

ATTACHMENT TO NOTICE OF EXEMPTION

Project Title: Covered Electronic Waste Recycling Program Enforcement Emergency Regulations

Project Applicant: Department of Resources Recycling and Recovery (CalRecycle)

Description of Nature, Purpose and Beneficiaries of Project:

The Covered Electronic Waste (CEW) Recycling Program includes procedures for collectors, recyclers, or dual entities to appeal a decision by CalRecycle to deny an application or application renewal, suspension, or revocation, and for recyclers or dual entities to appeal a decision by CalRecycle to adjust or deny a payment claim. In addition, the CEW Recycling Program also includes procedures for imposing administrative civil penalties for false statements or representations. Under the current regulations, in response to an appeal or the issuance of an accusation seeking administrative civil penalties, CalRecycle must provide a hearing before the CalRecycle Director, or his or her designee, who shall act as a hearing officer. The electronic waste (e-waste) collection and recycling documentation that is disclosed during one of these hearings is proprietary and trade secret because it generally requires information that might allow the public and competitors to determine a collector or recycler's market share, its business partnerships and contacts, operational business models, and transactions. In addition, e-waste collection documentation that is required during these hearings would most likely disclose confidential information that must be protected under state law. The proposed emergency regulations expressly exempt the CEW Recycling Program from the regulations and procedures instituted in CalRecycle's Administrative Hearing Regulations (set forth in Chapter 1, Article 6 of Division 7 of Title 14 of the California Code of Regulations) and specify the burden of proof on an appeal of a payment claim adjustment or denial. These emergency regulations are necessary to maintain existing program practices with respect to appeals and administrative hearings, and to provide clarification with respect to the burden of proof on an appeal of a decision by CalRecycle to adjust or deny a payment claim.

Reasons Why Project is Exempt:

The adoption of the regulation is exempt from the California Environmental Quality Act (CEQA) because it falls under the "Class 8" exemption as defined in the CEQA Guidelines. The Class 8 exemption states that a project is exempt from CEQA if it "consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment" (CEQA Guidelines, Section 15308). The regulations adopted pursuant to the Electronic Waste Recycling Act are part of an overall statutory scheme to encourage safe recovery and recycling of covered electronic devices (Stats. 2003, ch. 526, §1.) Regulations have already been promulgated to implement this Act. The proposed change to the existing regulations merely exempts the CEW Recycling Program from

the regulations and procedures specified in CalRecycle's newly adopted Administrative Hearing Regulations so as to maintain existing program practices and specifies the burden of proof for appeals of payment claim denials or adjustments.

The adoption of the regulation also falls under the "general rule" or "common sense" exemption as defined in the CEQA Guidelines (California Code of Regulations, Title 14, sections 15000 et. seq.). The common sense exemption states that a project is exempt from CEQA if "the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA" (CEQA Guidelines Section 15061(b)(3)). The adoption of the proposed emergency regulations will have no direct effect on the environment and no reasonably foreseeable indirect effect on the environment. There are no requirements, standards, or targets set in the proposed regulation on which to base an objective analysis of any potential impacts. To impute any general or specific environmental effects from the regulation would be entirely speculative, and CEQA does not require a lead agency to speculate as to the potential impacts of a project. Accordingly, the adoption of the regulation is exempt from consideration under CEQA.

Finally, the adoption of the regulation is not a "project", as that term is defined in the CEQA Guidelines (California Code of Regulations, Title 14, sections 15000 et. seq.). A "project" is an activity "which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." (CEQA Guidelines, Section 15378(a).). For the same reasons that CalRecycle has determined that the regulation falls under the common-sense exemption, there is also no possibility that the regulation would result in an effect on the environment and is exempt from consideration under CEQA because it is not a project.