

**DOCKETED**

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<b>Project Title:</b>	Emergency Rulemaking Amending the Opt-In Regulations to Add Reimbursement Procedures for Local Agencies
<b>TN #:</b>	258716
<b>Document Title:</b>	Revised CEQA Memo for Opt-in Amendment
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# Memorandum

**To:** Docket 24-OIR-02 **Date:** August 28, 2024

**From:** Alex Mayer, Senior Attorney and Crystal Cabrera, Staff Counsel  
Chief Counsel's Office  
California Energy Commission

**Subject:** California Environmental Quality Act Compliance

At the September 11, 2024 California Energy Commission (CEC) Business Meeting, CEC staff will propose that the CEC adopt a proposed resolution amending the Opt-In emergency regulations by adding clarifying procedures implementing Public Resources Code sections 25538 and 25545.8 to allow local agencies to be reimbursed for their review of opt-in applications and for lost permit fees for opt-in projects. The Opt-In program is authorized by Assembly Bill (AB) 205 (ch. 61, stats. 2022), which, among other things, added Chapter 6.2 to Division 15 of the Public Resources Code, which authorizes the CEC to accept applications for nonfossil-fueled powerplants, battery storage, and related facilities and provides a new, streamlined process for their review and approval by the CEC.

## **I. Adoption of the Regulations is Not a Project.**

For purposes of complying with the California Environmental Quality Act (“CEQA,” Pub. Resources Code, § 21000 et seq.), staff recommends the CEC find that the adoption of the proposed emergency regulations is not a project under CEQA. The proposed emergency regulations implement a process for reimbursement for local agencies that clarifies how the CEC will determine which local agency costs incurred to review opt-in applications are eligible for reimbursement; procedures for approving budgets for reimbursement; procedures for approving reimbursement invoices; and a procedure for resolving disputes.

California Code of Regulations, title 14, section 15060 states, in part, that a lead agency must first determine whether an activity is subject to CEQA and that an activity is not subject to CEQA if the activity is not a project as defined in section 15378. CEQA Guidelines section 15378 states that an activity is a project if it has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

In the case of this rulemaking, the proposed emergency regulations set forth a process for reviewing requests for reimbursement by local agencies for review of opt-in applications and lost permit fees for opt-in projects. The action to establish procedural requirements in emergency regulations does not result in any direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment but implements an administrative process. Therefore, the adoption of the emergency regulations is not a project and is not subject to CEQA.

## **II. Even if Adoption of the Regulations Were a Project, the Class 6 Exemption and the Common Sense Exemption Would Apply.**

The adoption of the emergency regulations clarifying how local agencies may seek reimbursement for review of opt-in applications and for lost permit fees for opt-in projects is also exempt from CEQA as a categorical exemption under the Class 6 Information Collection exemption. (Cal. Code Regs., tit. 14, §§ 15601(b)(2), 15306.) Pursuant to section 15306, activities that involve data collection, research, experimental management, and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource, have been determined not to have a significant effect on the environment and are therefore exempt from CEQA. In this case, the regulations pertain solely to data collection and therefore, if they were a project, would fall within the Class 6 exemption.

Furthermore, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply here, and there is no reasonable possibility that the approval will have a significant effect on the environment due to unusual circumstances. For these reasons, the adoption of the opt-in emergency regulations is exempt from CEQA.

Adoption of the regulations would also be exempt from CEQA under the common sense exemption. (Cal. Code Regs., tit. 14, § 15061(b)(3).) CEQA only applies to projects that have the potential for causing a significant effect on the environment. A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself or beneficial changes to the environment. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) Because the action concerns the adoption of regulations covering procedures for the opt-in program and it does not provide for any physical changes to the environment, it can be seen with certainty that there is no possibility that the adoption of the reimbursement procedures may have a significant effect on the environment.

## **III. Conclusion.**

As shown, adoption of the emergency regulations implementing a reimbursement process for local agencies is not a project under CEQA and thus CEQA does not apply. Even if the adoption is a project and CEQA does apply to the agency action, consistent with the Class 6 exemption in section 15306 of the CEQA Guidelines, the adoption is exempt from CEQA as information gathering and resource evaluation. Additionally, adoption of the regulations is consistent with the common sense exemption under section 15061(b)(3) of the CEQA Guidelines. For these reasons, the adoption of these emergency regulations by the CEC would be exempt from CEQA, and a Notice of Exemption may be filed with the Office of Planning and Research.