

DOCKETED

Docket Number:	22-OIR-01
Project Title:	Emergency Rulemaking for AB205, Opt-In Provisions
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Document Title:	Resolution Adopting Emergency Regulations
Description:	Resolution No: 22-1012-7
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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Emergency Rulemaking to Implement
Opt-in Program

Docket No. 22-OIR-01

RESOLUTION ADOPTING
EMERGENCY REGULATIONS

WHEREAS, on June 30, 2022, the Legislature enacted, and the Governor signed Assembly Bill (AB) 205 (ch. 61, stats. 2022), which, among other things, added Chapter 6.2 to Division 15 of the Public Resources Code; and

WHEREAS, to expedite the State's transition to clean energy projects and maintain energy reliability in the face of climate change, Public Resources Code section 25545.12 authorizes the CEC to adopt regulations to implement a new optional permitting program (opt-in) for non-fossil fueled power plants, energy storage facilities, and related facilities; and

WHEREAS, Section 25545.12 states that the adoption of these regulations shall be considered by the Office of Administrative Law (OAL) as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other area of law, the emergency regulations adopted to implement this chapter shall remain in effect until amended by the commission; and

WHEREAS, on September 9, 2022, the CEC mailed a Notice of a Webinar to the subscription service, including to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action, and posted it on the CEC's website to present the proposed emergency regulations and take public comments on the regulatory language and opt-in program; and

WHEREAS, on September 19, 2022, the CEC held the webinar, and accepted written public comment until September 30, 2022; and

WHEREAS, on September 30, 2022, in the proceeding's docket and business meeting webpage, the CEC provided notice that it designated October 12, 2022, as the date for the business meeting to consider adoption of the proposed emergency regulations; and

WHEREAS, on October 6, 2022, at least five working days prior to submission of the proposed emergency action to OAL, the CEC provided notice of the proposed action, which included the proposed emergency regulations, to every person who has filed a request for notice of regulatory action with the agency; and

WHEREAS, on October 12, 2022, the CEC considered the proposed emergency regulations at its business meeting and adopted the proposed emergency regulations as published on October 6, 2022.

THEREFORE, THE CALIFORNIA ENERGY COMMISSION FINDS:

With regard to the California Environmental Quality Act (CEQA):

- The CEC has considered the application of CEQA to the proposed emergency regulations and concluded that adoption of the proposed emergency regulations is not a project under CEQA (Cal. Code Regs., tit. 14, § 15378(a)) because the regulations will not result in a physical change to the environment or reasonably foreseeable indirect physical change to the environment. In the alternative, adoption is exempt from the CEQA as a categorical exemption under the Class 6 Information Collection exemption (Pub. Resources Code, § 15061(b)(2); Cal. Code Regs., tit. 14, § 15306) and adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).); and

With regard to the Administrative Procedure Act:

- The proposed regulations are deemed an emergency by statute, and the CEC has express statutory authority to seek approval of these regulations implementing Chapter 6.2 of Division 15 of the Public Resources Code through OAL's emergency rulemaking procedures; and
- The proposed emergency regulations will impose no direct costs or savings, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; and
- The proposed emergency regulations will result in no costs or savings in federal funding to the State of California; and
- The proposed emergency regulations will result in no nondiscretionary costs or savings to any state agencies, local agencies, or school districts; and
- None of the comments received at the business meeting on October 12, 2022, and nothing else in the record, justified any changes to the proposed emergency regulations.

THEREFORE, BE IT RESOLVED that, based on the entire record before it, the CEC finds that adoption of the proposed emergency regulations is not a project under CEQA (Cal. Code Regs., tit. 14, § 15378(a)) because the regulations will not result in a direct physical change to the environment or reasonably foreseeable indirect physical change to the environment. The adoption of the propose emergency regulations is also exempt from CEQA as a categorical exemption under the Class 6 Information Collection exemption (Pub. Resources Code, § 15061(b)(2); Cal. Code Regs., tit. 14, §15306) and adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).); and

FURTHER BE IT RESOLVED that, after considering all comments received and based on the entire record of this proceeding, the CEC hereby adopts emergency regulations implementing the opt-in program. The CEC takes this action under the authority of sections 25213, 25218(e) and 25545.12 of the Public Resources Code, which authorize the CEC to adopt emergency regulations, as reasonable and necessary, to implement the opt-in program; and

FURTHER BE IT RESOLVED that documents and other materials that constitute the rulemaking record can be found at the CEC, 715 P Street, Sacramento, California, 95814 in the custody of the Docket Unit and online in Docket Number 22-OIR-01, at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=22-OIR-01> and posted on the CEC's website; and

FURTHER BE IT RESOLVED that, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed emergency regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the rulemaking file required by OAL; and filing a notice of exemption with the Office of Planning and Research.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CEC held on October 12, 2022.

AYE: Hochschild, Gunda, McAllister, Monahan, Vaccaro
NAY: NONE
ABSENT: NONE
ABSTAIN: NONE

Dated: October 13, 2022

SIGNED BY:

Liza Lopez
SecretariaT