{Unit})$$

(E) The estimated annual increase in employee wages (AIEW) will be calculated based on Applicant-provided information about the per unit labor costs and the per unit price, pursuant to the following formula:

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

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

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

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

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

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

$$TFB = DFB + IFB$$

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

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

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

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

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

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

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

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

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

i. The ICIT is calculated using an estimate of annual tax liability (ATL) as determined by the Executive Director based on information collected by the

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California Franchise Tax Board, Applicant-provided data on estimated annual tax liability, or other sources as determined by the Executive Director; the value of the capital stock (VCS) used to produce the product; and the MIQP pursuant to the following formula:

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

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

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

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

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

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

(2) The value of the sales and use tax exclusion. For each Application, the total cost of the sales and use tax exclusion will be calculated by multiplying the value of the Qualified Property (VQP) as reported by the Applicant times the STR.

(3) Environmental Benefits.

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

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

and

$$AS = POT * FCC$$

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

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

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

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

(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:

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

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

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

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

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

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

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

i. The present value is based on the estimated useful lifespan of the product (ULOP) as provided by the Applicant and the discount rate determined by the Executive Director.

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.

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

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

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.

$$LPB = NAPB * \$CO2$$

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.

(iii) Net change in use of energy generated or produced from current sources (energy efficiency). The TPB resulting from the net change in the use of energy generated or produced from current sources is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

a. The LPB is calculated using the annual net improvement in system consumption per unit (NI) as provided by the Applicant and estimates of the dollar value of pollution avoided per MWh (\$MWh), per GGE (\$GGE), or per MMBTU (\$MMBTU), respectively, as determined by the Executive Director, pursuant to the following formula:

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

or

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

or

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

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

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

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

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

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

(iv) Net change in consumption of fossil fuels due to increased use of Advanced Transportation Technologies. The TPB resulting from the net change in consumption of fossil fuels is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

a. The LPB is calculated by using the annual net improvement in system consumption per unit (NI) and the annual consumption of offsetting energy (OFF) as provided by the Applicant and estimates of the dollar value of pollution avoided per GGE (\$GGE) and the dollar value of pollution emitted as a result of the offsetting energy consumption (\$MWh) as determined by the Executive Director, pursuant to the following formula:

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

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

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

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

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

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

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

- (i) Applicants may receive points for the following:

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

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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 (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.

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- 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 benefits (TPB) by the value of the sales and use tax exclusion and multiplying the result by 1,000. Points for environmental benefits (~~TPB points~~) for Advanced Manufacturing Applicants will be equal to the sum of the environmental benefits points awarded based on the categories listed in Section 10033(c)(23)(D).

(5) Additional points. Additional points shall be awarded as follows:

(A) Unemployment score. An Applicant may earn up to 50 points for creating jobs in high unemployment areas.

(i) The unemployment rate for the area means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The most current annual average unemployment rate information available at the time of the Application submission shall be used.

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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.
- 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.

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

~~(E) For Advanced Manufacturing Applicants only, Other Facility Characteristics.~~

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

a. Applicants with facilities in California that perform research and development functions related to the product or production process at the Facility that is the subject of this application will receive 25 points.

b. Applicants with partnerships with educational institutions either for the purpose of training the workers at the Facility or for purposes of assisting in the training of potential future workers, including workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans, will receive 25 points.

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

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.

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

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

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

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

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

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

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c. The dollar value per unit of any other offsetting pollutants (SOP) 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:

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

and

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

e. The total value of out-of-state non- greenhouse gas pollution benefits (TOB) to electricity generated from non-alternative sources or fossil fuels burned (conservation) is calculated pursuant to the following formula:

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

or

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

and

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

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

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

and

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

(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:

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

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

(6) Total Score. The total number of additional points not to exceed 200 determined pursuant to Section 10033(c)(5) shall be added to the number of points determined pursuant to Section 10033(c)(4). The result of this sum is the Applicant's total score. Complete Applications receiving both a total score greater than or equal to the threshold value of 1,000 and a TPB score greater than 20 may be recommended for a sales and use tax exclusion.

Notwithstanding the foregoing, where a project receives a score less than these thresholds, the Executive Director may recommend it to the board for approval upon a statement articulating specific reasons why the approval is in the public interest and advances the purposes of the Program.

(7) Upon a recommendation from the Executive Director that it is in the public interest and advances the purposes of the Program, the Authority may adjust any of the threshold values set forth in Section 10033(c)(6).

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

§ 10034. Approval of Applications by the Authority.

(a) Applications may be considered at meetings in accordance with the schedule established by the Authority pursuant to Section 10032. The Authority will evaluate Applications based on the eligibility requirements contained in Section 10033 and the summary and recommendation prepared by the Authority staff.

(b) For each Application, the Authority will determine whether the Application meets the eligibility requirements and will produce benefits for the State of California.

(c) Applicants that do not receive a recommendation for approval from the Authority staff will be notified in writing of the staff recommendation prior to the board meeting in which the Application will be considered. Applicants that do not receive a favorable recommendation from the staff may appeal the staff recommendation to the Authority. Applicants wishing to appeal the staff recommendation must notify the Authority of their intent to appeal the decision within five (5) business days of receipt of the notice containing the staff recommendation. No Applicant may appeal the evaluation of another Applicant's Application.

(d) Rejected Applications. Applicants whose Applications are not approved by the Authority will be notified in writing following the Authority's board meeting in which the determination was made.

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(e) Approved Applications. For each approved Application, the Authority will pass a resolution including the following findings:

(1) The Applicant to be a Participating Party (Pub. Res. Code Sec. 26003(a)(7)).

(2) The equipment proposed for the sales and use tax exclusion to be a "project" (Pub. Res. Code Sec. ~~26003(a)(8)(B)~~26011.8(b)(1)).

(f) Applicants with Applications that are approved by the Authority will be notified in writing following the Authority's board meeting at which the determination was made. The dollar value of the Qualified Property approved by the Authority will be stated in the letter.

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

§ 10035. Regulatory Agreement and Compliance.

(a) Regulatory Agreement. All recipients of sales and use tax exclusions are required to execute a Regulatory Agreement as a condition to the Authority's making a finding and awarding a sales and use tax exclusion.

(1) This agreement, to be entered into between the Applicant and the Authority's Executive Director, will require the Applicant to comply with the requirements set forth in these regulations. This agreement must be signed by a representative of the Applicant's company authorized to enter into contracts on behalf of that company and returned to CAEATFA within 30 calendar days from the acceptance date shown on the notification provided pursuant to Section 10034(f).

(2) The Regulatory Agreement will commence upon execution and will continue in force for a period equal to the longer of (a) three years or (b) one-half of the Estimated Useful Lifespan of the longest lived item of Qualified Property identified in the Application. If the Applicant is granted an extension of the initial term to make Qualified Property purchases pursuant to Section 10035(b)(1)(B), below, the term of the Regulatory Agreement shall be extended for an equal amount of time.

(3) The Regulatory Agreement shall include but not be limited to the following:

(A) A requirement that the Applicant indemnify and hold harmless CAEATFA from claims connected with: 1) the Project, 2) transactions associated with the Project, 3) any violation of law connected with the Project, and 4) any dispute or ruling regarding the ultimate taxability of the sale or use of the Qualified Property.

(B) A requirement that the Qualified Property be installed, maintained and operated within the State of California, except as provided by this section.

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

(D) Requests for relocation of Qualified Property in excess of the fifteen percent (15%) requirement set forth in (a)(3)(C) may be approved by the Authority based on a recommendation from the Executive Director and upon a finding that the relocation is part of an improvement, upgrade or increase in the economic efficiency of the Project and that approval of the requested relocation is likely to continue or increase the anticipated net benefits of the Project.

(E) Any amount of Qualified Property may be relocated outside of California upon a voluntary payment by the Applicant in an amount calculated by multiplying the original purchase price of the Qualified Property to be relocated by the average statewide sales tax rate at the time of the proposed relocation.

(F) A requirement that the Applicant file a semi-annual report. This report will identify purchases of Qualified Property, if any, made during the preceding two calendar quarters.

(i) Each semi-annual report shall include information about the Qualified Property purchased, including the acquisition date; vendor city, county, and country; cost; address where the Qualified Property will be located or installed; a description and explanation of the purpose of the Qualified Property; and any other information requested by the Executive Director that is reasonably related to the purposes of the Program.

(ii) The semi-annual report covering the first two calendar quarters of the year shall be submitted to the Authority on or before July 31; the semi-annual report covering the last two calendar quarters of the year shall be submitted to the Authority on or before January 31 of the immediately following calendar year.

(b) Compliance. Applicants are responsible for compliance with all applicable Program regulations, including the following:

(1) Exercise of sales and use tax exclusion. Except as noted in subparagraph (A) below, within ~~one year~~eighteen (18) months of approval by the Authority, the Applicant must make purchases or have executed purchase orders of Qualified Property totaling not less than fifteen percent (15.0%) of the total amount listed in the approval resolution. Except as noted in

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subparagraph (B) below, all purchases of Qualified Property must be made within three years of Application approval. Regulatory Agreements for Facilities not meeting these requirements will be subject to termination, and no further purchases will be excluded from the imposition of the sales and use tax.

(A) Upon a finding of extraordinary circumstances and that it is in the public interest and advances the purposes of the Program, the Authority shall waive the requirement that the Applicant make purchases or have executed purchase orders of Qualified Property totaling not less than fifteen percent (15.0%) of the total amount of Qualified Property listed in the approval resolution within eighteen (18) months of Application approval. Extraordinary circumstances may include, but are not limited to, unforeseen permitting delays.

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

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

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

(3) Certification letter and compliance report. During the term of the Regulatory Agreement, Applicants must submit an annual certification and compliance report. The certification letter must document that the Qualified Property was used for the purposes specified in the Application for the entire period since the signing of the Regulatory Agreement as required by these regulations. The certification letter and compliance report must be submitted to the Authority by January 31 with information reported for the previous calendar year. The annual compliance report shall contain:

(A) total payroll;

(B) number of full time equivalent permanent jobs at the Applicant's Facility;

(C) number of full time equivalent construction or installation jobs created as a result of the Qualified Property purchases;

(D) total annual product sales (in dollars) including the fraction in California;

(E) total number of units sold including the fraction in California;

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(F) anticipated corporate or personal income tax related to the Facility for the preceding calendar year; if the Facility makes multiple products, include information relating to the tax liability associated with the production of Qualified Products;

(G) the amount spent on supplier purchases for Qualified Products, including the fraction of such purchases from California Suppliers;

(H) the total amount of Qualified Property purchased as of the date specified in the compliance report;

(I) a narrative description of the project status and consistency with the timeline contained in the Application, anticipated purchase dates of any additional items of Qualified Property, and an explanation of any material changes to the product or manufacturing process implemented since the approval of the Application;

(J) a statement indicating the fraction of the time that the Qualified Property has been used to make Qualified Products; and

(K) any other information requested by the Executive Director that is reasonably related to the purposes of the Program.

(4) Retention of records. Applicants must retain records necessary to document information provided in the annual compliance reports and certification letters for at least five (5) years following the date of the latest certification letter or compliance report required.

(5) False Information. Upon a finding that information supplied by an Applicant, or any person acting on behalf of an Applicant, is false or no longer true, and the Applicant has not notified the Authority in writing, the Authority may, after written notice to the Applicant, rescind the approval resolution, in addition to other remedies.

(6) Rescission. Following a finding that an Applicant has provided false information pursuant to paragraph (5) or has otherwise violated the Regulatory Agreement, the Authority may, after written notice to the Applicant, terminate or rescind the approval resolution, in addition to other remedies. Applicants may request an opportunity to be heard in front of the Authority to contest rescission. Any such request must be made in writing to the Authority and postmarked no later than fifteen (15) calendar days following the mailing of written notice from the Authority. Upon a final decision by the Authority, the approval resolution shall be rescinded, and notice of the rescission may be provided to the ~~Board of Equalization~~ Department of Tax and Fee Administration.

(7) Reporting. The Authority may from time to time publish the actual total value of the Qualified Property purchased within each city or county in California. If the Executive Director determines that publishing such information could cause the price paid by an Applicant to a supplier for a Qualified Property purchase or the identity of that supplier to

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become known, then the information from multiple cities or counties will be aggregated so as to protect the confidentiality of this information.

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

(c) Recovery of Financial Assistance. The Regulatory Agreement shall contain a provision under which the Authority may seek recovery of the Financial Assistance provided plus interest at a rate to be reasonably determined by the Authority and specified in the Regulatory Agreement. The Authority may seek recovery of the Financial Assistance actually utilized in cases in which the Applicant: (1) does not meet the substantial use requirements identified in Section 10033(b)(1)(A) or (2) removes the Qualified Property purchased from the State of California prior to the shorter of (a) the expiration of the term of the Regulatory Agreement or (b) three years, except in compliance with section 10035(b)(1)(F).

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

§ 10036. Fees.

(a) Application Fee.

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

(2) The Application Fee shall be equal to .0005 (one twentieth of one percent) of the total amount of Qualified Property identified in the Application as originally submitted. If, during the Application process, the Applicant reduces the amount of Qualified Property listed in the Application as submitted, the Applicant will not be entitled to a refund of the excess Application Fees paid. If the Applicant makes a request to CAEATFA to increase the amount of Qualified Property listed in a revised or amended Application, CAEATFA will require additional Application Fees to be submitted. The minimum Application Fee shall be \$250 and shall not exceed \$10,000.

(3) This fee shall be paid in a check payable to the Authority, and shall be ~~submitted with the Application~~ received by CAEATFA within five (5) business days of the Application submission.

(4) This fee is not refundable, except in the event an Application is not reviewed by staff due to oversubscription of the \$100 million annual program cap.

(5) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency

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proclamation made by the California State Governor within two years of the time of application, the Executive Director shall waive the Application Fee.

(b) Administrative Fee.

- (1) The Authority shall charge an Administrative Fee to cover the costs associated with the Program, including the costs of compliance monitoring.
- (2) The total Administrative Fee amount shall be .004 (four tenths of one percent) of the total amount of the Qualified Property purchased.
- (3) In no case shall the total Administrative Fee be less than \$15,000 nor more than \$350,000.
- (4) \$15,000 of the total Administrative Fee shall be due upon the execution of the Regulatory Agreement between the Applicant and the Authority.
- (5) The balance of an Applicant's Administrative Fee shall be payable semi-annually on July 31 and January 31 each year following Application approval until such time as the total amount of the Administrative Fee due has been paid. The amount of the Administrative Fee due during each period shall be based on the Qualified Property purchase amounts during the immediately preceding six-month period (from January 1 through June 30 and July 1 through December 31, respectively) such that the fee due is proportional to the total amount of the Administrative Fee remaining after the initial \$15,000 until the total Administrative Fee has been paid.
 - (A) Each semi-annual Fee payment shall include information about the Qualified Property purchased, including the acquisition date; vendor city, county, and country; cost; address where the Qualified Property will be located or installed; a description and explanation of the purpose of the Qualified Property; and any other information requested by the Executive Director that is reasonably related to the purposes of the Program.
 - (B) The Applicant will submit a "final statement" when the total amount of Qualified Property purchases equals the total amount of exclusion granted or when the Applicant no longer wishes to exercise the sales and use tax exclusion granted and signifies that the Applicant's purchases are no longer subject to the sales and use tax exclusion. Pursuant to Section 10036 a determination will be made of the total amount of Qualified Property purchased, and the corresponding amount of the total Administrative Fee due. If any remaining Administrative Fee is due, the Fee shall be submitted together with the final statement. In the event that an Applicant has overpaid Administrative Fees, the overpayment will be paid to the Applicant within thirty (30) days of submission of the final statement.
- (6) The initial \$15,000 paid by the Applicant at the time of executing the Regulatory Agreement will be credited to the Applicant's total Administrative Fee upon a determination of total amount of Qualified Property actually purchased.

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(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.

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

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

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

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