



Edmund G. Brown Jr.
Governor

Matthew Rodriguez
Secretary for Environmental Protection

November 20, 2018

David Bainbridge, General Counsel
Fair Political Practices Commission
1102 Q Street, # 3000
Sacramento, CA 95811

Dear Mr. Bainbridge:

I am writing as a follow up to our phone conversation to request an exemption from the provisions of the Political Reform Act for members of a statutorily-created advisory committee housed within the California Environmental Protection Agency (CalEPA): the Independent Emissions Market Advisory Committee (IEMAC). This request is submitted pursuant to the provisions of California Code of Regulations, title 2, section 18571.

The IEMAC was established by statute in July 2017. Health and Safety Code section 38591.2 charges the IEMAC with holding at least one meeting annually and reporting to the state Air Resources Board and the Joint Legislative Committee on Climate Change Policies on the the environmental and economic performance of California's cap and trade regulation. Section 38591.2 provides that the IEMAC shall be composed of at least five experts on emissions trading market design, with three members appointed by the Governor, one member appointed by the Senate Committee on Rules and one member appointed by the Speaker of the Assembly.

Health and Safety Code section 38591.2, subdivision (b)(2) provides that IEMAC committee members shall have academic, nonprofit and other relevant backgrounds and lack financial conflicts of interest with entities subject to the Air Resources Board's cap and trade regulation.

The IEMAC was fully constituted by appointments during 2018, held two public meetings in 2018 (on June 20, 2018 and September 21, 2018), and submitted its first and only report to the Air Resources Board and Joint Legislative Committee on Climate Change Policies on October 22, 2018.

We believe that the IEMAC meets the criteria set forth in California Code of Regulations, title 2, section 18571(d)(1), for exemption from the requirements of the Political Reform Act.

The IEMAC has no designated employees within the meaning of Government Code sections 82019 and 87302(a). The IEMAC has no employees at all; it is housed within CalEPA with no CalEPA staff specifically dedicated to its operation. The IEMAC will not acquire real property in the foreseeable future, and it has an annual operating budget of less than \$150,000. (The IEMAC does not have an independent budget or any funds appropriated for its operation.)

Neither the IEMAC nor its members possess decision making authority as defined in California Code of Regulations, title 2, section 18700(c)(2)(A)(i-iii). The IEMAC does not make any final government decisions. It cannot compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that cannot be overridden. Additionally, the IEMAC has not made substantive recommendations that over a period of time have been regularly approved without significant amendment or modification by another public official or government agency.

We want to call to your attention that one of the criteria for appointment to the IEMAC, set forth in Health and Safety Code section 38591.2, subdivision (b)(2)(B), is lack of financial conflicts of interest with entities subject to the Air Resources Board cap and trade regulation. Our interpretation of that section is that it places responsibility on the appointing authorities to ensure that their appointees do not have a financial conflict of interest, and that it does not override (and cannot override by implication) the Political Reform Act's exemption provisions. (*In re White* (1969) 1 Cal.3d 207, 212 [Repeals by implication are not favored and are recognized only when there is no basis for harmonizing laws].)

I am attaching a copy of Health and Safety Code section 38591.2 to this letter. You can access the IEMAC's sole advisory report, which was provided to the Air Resources Board and the Joint Legislative Committee on Climate Change Policies in October 2018, and other information about the IEMAC, including meeting notices, at: <https://calepa.ca.gov/climate/>.

If you need additional information to consider this exemption request, please contact me at chris.tiedemann@calepa.ca.gov or at (916) 634-8428. Thank you for your consideration

Sincerely,

Christiana Tiedemann
Deputy Secretary for Law Enforcement and Counsel