

<b>DOCKETED</b>	
<b>Docket Number:</b>	22-OIR-01
<b>Project Title:</b>	Emergency Rulemaking for AB205, Opt-In Provisions
<b>TN #:</b>	246799
<b>Document Title:</b>	Notice of Approval of Emergency Regulatory Action for Opt-in Regulations
<b>Description:</b>	OAL Matter No. 2022-1013-02
<b>Filer:</b>	Patty Paul
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	10/25/2022 3:30:04 PM
<b>Docketed Date:</b>	10/25/2022

Acton Takes Action Editor's Note:

\*\*This is the Emergency RULEMAKING for AB 205, which seems to more clearly define the "Opt-in Program" and lays out the requirements for applicants, including the Community Benefit requirement. (See §1879 on pages 4-5; relevant sections highlighted in yellow)

Link to this document –

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=246799>

**State of California  
Office of Administrative Law**

**In re:**  
California Energy Commission

**Regulatory Action:**

**Title 20, California Code of Regulations**

**Adopt sections:** 1875, 1876, 1876.5, 1877,  
1877.5, 1878, 1878.5, 1879,  
1880, 1880.5, 1881, 1882

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2022-1013-02**

**OAL Matter Type: Emergency (E)**

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This action by the California Energy Commission adopts emergency regulations to further specify requirements of the optional certification program for non-fossil fueled power plants, energy storage facilities, and related facilities in accordance with Assembly Bill 205 (Ch. 61 of 2022). Pursuant to Public Resources Code section 25545.12, this is a deemed emergency and shall remain in effect until amended by the commission.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

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This emergency regulatory action is effective on October 24, 2022 and shall remain in effect until amended by the commission pursuant to Public Resources Code section 25545.12.

**Date:** October 24, 2022



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Nicole C. Carrillo  
Senior Attorney

**For:** Kenneth J. Pogue  
Director

**Original:** Drew Bohan, Executive  
Director

**Copy:** Jared Babula

# EMERGENCY

For use by Secretary of State only

OAL FILE NUMBERS <b>Z-</b>	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER <b>2022-1013-02</b>	EMERGENCY NUMBER
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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**OCT 24 2022**

*3:14 pm*

For use by Office of Administrative Law (OAL) only

**OFFICE OF ADMIN. LAW**  
2022 OCT 13 PM 2:38  
REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
**California Energy Commission**

AGENCY FILE NUMBER (If any)  
**22-OIR-01**

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE <b>Opt-in Emergency Regulations</b>		TITLE(S) <b>20</b>	FIRST SECTION AFFECTED <b>1875</b>	2. REQUESTED PUBLICATION DATE <b>October 13, 2022</b>	
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON <b>Jared Babula</b>		TELEPHONE NUMBER <b>916-879-3028</b>	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) <b>Implementation of AB 205 opt-in jurisdiction</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT <b>1875,1876, 1876.5, 1877,1877.5,1878,1878.5,1879,1880, 1880.5, 1881, and 1882.</b>
	AMEND
	REPEAL

TITLE(S)  
**20**

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  §100 Changes Without Regulatory Effect  Effective other (Specify)


6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify)

7. CONTACT PERSON: **Jared Babula** TELEPHONE NUMBER: **916-879-3028** FAX NUMBER (Optional): E-MAIL ADDRESS (Optional): **jared.babula@energy.ca.gov**

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE: 

DATE: **October 5, 2022**

TYPED NAME AND TITLE OF SIGNATORY: **Drew Bohan, Executive Director**

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**OCT 24 2022**

Office of Administrative Law

**Article 4.1 Certification of Nonfossil-Fueled Powerplants, Energy Storage Facilities, and Related Facilities**

**§ 1875. Scope.**

This Article implements Chapter 6.2 of Division 15 of the Public Resources Code related to certification of nonfossil-fueled powerplants, energy storage facilities, and related facilities, as defined in section 25545(b) of the Public Resources Code.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, and 25545.1, Public Resources Code.

**§ 1876. Filing of Opt-in Application.**

Applications filed under this Article shall be known as “opt-in” applications. All opt-in applications shall be filed following the requirements set forth in sections 1208 and 1208.1 of title 20. All opt-in applications shall be authorized and verified as set forth in section 1707 of title 20.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.1, 25545.2 and 25545.4, Public Resources Code.

**§ 1876.5. Pre-filing Consultation.**

(a) At least 30 days before submitting an opt-in application under this Article, the applicant shall meet with staff to discuss information requirements for the opt-in application.

(b) Staff shall invite the local government(s) that would have had permitting authority over the site and related facility, but for Chapter 6.2 of Division 15 of the Public Resources Code, and may invite other relevant state and federal agencies, to participate in the meeting(s) held pursuant to subdivision (a).

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.1, 25545.2 and 25545.4, Public Resources Code.

**§ 1877. Contents of Opt-in Application.**

(a) The opt-in application shall contain all the information specified by Appendix B of this chapter and meet the general requirements set forth in section 1704(a) of title 20. For categories of information contained in Appendix B not relevant to the project, the application shall include a discussion explaining why a category does not apply. If the applicant is seeking incidental take authorization as described in California Fish and

Game Code section 2081(b), the application shall include the information required in California Code of Regulations, title 14, section 783.2(a)(1)-(a)(10). If the applicant is seeking lake and streambed alteration authorization under Fish and Game Code section 1602, the application shall include the information required in California Fish and Game Code section 1602(a)(1)(A)-(F).

(b) The opt-in application shall contain an explanation of how the facility meets one or more of the definitions of "facility" in Public Resources Code section 25545(b). If the opt-in application is seeking certification for a discretionary project pursuant to Public Resources Code section 25545(b)(4), the application shall contain a detailed description of how the facility meets the criteria specified in section 25545(b)(4) including, as applicable, what the facility would manufacture, produce, or assemble, and how the facility's products or services would be used in the manufacture, production, or assembly of (1) energy storage systems or component manufacturing, (2) wind systems or component manufacturing, (3) solar photovoltaic energy systems or component manufacturing, or (4) specialized products, components, or systems that are integral to renewable energy or energy storage technologies.

(c) The opt-in application shall contain all certifications required by Public Resources Code sections 25545.3.3 and 25545.3.5. The executive director may request, and the applicant shall provide, documentation verifying any certification in the opt-in application. Unless confidential information is requested by the executive director, all supporting documentation shall be filed as a public record.

(d) The opt-in application shall identify and discuss whether the applicant has submitted any local, state, or federal permit applications. For any required permit that has not yet been submitted to the relevant state agency, the opt-in application shall include a plan for submitting the application and any discussions that have occurred with the relevant state agency with authority over the project.

(e) The opt-in application shall identify whether the project is on a prohibited site as identified in Public Resources Code section 25527 or on a site designated by the California Coastal Commission under Public Resources Code section 30413(b) or on a site designated by the San Francisco Bay Conservation and Development Commission under Government Code section 66645(b). For projects on such a site, the opt-in application shall include documentation of the approval of the public agency having ownership or control of the land.

(f) The opt-in application shall contain preliminary information demonstrating overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility, consistent with Public Resources Code section 25545.9. Staff shall provide the submitted information to the local government for review and comment.

(g) The opt-in application shall include the applicant's plan or strategy, including a timeline for execution, to obtain legally binding and enforceable agreement(s) with, or

that benefit, a coalition of one or more community-based organizations prior to project certification, consistent with Public Resources Code section 25545.10.

(h) The opt-in application shall include a discussion of whether the project meets the requirements of Public Resources Code sections 21183 and 21183.6.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25527, 25545, 25545.1, 25545.2, 25545.3.3, 25545.3.5, 25545.7, 25545.9, 25545.10, 25545.13, Public Resources Code.

#### **§ 1877.5. Withdrawal of Opt-in Application.**

(a) Any time after acceptance, the applicant may withdraw the opt-in application by filing a written notice of withdrawal. The notice of withdrawal must be authorized and verified in the same manner as the original opt-in application, as provided in section 1707 of title 20.

(b) Upon receipt of a properly executed withdrawal, the executive director shall immediately file a statement that the application has been withdrawn and close the docket. The documents of the proceeding shall continue to be maintained by the Docket Unit.

(c) If the applicant decides to request that the commission review and approve the project after filing a notice of withdrawal, the applicant must file a new opt-in application under section 1876, except that an applicant for facilities described in section 25545(b)(3) of the Public Resources Code must either file a new opt-in application under section 1876 or a new notice or application under section 1709 of title 20.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.1, and 25545.2, Public Resources Code.

#### **§ 1878. Commission Review of Opt-in Application.**

(a) The executive director may request additional information from the applicant as set forth in Public Resources Code section 25545.4, including additional information to address comments by public agencies and California Native American tribal governments.

(b) Consistent with Public Resources Code section 25545.4, the executive director shall file a statement when the application is deemed complete.

(c) No later than 45 days after an application is deemed complete, or a later date set forth by the executive director, the applicant shall provide information updating or supplementing the information in the application to support the findings required by Public Resources Code sections 25545.9 and 25545.10.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.4, 25545.9, and 25545.10, Public Resources Code.

**§ 1878.5. Tribal Consultation.**

(a) In addition to formal tribal consultation required in the California Environmental Quality Act, the commission shall follow the additional requirements governing tribal engagement, related to opt-in applications, as set forth in Public Resources Code section 25545.7.4.

(b) The commission may initiate tribal engagement earlier than required under Public Resources Code section 25545.7.4 to ensure meaningful process and information exchange.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.7.2, and 25545.7.4, Public Resources Code.

**§ 1879. Staff Assessment and Executive Director's Recommendation.**

(a) Within 150 days from the date the application is deemed complete, or as soon thereafter as is practicable, staff shall file a Staff Assessment of the opt-in application that consists of a draft environmental impact report following the requirements of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code of Regs., tit. 14, div. 6, ch. 3) and includes consideration on whether the project satisfies the conditions in Chapter 6.5 (commencing with Section 21178) of Division 13, including Sections 21183 and 21183.6, of the Public Resources Code, and a separate section addressing the following:

(1) The extent to which the applicant has complied with the recommended minimum standards of efficiency adopted under Public Resources Code section 25402(d).

(2) The conformity of the facility with public safety standards and the applicable air and water quality standards, and with other applicable local, regional, state, and federal standards, ordinances, or laws and a statement of efforts made to correct or eliminate any noncompliance.

(3) The potential for restoring the site as necessary to protect the environment if the commission denies approval of the application.

(4) The public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

(5) An identification of public agencies that received notice of the opt-in application.



(6) An identification of whether the site is located at a prohibited area as identified in Public Resources Code sections 25526 and 25527 and any proposed findings relevant to that location.

(7) The overall net positive economic benefit to the local government that would have had permitting authority over the site and related facility. Economic benefits may include, but are not limited to, employment growth, housing development, infrastructure and environmental improvements, assistance to public schools and education, assistance to public safety agencies and departments, property taxes, and sales and use tax revenues.

(8) Any legally binding and enforceable agreements by the applicant with, or that benefit, a coalition of one or more community-based organizations, such as workforce development and training organizations, labor unions, social justice advocates, local governmental entities, California Native American tribes, or other organizations that represent community interests, where there is mutual benefit to the parties to the agreement.

(b) After conclusion of at least a 60-day public comment period on the Staff Assessment of the opt-in application, including the draft environmental impact report, staff shall publish an updated Staff Assessment of the opt-in application that consists of a final environmental impact report following the requirements of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code of Regs, tit. 14, div. 6, ch. 3), and any updates or changes to the sections of the Staff Assessment addressing section 1879, subdivisions (a)(1)-(a)(8). The updated Staff Assessment, including the final environmental impact report, shall be filed no sooner than 30 days before the commission's consideration at a public meeting.

(c) Concurrent with the publication of the updated Staff Assessment the executive director shall file a recommendation on whether the commission shall certify the environmental impact report and issue a certificate for construction and operation of the facility.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25526, 25545.1, 25545.6, 25545.8, 25545.9, 25545.10, and 25545.13, Public Resources Code.

### **§ 1880. Public Outreach.**

(a) Noticing of meetings, workshops, hearings, and similar public events shall be done as set forth in section 1209 of title 20.

(b) The timing and number of public events shall be consistent with Public Resources Code section 25545.7.2.



(c) For purposes of conducting a meeting, informational workshop, or scoping workshop as close as practicable to the proposed site consistent with Public Resources Code sections 25545.7.2 and 25545.7.6, the commission or applicant shall, to the extent feasible, secure a space with adequate technological capacity to support remote participation that is near the project site.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.7.2 and 25545.7.6, Public Resources Code.

### **Section 1880.5. Record of Proceedings and Request for Modification.**

(a) To prepare and certify a record of the proceeding concurrently with the review of the opt-in application, as set forth in Public Resources Code section 25545.13, the project's docket will be the record of proceedings and contain the materials required in subdivision (e) of Public Resources Code section 21167.6. The commission's certification of the environmental impact report and project shall be based on this record and on any public comments made at the public meeting to consider the application.

(b) Within five days after the executive director issues the recommendation set forth in section 1879(c), staff shall file a statement that the record of proceedings is complete.

(c) Within seven days after staff files the statement set forth in subsection (b), any person who commented on the Staff Assessment of the opt-in application may request that the commission modify the record of the proceeding. Such a request shall be filed into the project's docket and contain information detailing the records to be added or removed, reason for such action, and laws and policies supporting such action. A request to modify the record of the proceeding shall not delay or prohibit the commission from certifying the record of the proceeding pursuant to Public Resources Code section 25545.13.

(d) The executive director may review the request and take actions to conform the docket with the request by adding or removing the requested records and notifying the requester. Comporting with the request shall cause the request to be considered withdrawn.

(e) A request to modify the record of proceeding not acted upon by the executive director shall be considered by the commission at the public meeting in which the opt-in application is on the agenda for consideration. The executive director shall file a statement before the public meeting explaining the reasons for not acting on a request.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.8, 25545.9, 25545.10, and 25545.13, Public Resources Code.

**§ 1881. Commission Certification of the Environmental Impact Report and Certification to Construct and Operate the Facility.**

After consideration of the updated Staff Assessment of the opt-in application, the executive director's recommendation, the requirements of Public Resources sections 25545.8, 25545.9, and 25545.10, and public and public agency comment, the commission shall determine whether to certify the environmental impact report and issue a certification to construct and operate the facility. The commission may take action including, without limitation, voting to issue the certification, deny the application, or require additional information or analysis. If the commission votes to require additional information or analysis, the commission shall issue an order that specifies the required information and establishes a schedule for subsequent actions.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.4, 25545.8, 25545.9, and 25545.10, Public Resources Code.

**§ 1882. Post Certification Project Changes.**

(a) Upon project certification, any change to the design, operation, or performance requirements of the project shall be approved by staff if staff finds the proposed project change does not require the preparation of a subsequent or supplemental environmental impact report as set forth in Title 14, California Code of Regulations, sections 15162 and 15163. In the alternative, staff may submit a proposed change that would otherwise qualify for staff approval to the commission for consideration at a public meeting held under section 1101 of title 20.

(b) A project owner seeking a change to the design, operation, or performance shall file a petition containing the payment required under Public Resources Code section 25806(e) and a complete description of the proposed change and whether any of the conditions requiring a subsequent or supplemental environmental impact report set forth in Title 14, California Code of Regulations sections 15162 and 15163 are met. The petition shall also include a discussion of how the project as changed would continue to comply with the requirements of Public Resources Code sections 25545.3.3, 25545.3.5, 25545.9, and 25545.10, and a list of current assessor's parcel numbers and owners' names and addresses for all parcels within 500 feet of any affected project linears and 1000 feet of the project site.

(c) Within 30 days of receiving a completed petition and the applicable fee, staff shall file a summary describing the content of the petition and shall include a description of the commission's procedures concerning review and consideration of the petition. As soon as practicable after filing the summary, staff shall provide a copy to each property owner described in subdivision (b) with instructions on how to receive future filings.

(d) If staff finds a subsequent or supplemental environmental impact report is not required, staff shall file a statement to that effect and approve the project change. Any person may file an objection to a staff's approval of the project change within 14 days of the filing of staff's statement. Any such objection must make a showing supported by facts that the change requires the preparation of a subsequent or supplemental environmental impact report as set forth in Title 14, California Code of Regulations, sections 15162 and 15163. Speculation, argument, conjecture, and unsupported conclusions or opinions are not sufficient to support an objection to staff approval.

(e) If staff finds a subsequent or supplemental environmental impact report is required, or if a person files an objection that complies with subdivision (d), the subsequent or supplemental environmental impact report and the petition shall be submitted to the commission for consideration at a public meeting held under section 1101. The commission shall issue an order approving, rejecting, or modifying the petition.

Note: Authority cited: Sections 25213, 25218, and 25545.12, Public Resources Code. Reference: Sections 25545, 25545.3.3, 25545.3.5, 25545.9, 25545.10, 25545.11, and 25806 Public Resources Code.