

DOCKETED	
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Emergency Rulemaking for Assembly Bill 205, Opt-in Certification Provisions

September 19, 2022, Public Webinar



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Environmental Protection
September 19, 2022



Housekeeping

- This Public Webinar is being held remotely.
 - The webinar is being recorded.
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 - Comments taken at end of presentation
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Public Webinar

Purpose is to explain the proposed regulations and provide an opportunity for oral comments. All written comments submitted by September 30, 2022, and oral comments made today will be considered in the development of the regulations.

NOTE: All statements today and all written comments may become part of the public record for this emergency rulemaking.



Legislative History

- June 30, 2022: Assembly Bill 205 establishes a new program for certain non-fossil-fueled power plants and clean energy manufacturing facilities to optionally seek a permit to construct and operate from the CEC (“opt-in program”)
 - CEC permit in lieu of most other local, state, and regional permits, and federal permits to the extent allowed by federal law
 - Regulations to implement the opt-in program to be adopted as emergency regulations
 - Public Resources Code sections 25545-25545.13
- September 6, 2022: Assembly Bill 209 clarifies requirements for tribal consultation in the opt-in program









Emergency Rulemaking History

- September 9, 2022: CEC publishes notice of public webinar on the draft emergency regulations
- September 14, 2022: CEC publishes draft emergency regulations for public comment
- **September 19, 2022: Public Webinar on the Emergency Regulations**
- September 30, 2022: Written comment deadline on draft emergency regulations
- October 6, 2022: Notice of proposed emergency action published
- October 12, 2022: Proposed emergency rulemaking adoption date
- October 13, 2022: Submit rulemaking package to OAL
- October 24, 2022: OAL issues decision on emergency regulations
- Estimated effective date: October 28, 2022



Overview

- Opt-in Program established until June 30, 2029
- Streamlined process for certain eligible facilities to optionally seek a permit (or certification) from the CEC to construct and operate

<p>Solar photovoltaic power plant of at least 50 MW</p> 	<p>Terrestrial wind power plant of at least 50 MW</p> 	<p>Energy storage system of at least 200 MWh</p> 
<p>Non-fossil-fueled thermal power plant of at least 50 MW (i.e., jurisdictional facility)</p> 	<p>Manufacturing/assembly facility for renewable energy/energy storage systems or components with at least \$250 million investment</p> 	<p>Transmission from an eligible power plant or energy storage system to the first point of interconnection</p> 



Framework

1. **Pre-filing Meeting (Day -60)**
2. Application Submitted (Day -30); CEC requests additional information if necessary
3. Transmit Application to Responsible/Trustee Agencies and Publish Summary in Newspaper
4. Application Deemed Complete (Day 0)
5. Notice of Preparation (Day 3)
6. Initiate Tribal Engagement (Day 5 **or earlier**)
7. Public Scoping Meeting, Public Informational Meeting, Public Workshop
8. Publish Notice of Availability & Draft EIR+ (Day 30-150)
9. Public Comment Period & Public Meeting on Draft EIR+ (60 days)
10. Final EIR+ (Day 240)
11. Business Meeting Approval (Day 270)
12. Other Agencies Issue Permits (if applicable) (Day 270-360)



Scope (§1875)

- Applies only to facilities that may opt-in, as defined in section 25545(b) of the Public Resources Code (PRC)



Filing Opt-in Application (§1876)

- File application in the Docket and follow technical requirements (sections 1208 and 1208.1)
- Authorize and verify application under penalty of perjury (section 1707)



Pre-Filing Meeting (§1876.5)

- Applicant must meet with staff at least 30 days before submitting an application
- Staff shall invite affected local government(s) to attend prefiling meeting(s)



Opt-in Application Content (§1877)

- Appendix B (requirements for AFC)
- Information required for incidental take and lake and streambed alteration, if authorization being sought
- How the project is eligible under PRC section 25545(b)
- Certifications required under PRC section 25545.3.3 and 25545.3.5 (related to labor)
- Whether any required permits applications have been sought, and plan for obtaining other required permits
- Whether project is on a “prohibited” site under PRC section 25527 or 25528, and documentation of relevant agency approvals
- Preliminary information on overall net positive economic benefit to local government
- Plan or strategy to obtain binding agreements with or for the benefit of community-based organization(s)
- Whether project is eligible for streamlined judicial review



Application Withdrawal (1877.5)

- Withdraw by filing a notice of withdrawal, authorized and verified in the same manner as original application
- Executive director will file statement and close the docket
- If applicant decides to go forward after filing a notice of withdrawal, must file a new application



Application Completeness (§1878)

- CEC may request additional information from the applicant
- Executive director will file a statement when the application is complete, the later of either:
 - 30 days after submission if CEC does not request additional information, or
 - Upon CEC acceptance of additional requested information
- Within 45 days after application complete or at a later date specified by the executive director, applicant must update information to support findings on:
 - The net positive economic benefit to local government
 - Agreement(s) with or to benefit community-based organization(s)



Tribal Engagement (§1878.5)

- Consultation, treatment of tribal cultural resources, and baseline follows CEQA
- Additional requirements in PRC 25545.7.4:
 - Initiate consultation within 5 days of complete application
 - Contact NAHC to identify California Native American tribes traditionally and culturally affiliated with the geographic area
 - Incorporate, where feasible, tribes' expertise and knowledge into EIR
 - Requirements related to tribal monitors for ground disturbing activities
- Regulations: CEC may engage tribes earlier than 25545.7.4



Initial Staff Assessment (§1879(a))

- Draft Environmental Impact Report
- Whether project complies with minimum efficiency standards in Public Resources Code section 25402(d)
- Conformity with public safety standards, air and water quality standards, and otherwise applicable local, regional, state, and federal laws, ordinances, regulations, or standards (LORS)
- Potential for restoring the site if application is denied
- Public benefits of the project
- Identification of public agencies that received notice of the opt-in application
- Identification of whether site is in a “prohibited” area (PRC 25526 and 25527)
- Net economic impact to local government
- Binding agreements with or for the benefit of one or more community-based organizations
- Whether the project meets the requirements for streamlined judicial review (Pub. Resources Code sections 21183 and 21183.6)



Final Staff Assessment (§1879(b))

- Following 60-day minimum public comment period
- Final EIR
- Updates and changes to other findings in staff assessment
- Published at least 30 days before CEC business meeting
- Executive Director files recommendation to CEC



Public Outreach (§1880)

- Required Public Meetings (PRC 25545.7.2, 25545.7.6)
 - Scoping Meeting
 - Informational Meeting (may be combined with scoping meeting)
 - Workshop
 - Public Meeting on Draft EIR
- Above public meetings must be held as close as practicable to the proposed site (PRC 25545.7.2, 25545.7.6)
- Meetings to allow for remote participation
- 10 days' notice of meetings



Commission Decision (§1881)

- Record includes the final EIR, staff's assessment, the Executive Director's recommendation, public comment
- Commission decision at business meeting



Post Certification Changes (§1882)

- Project owner must file petition with payment to CEC
- Staff files summary description and procedures within 30 days, and provide copy to each nearby property owner
- Staff shall approve if no subsequent or supplemental EIR required
- Any person may object to staff approval within 14 days and make showing that subsequent or supplemental EIR is required
- If subsequent or supplemental EIR required, staff shall prepare the environmental document and submit to the CEC for approval at a business meeting



Written Comments

Comments are due by 5:00 pm on September 30, 2022

To submit electronically: Go to 22-OIR-01's [E-commenting Page](#)

To send a hard copy:

California Energy Commission
Docket Unit, MS-4
Docket No. 22-OIR-01
715 P Street
Sacramento, CA 95814-6400

To send a digital copy: Email docket@energy.ca.gov, include docket number 22-OIR-01 and indicate “Webinar on Emergency Rulemaking for Assembly Bill 205 Opt-In Certification Provisions” in the subject line



How to Follow & Engage

- All filings in CEC [Docket No. 22-OIR-01](#)
- **Subscribe to *Siting Division General List* to receive filings**
- **Visit the [Opt-in Emergency Rulemaking Webpage](#)**
- **Contact Public Advisor's Office**
- Publicadvisor@energy.ca.gov



Public Comment and Discussion

Instructions

Zoom App/Online

- Click “raise hand”

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- Press *9 to raise hand
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When called upon

- Staff will open your line
- Unmute, state and spell name, state affiliation, if any



Thank You!

