



Sales & Use Tax Exclusion Program

DISCUSSION OF POTENTIAL MODIFICATIONS
TO THE STE PROGRAM'S REGULATIONS

Agenda

- Goals and Purpose of Discussion
- Regulation Timeline
- Overview of November 2019 Regulation Modifications
- Potential Program Modifications for Board Discussion
- Next Steps
- Board Discussion
- Public Comment

Background and Goal of Discussion

Background

- In 2019, CAEATFA awarded the full \$100 million in STE by the July Board meeting, the first time for it to be fully awarded before the December meeting, and the first time Competitive Criteria was used.
- Given the limited resources and competitive nature of the Program, CAEATFA evaluated Program goals and priorities to determine how best to effectuate the purpose of the Program.
- On November 19, 2019 the CAEATFA Board approved emergency regulations to address the early 2019 over-subscription and to help improve Program efficiency and effectiveness.
 - The regulations made incremental changes, reserving more complex issues for the regular rulemaking process in 2020 to take more time to solicit input and thoughtfully consider the issues.

Goal

- Staff is now soliciting Board member and stakeholder input on additional modifications to the regulations to continue the regulation process initiated last year and address Program and market updates since the regulations were adopted in November.

Emergency Regulation Tentative Timeline

December 16, 2019 – August 14, 2020 – Emergency Regulations Effective (with the 60-day extension from Executive Order N-40-20)

August 14, 2020
November 12, 2020

First Readoption of Emergency Regulations Effective

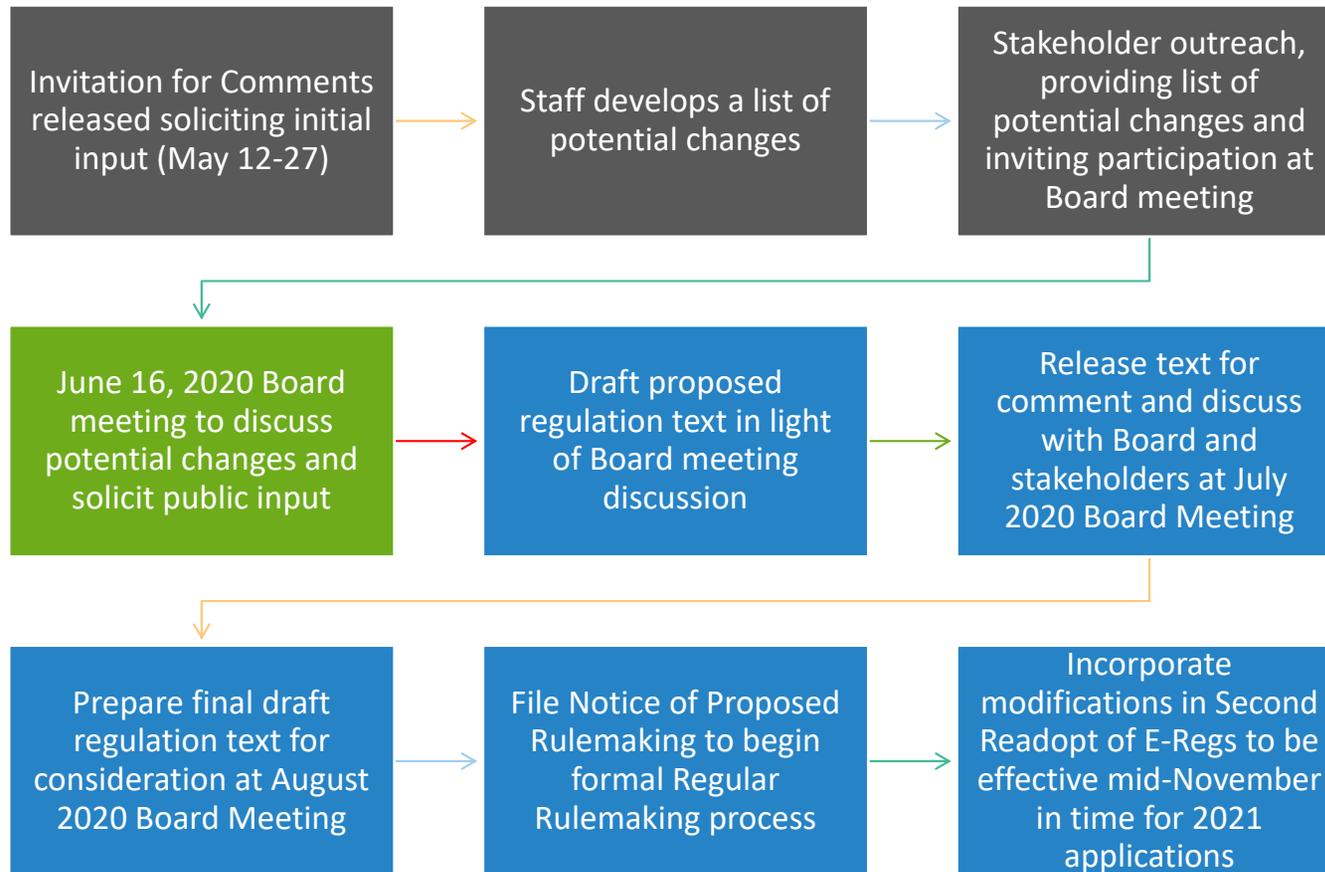
Board considers amended regulations

August 18th Board meeting

Notice of Proposed Rulemaking filed to begin regular rulemaking

November 12, 2020 – February 10, 2021 – Second Readopt effective with amended regulations, in time for 2021 Applications

Tentative Regulation Development Process



Overview of November 2019 Regulation Changes

- Continue accepting Applications on a rolling, first-come-first-served basis until oversubscribed.
- Amended Competitive Criteria.
- Per-Applicant cap lowered from \$20 MM to \$10 MM in STE each calendar year.
- Timeframe to meet 15% purchase requirement extended from 12 to 18 months, includes purchase orders, and Board may waive/extend upon a finding of extraordinary circumstances.
- Applicants ineligible if found guilty of a willful violation by Occupational Safety and Health Administration (“OSHA”) or have a case under the OSHA Severe Violator Enforcement Program.
- Opened up points for performing R&D in CA, being part of an industry cluster, and providing workforce training opportunities to all eligibility pathways (originally only for AM).

Program and Market Updates Since November 2019 Regulation Changes

- Oversubscribed for 2020 after one application round
- Greater number of Applicants requesting larger awards (over \$5MM)
- No current increase of the \$100 MM Program Cap
- **COVID-19 Pandemic and Market Uncertainty**

Discussion of Potential Modifications to Program Regulations



\$10 Million in STE Per Applicant Cap

Current Cap – Lowered from \$20 MM in November 2019 to help maximize the number of awards.

Public Comments Received – Some are concerned the cap is too low to allow companies to scale, others are in favor of further lowering the cap, and others believe the cap should remain at \$10 MM.

Potential Options or Alternatives

Keep the \$10 million cap

Lower the cap to \$5 million

Allocate \$40 million in STE for projects under \$5 million, and \$60 million for projects \$5 million and over, up to \$20 million in STE. If any STE remains from either bucket at the end of the year, it can be awarded to any Applicant on a competitive basis

Cap projects at \$10 million and set aside \$20 million of the \$100 million allocation to be awarded once a year on a competitive basis to Applicants requesting more than \$10 million in STE

Historical Program Data

Over 50% of awards are under \$1 MM

Over 80% of Awards are under \$5 MM

Over 90% of awards are \$10MM or under

Award sizes have been trending upwards.

- In 2019 and 2020, the number of Applicants requesting mid-to-large sized awards (\$5 million or more) was significantly higher compared to previous years, and the number of Applicants requesting “micro” awards (under \$750K) was significantly less.

[See slides 22-24 in the Appendix for more data](#)

Application Cycles

Continue rolling first-come-first-served basis until oversubscribed

Flexible with Applicants' business plans.

More certainty for Applicants, given the transparent scoring and eligibility (can determine whether to invest the time and money to apply).

Applicants can more easily build the STE into its business plan, encouraging Applicants to buy more equipment.

May mean all STE is gone after one Application round.

May encourage Applicants to apply too early if there is fear of early oversubscription.

Consider Applications in two or three competitive rounds

Ensures STE is available throughout the year.

Competitive Criteria help advance Program goals.

Can mean less certainty for Applicants (to determine whether to invest the time and money to apply).

First-come-first-served until certain % awarded, then switch to competitive rounds depending on the month

Wait-and-see approach helps CAEATFA adjust to fluid market conditions.

Helps ensure there is some STE available throughout the year.

May encourage Applicants to apply too early to try to get in for the first-come-first-served pot of STE.

Comments Received:

- Support for three times a year to best integrate with CalRecycle loan process, which is also year-round
- Support for first-come-first-served until % awarded given the current market and the fact that the Program has been competitive for only two out of ten years
- End practice of carrying over waitlist to the following year

Providing Flexibility and Addressing Increased Uncertainty in the Market

Initial Term to Make Qualified Property Purchases

Currently have 3 years to use the award

- Board may waive/extend upon a finding that it is in the public interest and advances the purposes of the program.
- To date, 30% of Applicants request an extension

15% Purchase Requirement

Currently have 18 months to purchase or execute purchase orders for 15% of the approved Qualified Property amount

- Board may waive/extend upon and finding of extraordinary circumstances and that it is in the public interest and advanced the purposes of the program.
 - Extraordinary circumstances may include, but are not limited to, unforeseen permitting delays, but do not include a current lack of funding.
- CAEATFA received comments both recommending waiver of this requirement for previously approved Applicants given COVID-19 effects and recommending not extending this requirement to discourage Applicants from having overly optimistic projections.

[See Slides 25-27 in the Appendix for more data](#)

Implementation of AB 176

AB 176 (Cervantes, Ch. 672, Statutes of 2019) amended the STE Program's statute to add additional criteria by which CAEATFA shall evaluate Applications. Specifically, the language amended Public Resources Code Section 26011.8(d)(3) as follows:

The extent to which the project will create new, ~~permanent jobs in California~~, or *result in the loss of, permanent, full-time jobs in California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained.*

	Requests to add specificity as to what lost jobs must be included (for example, does it include downstream industry effects?)
Comments received on implementation of AB 176	Requests to allow Applicants to provide a narrative explanation as to why a position was eliminated and whether existing employees have been reassigned to new positions
	Concerns over employee privacy with regard to wages, and requests to aggregate wage information
	Look to other state and local incentives

Reporting Requirements

Current Reporting Requirements for All Applicants

- Semi-annual reports on Qualified Property Purchases
- Annuals reports on status of the project, including jobs and production numbers

3 out of over 200 Applicants have extra, ad hoc reporting requirements

- Tesla reports 3x a year for three years (until April 2022)
 - Progress in meeting its production goals;
 - Progress in improving the health and safety at its facilities; and
 - Provide an updated Legal Status Questionnaire
- Faraday reports 2x a year for the shorter of three years or until the Executive Director deems necessary (until April 2021)
 - Any significant developments in the status of the Project;
 - Progress in meeting its production goals; and
 - Any other matters the Executive Director shall deem appropriate.
- California Ethanol and Power Imperial Valley must report annually on the status of the project during the initial term of the Agreement (until Dec 2023), and at the two-year report, the Board may determine whether to terminate the award

Competitive Criteria

Current Competitive Criteria (Total Possible 290 Points)

- Environmental Benefits: 100 points for AS/AT/RF Projects.
- Job Creation: Up to 75 points based on amount of STE per job created as a result of the STE.
- Unemployment: Up to 50 points based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployment rate.
- Natural Disaster Relief: 50 points for Applicants rebuilding or relocating due a natural disaster.
- California Headquarters: 15 points for Applicants with a California Corporate Headquarters.

We asked stakeholders what other Competitive Criteria do they suggest and how would they prioritize the Competitive Criteria (including current criteria and any proposed criteria).

Criteria Proposed by Stakeholders:

- Highest priority to recyclers using California discards
- Applicants manufacturing products to combat COVID-19 (ex: vaccine, therapeutic treatments, testing equipment, etc.)
- If a Applicant is ineligible for CDTFA partial exemption (those that process recycled feedstock)

Other Evaluation Criteria Proposed by Stakeholders

Proposal: Evaluation of Applicants' Health and Safety Records and Plans

What CAEATFA Already Looks At

- LSQ review of matters involving health and safety where there are allegations of serious harm to employees, including OSHA citations, for last 10 years
- Cannot have been found of guilty of a willful violation by OSHA
- Cannot have a case under OSHA's Severe Violator Enforcement Program

Proposed in Comments Received

Evaluate Applicants based on:

- All OSHA citations, violations and penalties from past five years, including serious and/or repeat violations.
- Past 5 years of OSHA 300 injury and illness logs and OSHA 300A Summary of Work-Related Injuries and Illnesses (or comparable data if the manufacturer is not otherwise required to keep OSHA 300 logs), and injury rates compared to industry average (based on 300A).
- The Applicant's health and safety plan based on California's Injury and Illness Prevention Program template.

Other Evaluation Criteria Proposed by Stakeholders

Proposal: An affirmative finding the Project will create “high quality” jobs

What CAEATFA Already Looks At

- Extent to which the project will create new production and construction jobs in CA.
- Wages (Fiscal Benefits), and incorporating minimum and average for each classification of employee under AB 176.
- Compliance with applicable labor, employment, health and safety laws, and environmental laws for the past 10 years, including if the applicant has a history of serious, repeated, willful, and/or pervasive violations of such laws with inadequate remediation.
- Providing job access and training to workers and potential employees, including those from disadvantaged communities.

Factors Proposed in Comments Received

- Extent to which the project will create new, permanent, direct-hire jobs in CA.
- Wages, including the min. and average wage for each classification of employee.
- Benefits/fringe benefits (ex: retirement, health care) and contribution amounts.
- Cannot rely on workers from temporary agencies or subcontractors, or if used on a limited basis, must disclose the number, % and expected duration of work.
- Compliance with applicable labor, employment, health and safety laws, and environmental laws; history of serious, repeated, willful, and/or pervasive violations with inadequate remediation.
- Disclosure of Health & Safety violations, injury rates, OSHA 300 and 300A logs (or comparable data if not required to keep OSHA 300 logs).
- Providing job access and training to workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans.
- Whether employees are required to sign pre-dispute arbitration agreements.

On-going Compliance Requirements

Current Program Compliance Mechanisms

- Suspension – If the Applicant violates statute, regulations, or the terms of the Master Agreement.
- Termination – If the Applicant provides false information or violates the terms of the Master Agreement.
- Rescission – If the Applicant provides false information or violates the terms of the Master Agreement.
- Repayment of STE (outside of suspending, terminating, or rescinding the award)
 - If the equipment is not used at least 50% of the time for an eligible purpose.
 - If the equipment is moved out of the state prior to the shorter of three years or the expiration of the Master Agreement.

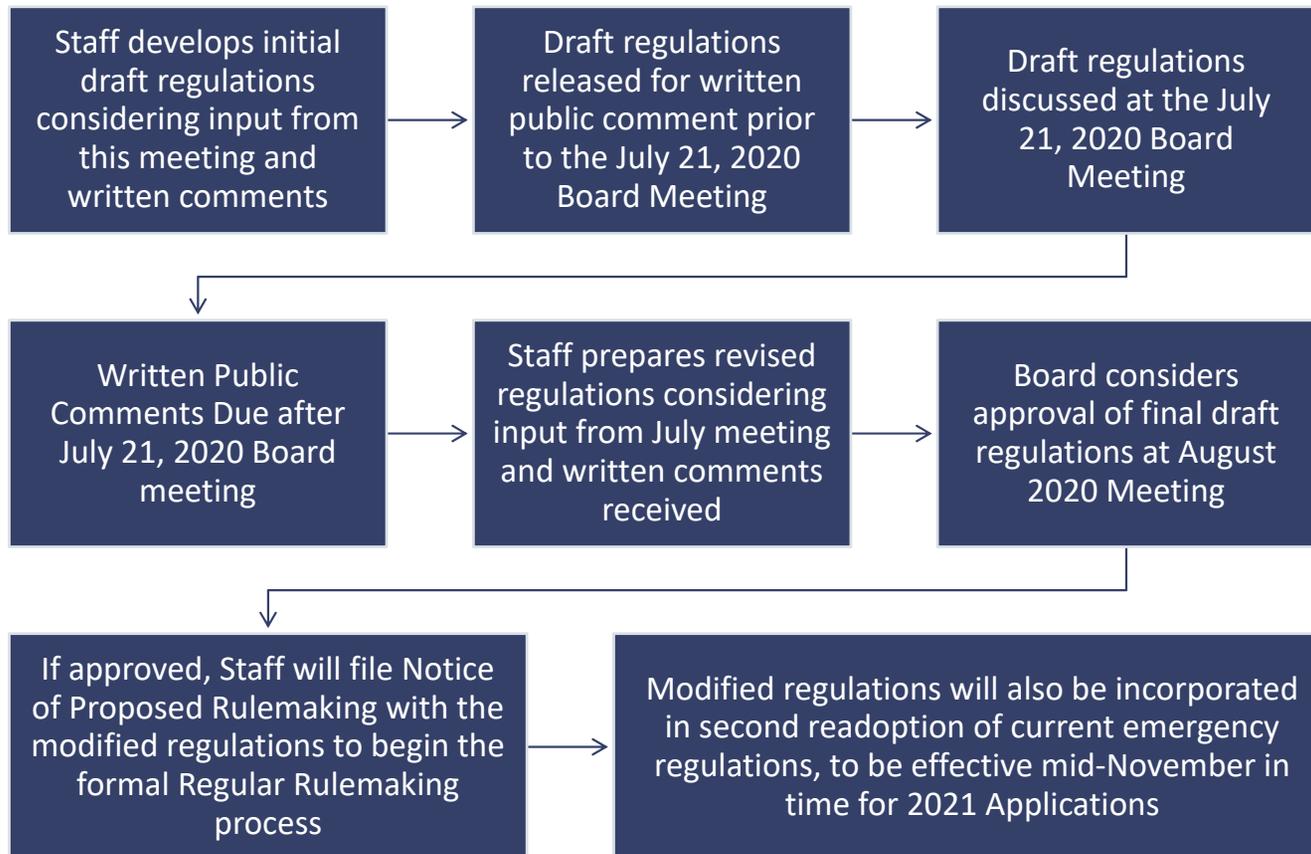
Compliance Requirements Proposed in Comments Received

- If an STE recipient is found to have violated applicable labor, employment, health and safety, or environmental laws, the Qualifying Property will be deemed not to have been “installed, maintained and operated in accordance with all applicable local, state and federal laws and regulations,” as required by the Regulatory Agreement.
- Consider a citation for a “serious” health and safety violation or a failure to comply with other applicable labor, employment, and environmental laws a violation of the Master Regulatory Agreement, subject to award suspension or termination.

Next Steps



Next Steps and Tentative Timeline



Board Discussion & Public Input



Appendix

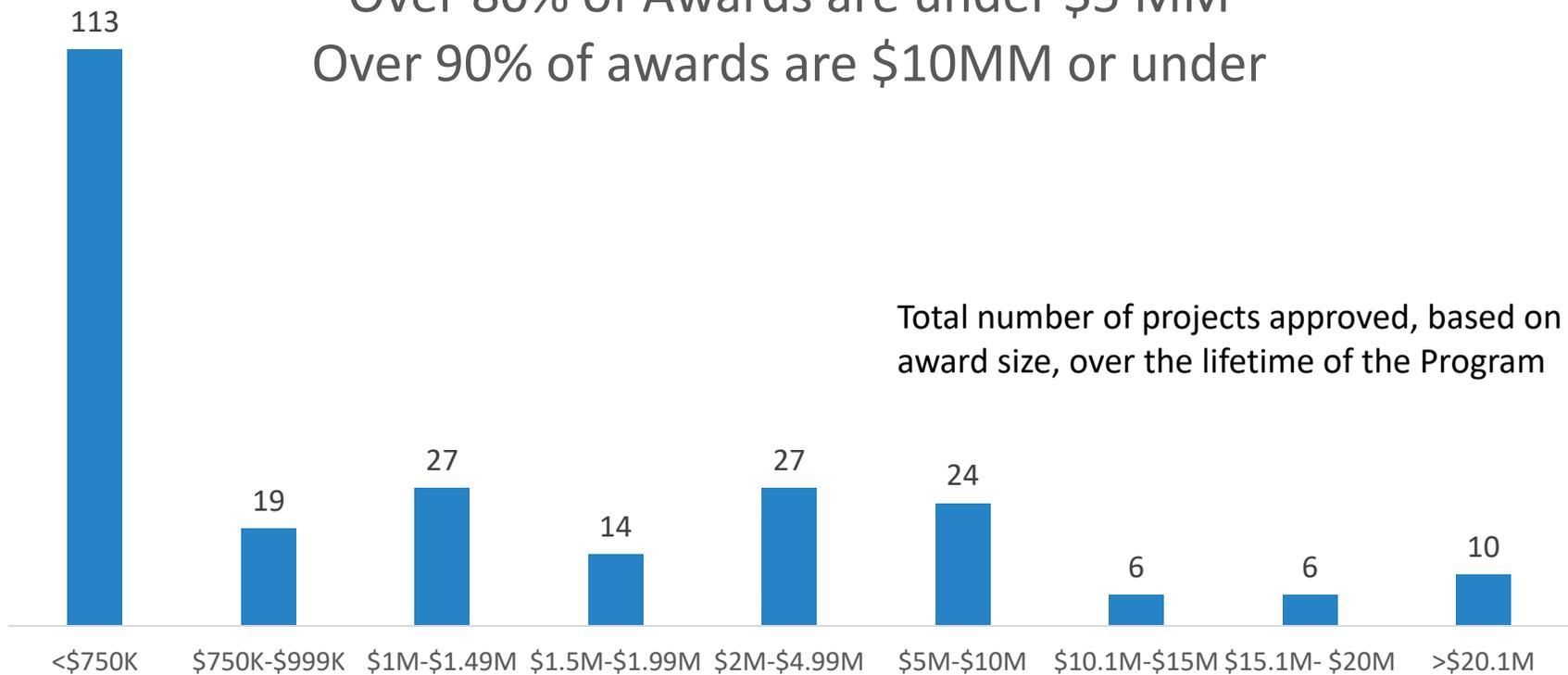
Allocating STE Based on Award Size

Total Amount of STE Awarded Each Year, Based on Award Size								
Year	Amount \$5MM and Under	# of Awards	Amount over \$5MM	# of Awards	Amount \$10MM and Under	# of Awards	Amount over \$10MM	# of Awards
2015	\$15,179,666	16	\$102,445,716	5	\$34,144,766	18	\$83,480,616	3
2016	\$18,551,891	20	\$63,822,727	3	\$25,058,240	21	\$57,316,378	2
2017	\$40,954,781	38	\$59,045,218	4	\$57,785,250	40	\$42,214,749	2
2018	\$22,178,398	28	\$76,584,519	6	\$34,035,304	30	\$64,727,613	4
2019	\$14,759,905	14	\$85,429,631	7	\$42,469,280	18	\$57,720,256	3
2020	\$22,368,482	14	\$83,264,227	10	\$105,632,709	24		

* Awards split between two calendar years are allocated to the year in which they were considered

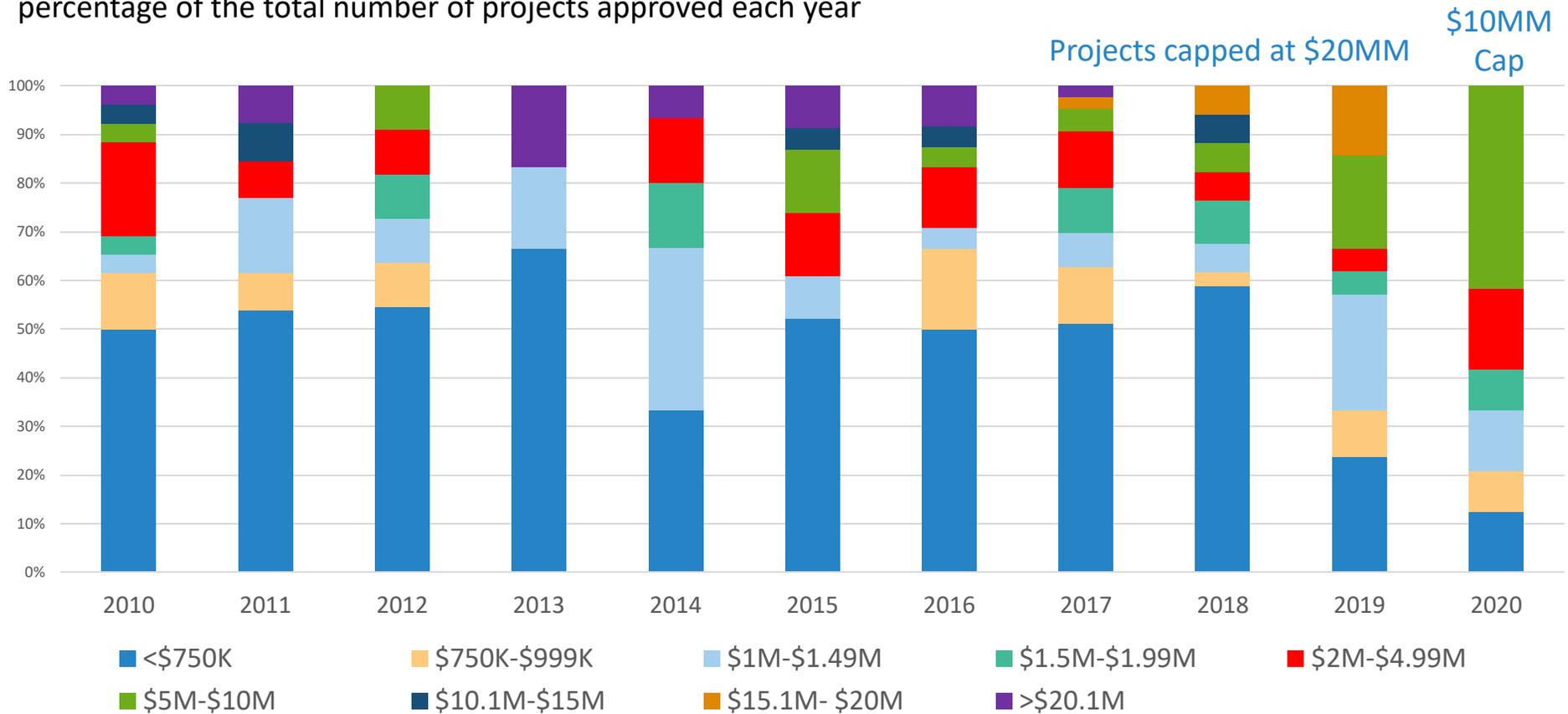
Per-Applicant Cap – Award Size Data

Over 50% of awards are under \$1 MM
Over 80% of Awards are under \$5 MM
Over 90% of awards are \$10MM or under



Per-Applicant Cap – Award Size Data

Number of projects approved based on award size, shown as a percentage of the total number of projects approved each year



Providing Flexibility and Addressing Increased Uncertainty in the Market – Initial Term Data

It's Common for Applicants to Request Extension to Purchase Equipment Beyond 3 Years

Over 30% of Applicants have requested an extension

81% of those Projects are active or complete

56% of extension requests seek terms for 5 years or less

86% of extension requests seek terms for 6 years or less

15% Purchase Requirement

- After the Program became oversubscribed for the first time, CAEATFA adopted regulations requiring approved Applicants to purchase at least 15% of the Qualified Property amount within one year, without the ability to waive this requirement (Applicants approved on or after October 2016).
- **17%** of Applicants did not meet the requirement to date (13/75 Applicants), for a total of **\$28.7MM in STE (16% of STE awarded)**.
 - These Applicants must reapply if they wish to receive an STE award once the project is ready, which can reduce the amount of STE available for other projects in the future.
 - 2 Applicants have already reapplied once permitting issues were settled.
- Common Reasons:
 - Permitting delays
 - Funding
 - Market conditions
- A slightly larger percentage of Recycling projects did not meet the requirement compared to other types of projects.
 - 16% of Advanced Manufacturers AM (5 out of 31 projects)
 - 20% of Advanced Transportation (1 out of 5 projects)
 - 15% of Alternative Source (3 out of 20 projects)
 - 21% of Recycling (4 out of 19 projects)

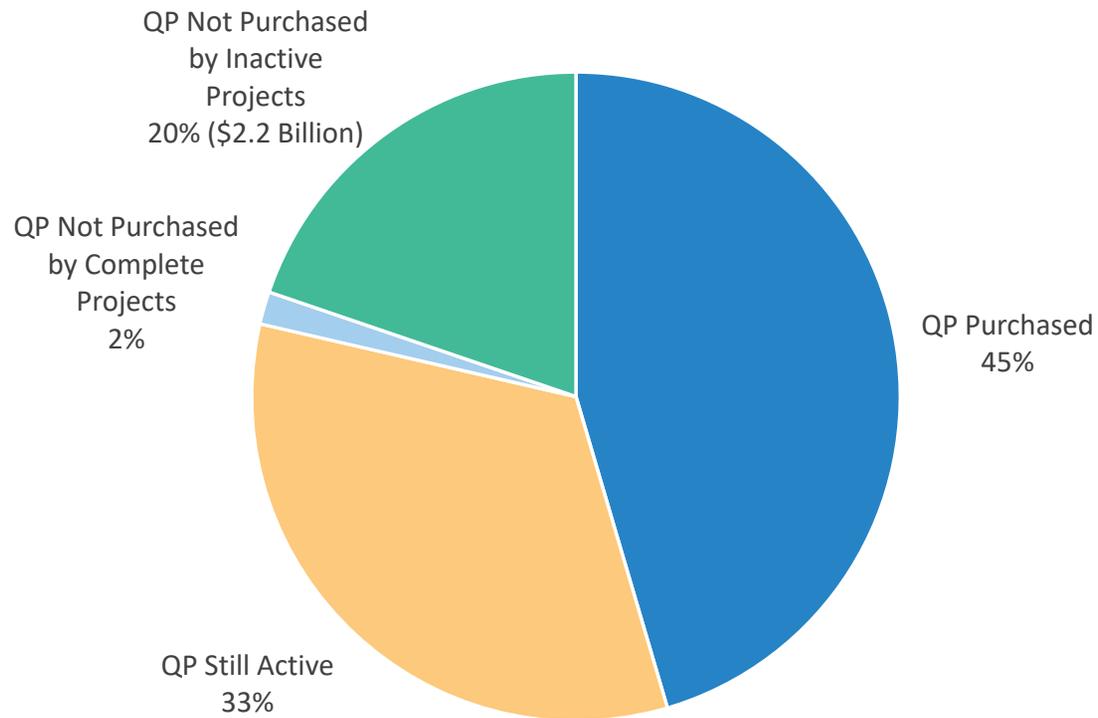
Data as of September 2019

Other Potential Changes

- Program Fees
- Additional language clean-up (clarifying changes)

Providing Flexibility and Addressing Increased Uncertainty in the Market

Projects Generally Use Full Award, But a Large Percentage is Left on the Table by Inactive Projects



Current Application and Administrative Fee Schedule

Application fee: 0.05% of the total amount of Qualified Property identified in the Application as originally submitted. Waved if rebuilding or relocating due to a natural disaster named in a State of Emergency proclamation.

Min: \$250

Max: \$10,000

Estimated STE Amount	Qualified Property Amount	Application Fee
\$585,200	\$7,000,000	\$3,500
\$1,254,000	\$15,000,000	\$7,500
\$10,000,000	\$119,617,224	\$10,000

Administration fee: 0.4% of the total amount of Qualified Property actually purchased during the term of the award.

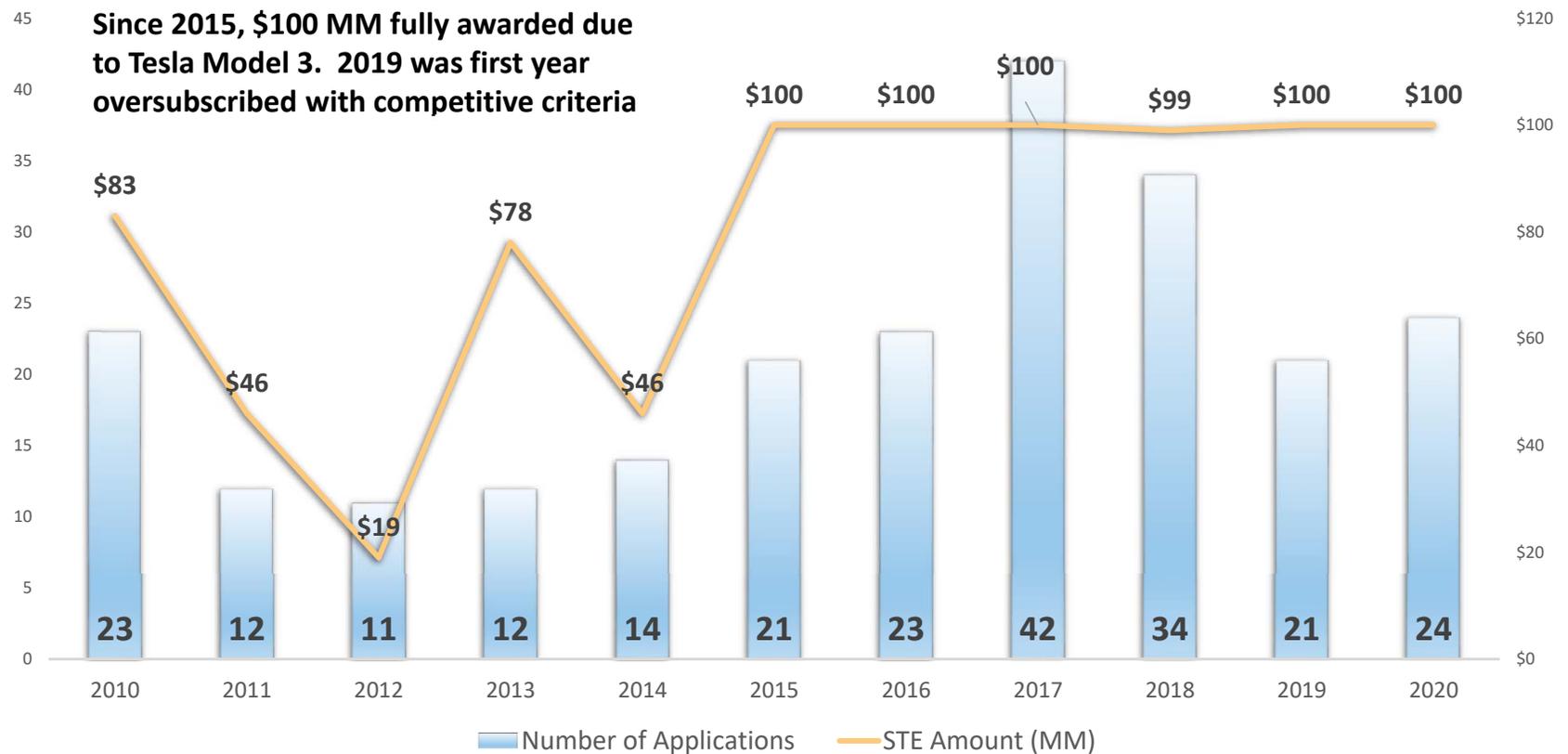
Min: \$15,000

Max: \$350,000

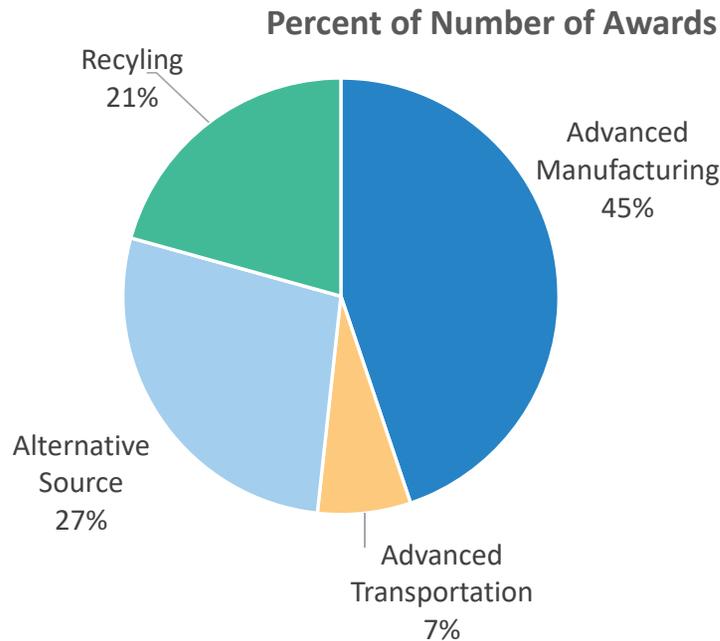
Other:

- \$500 for a modification to the Regulatory Agreement or authorizing resolution that must be approved by the Authority (ex: extension request or name change).
- 0.005% of total amount of Qualified Property for a modification to the Regulatory Agreement or authorizing resolution that requires a revised application to be considered by the Authority (ex: award increase in the same calendar year).

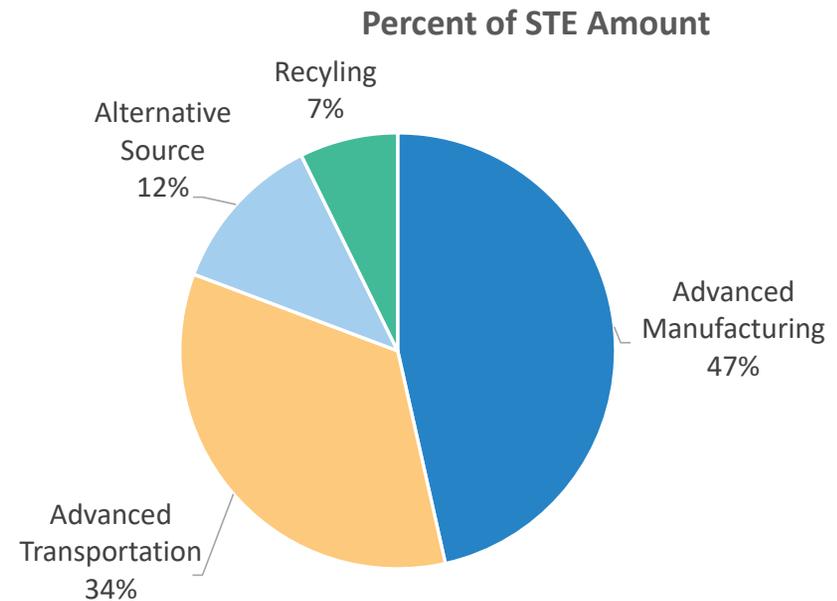
While the universe of potential applicants has expanded, the funding remains restricted



Since October 2016 (when Recycling was added to the Program), Advanced Manufacturers have been the largest awardee, both by number and value of awards

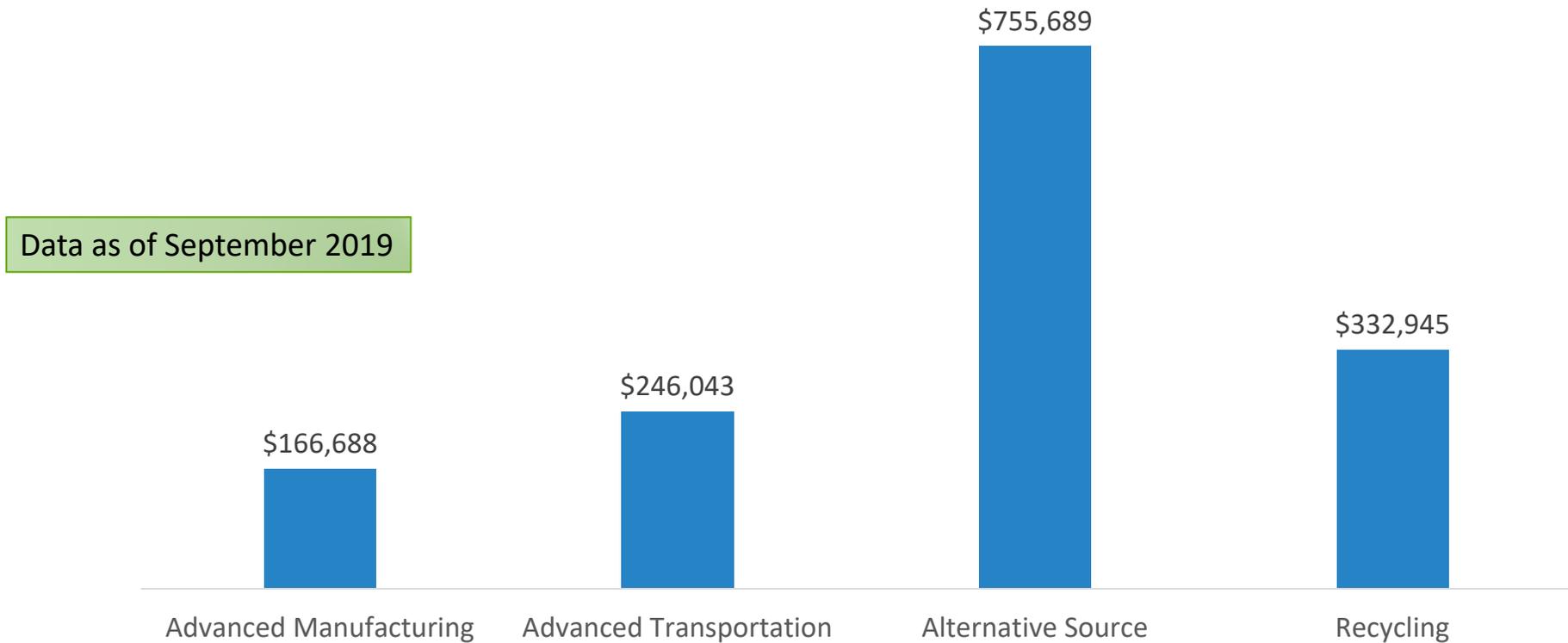


Data as of September 2019



Advanced Manufacturing and Advanced Transportation production jobs created by the STE tend to cost less per \$ of STE

Median \$ of STE per Estimated Number of Production Jobs Created, By Project Type



Statutory Criteria for Evaluating STE Applications

Public Resources Code Section 26011.8(d) (as amended by AB 176)

(d) The authority shall evaluate *a* project ~~applications~~ *application* based ~~upon~~ *on* all of the following criteria:

(1) The extent to which the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California.

(2) The extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the participating party from the sales and use tax exclusion.

(3) The extent to which the project will create new, ~~permanent jobs in California.~~ *or result in the loss of, permanent, full-time jobs in California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained.*

(4) To the extent feasible, the extent to which the project, or the product produced by the project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by federal or state law or regulation.

(5) The extent of unemployment in the area in which the project is proposed to be located.

(6) Any other factors the authority deems appropriate in accordance with this section.