ATTACHMENT TO NOTICE OF EXEMPTION

Project Title: Covered Battery-Embedded Waste Recycling Fee

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

Description of Nature, Purpose and Beneficiaries of Project:

The Electronic Waste Recycling Act of 2003 (Public Resources Code (PRC) Section 42460, et seq.) (the "Act") established a program to finance the end-of-life management of certain electronic devices (i.e., video display devices). In 2022, Senate Bill (SB) 1215 amended the Act to include certain battery-embedded products to the types of covered electronic devices eligible for payment in California's Covered Electronic Waste (CEW) Recycling Program (Program). The Program is financed through a covered battery-embedded waste recycling fee paid by consumers at the point of retail sale for any new or refurbished covered battery-embedded product. Pursuant to PRC section 42464(b)(3), CalRecycle must annually establish, by October 1, a covered battery-embedded waste recycling fee based on the reasonable regulatory costs to administer the Program. The fee shall go into effect on January 1 of each calendar year after the fee is adopted, pursuant to PRC Section 42464(b)(3).

The proposed emergency regulations establish the covered battery-embedded waste recycling fee by maintaining the current amount that went into effect January 1, 2026,, which is set at 1.5 percent of the retail sales price for each covered battery-embedded product sold for use in California by a retailer, not to exceed a specified cap amount. The proposed regulations would lower the amount of that fee cap from $15.00 to $1.00.

Reasons Why Project is Exempt:

The adoption of the regulation is exempt from the California Environmental Quality Act (CEQA) because it 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)). The emergency regulation maintains the covered battery-embedded waste recycling fee that will go into effect on January 1, 2027, but proposes to lower the amount of the fee cap. The adoption of the regulation 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.

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 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)). For the same reasons that CalRecycle has determined that the regulation falls under the “not a project” exemption, it can also be seen with certainty that there is no possibility that the regulation would result in a significant effect on the environment and is exempt from consideration under CEQA.

Additionally, the adoption of the regulation is exempt from 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 Act are part of an overall statutory scheme to encourage safe recovery and recycling of covered electronic devices Regulations have been promulgated to implement SB 1215 amendments that added battery-embedded products to the CEW Recycling Program. The emergency regulation establishes the covered battery-embedded waste recycling fee that will go into effect on January 1, 2027.

Finally, the adoption of the regulation is exempt from CEQA pursuant to Public Resources Code section 21080(b)(8). That section provides that CEQA does not apply to the “establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits; (B) purchasing or leasing supplies, equipment, or materials; (C) meeting financial reserve needs and requirements; (D) obtaining funds for capital projects necessary to maintain service within existing service areas; or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter.” Here, the covered battery-embedded waste recycling fee structure is necessary to meet operating expenses and not to fund capital improvements. (PRC Section 42464(b)(3) [“CalRecycle shall establish a covered electronic waste recycling fee based on the reasonable regulatory costs to administer covered electronic waste recycling”]).