

**TITLE 18. CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION**

**PROPOSED ADOPTION OF NEW CHAPTER 5.6,
EMERGENCY TELEPHONE USERS SURCHARGE ACT
OPERATIVE ON AND AFTER JANUARY 1, 2020, AND
AMENDMENTS TO CHAPTER 5.7, PREPAID MOBILE
TELEPHONY SERVICES, AND PROPOSED REPEAL OF
CHAPTER 5.5, EMERGENCY TELEPHONE USERS
SURCHARGE LAW, IN DIVISION 2 OF TITLE 18
OF THE CALIFORNIA CODE OF REGULATIONS**

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority in Revenue and Taxation Code (RTC) section 41128, proposes to adopt new chapter 5.6 (commencing with section (Regulation or Reg.) 2435) in division 2 of title 18 of the California Code of Regulations (CCR) (chapter 5.6) to provide new Emergency Telephone Users Surcharge (ETUS) Act regulations to implement the ETUS Act (RTC, § 41001 et seq.) as amended by Senate Bill No. (SB) 96 (Stats. 2019, ch.54) and Assembly Bill No. (AB) 988 (Stats. 2022, ch.747). The Department is also proposing to repeal chapter 5.5 (commencing with Reg. 2401), Emergency Telephone Users Surcharge Law, in division 2 of title 18 of the CCR (chapter 5.5), which contains the old ETUS Act regulations, because it's no longer necessary to continue to publish the old ETUS Act regulations in the CCR. Additionally, the Department, pursuant to the authority in RTC section 42103, proposes amendments to chapter 5.7 (commencing with Reg. 2460), Prepaid Mobile Telephony Services (MTS), of division 2 of title 18 of the CCR (chapter 5.7) to clarify how the Local Prepaid MTS Collection Act (RTC, § 42100 et seq.) applies after the Prepaid MTS Surcharge Collection Act (RTC, § 42001 et seq.) was repealed on January 1, 2020, and after the Local Prepaid MTS Collection Act (RTC, § 42100 et seq.) was amended by SB 344 (Stats. 2019, ch.642) and SB 1441 (Stats. 2020, ch.179.)

AUTHORITY

Regulations 2401, 2403, 2405, 2406, 2413, 2421, 2422, 2425, 2431, 2432, 2433, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446: RTC section 41128

Regulation 2425: RTC section 41060 and 41128

Regulations 2460, 2461, and 2462: RTC section 42103

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004

Regulation 2403: RTC sections 41011 and 41021

Regulation 2405: RTC section 41021

Regulation 2406: RTC sections 41021 and 41023

Regulation 2413: RTC sections 41003-41019, 41020-41049, 41052-41053, 41073-41095, and 41129

Regulation 2421: RTC section 41040

Regulation 2422: RTC sections 41024, 41033, 41051, 41052, 41052.1, 41053 and 42010

Regulation 2425: RTC sections 41060 and 41062

Regulation 2431: RTC section 41056

Regulation 2432: RTC section 41098

Regulation 2433: RTC section 41099 and Family Code sections 297, 297.5 and 308

Regulation 2435: RTC sections 41020 and 41028

Regulation 2436: RTC sections 41003, 41004, 41005, 41006, 41007, 41007.1, 41007.2, 41007.3, 41007.5, 41009, 41013, 41020, 41028, 41040, 42101, and 42103.2

Regulation 2437: RTC sections 41007.2, 41007.3, 41016.5, 41020, 41021, 41022, 41023, 41024, 41028, 41040, and 41052

Regulation 2438: RTC sections 41003, 41006, 41009, 41027, and 41046

Regulation 2439: RTC section 41028

Regulation 2440: RTC sections 6452, 6455, 41022, 41024, 41028, 41051, 41052, 41052.1, 41053, 41053.1, and 41055

Regulation 2441: RTC section 41028

Regulation 2442: RTC sections 6479.3, 6479.5, 41028, 41060, and 41062

Regulation 2443: RTC sections 41056, 41073, 41129, and 41130

Regulation 2444: RTC section 41098

Regulation 2445: RTC section 41099

Regulation 2446: RTC sections 41023, 41028, 41101, 41101.1, 41101.2, and 41101.3

Regulation 2460: RTC sections 41040, 42101, 42101.5, 42101.6, 42101.8, 42101.9, 42102, 42102.5, 42103, and 42103.2

Regulation 2461: RTC sections 41028, 42101, 42101.6, 42101.7, 42101.9, and 42103

Regulation 2462: RTC sections 42101.6, 42101.8, 42103 and 42105

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

Emergency Telephone Users Surcharge Act Prior to SB 96

The ETUS Act was enacted in 1976. (Stats. 1976, ch. 443.) The State Board of Equalization (Board) was originally responsible for the administration and enforcement of the ETUS Act (RTC, § 41128 as enacted by Stats. 1976, ch. 443), and in 1977 the Board adopted chapter 5.5, which contains the old ETUS Act regulations that implement, interpret, and make specific the imposition, reporting, and remittance of the emergency telephone users (911) surcharge originally imposed by the ETUS Act.

Prior to January 1, 2016, the ETUS Act imposed the 911 surcharge on amounts paid by every person in this state for intrastate telephone communication service in this state and Voice over Internet Protocol (VoIP) service that provides access to the 911 emergency system, including charges for mobile telecommunications service provided to customers in this state. (RTC, § 41020, as amended by Stats, 2008, ch. 17.) The 911 surcharge rate was a percentage of 0.5% to 0.75% of those charges that, pursuant to a specified formula, the Office of Emergency Services (OES) annually estimated would produce sufficient revenue to fund the current fiscal year's 911 costs. (RTC, § 41030, as amended by Stats, 2015, ch. 25.) Also, service suppliers were required to collect the 911 surcharge from service users, generally on the monthly service billings, and pay it to the state. (RTC, §§ 41021 (as amended by Stats, 2008, ch. 179) and 41051 (as amended by Stats. 1996, ch. 432).)

AB 1717

AB 1717 (Stats. 2014, ch. 885) enacted the Prepaid MTS Surcharge Collection Act and the Local Prepaid MTS Collection Act and amended the ETUS Act. From January 1, 2016, until January 1, 2020, the Prepaid MTS Surcharge Collection Act defined prepaid MTS to mean “the right to utilize a mobile device for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars.” (RTC, § 42004.) It defined “prepaid consumer” to mean “a person who purchases prepaid MTS in a retail transaction.” (*Ibid.*) It imposed a prepaid MTS surcharge on each prepaid consumer on and after January 1, 2016, in lieu of the 911 surcharge imposed by the ETUS Act. (RTC, §§ 41020 and 42010.) The prepaid MTS surcharge was a percentage of the sales price for each retail transaction that occurred in this state. (RTC, § 42010.) The Prepaid MTS Collection Act also required sellers of prepaid MTS to collect the surcharge from each prepaid consumer at the time of each retail transaction and pay it to the state. (*Ibid.*)

The prepaid MTS surcharge rate was annually calculated by adding:

- The surcharge rate as determined by the OES;
- The California Public Utilities Commission (CPUC) reimbursement fee; and

- The telecommunications universal service surcharges. (RTC, § 42010.)

The Prepaid MTS Surcharge Collection Act defined a “seller” to mean “a person that sells prepaid [MTS] to a person in a retail transaction.” (RTC, § 42004.) It defined “direct seller” to mean a prepaid MTS provider or service supplier (as defined in the ETUS Act) that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than resale in the regular course of business. (*Ibid.*) It required sellers, other than direct sellers, to remit the prepaid MTS surcharges and local charges (discussed below) they collected to the Board. (RTC, § 42010.) It also required direct sellers to remit portions of the prepaid MTS surcharges they collected to the CPUC and the Board, and required direct sellers to remit the local charges they collected directly to the local jurisdictions that imposed the local charges. (*Ibid.*)

Local Prepaid MTS Collection Act

The Local Prepaid MTS Collection Act established the exclusive method for the collection of local charges imposed by a local jurisdiction or local agency, as defined in RTC section 42004, on prepaid MTS beginning January 1, 2016. Local charges include local utility user taxes on the consumption of prepaid MTS, local 911 charges, and any other local charges for the consumption of communication services that apply to prepaid MTS. (RTC, §§ 42101, 42102, and 42102.5.)

Prior to July 1, 2017, the Local Prepaid MTS Collection Act required a local jurisdiction or local agency imposing a local charge on prepaid MTS to contract with the Board to collect and administer the local charge. (RTC, §§ 42101.5, 42103.) It required sellers to collect a local jurisdiction’s or local agency’s local charge from prepaid consumers at the same time and in the same manner as the prepaid MTS surcharge and it required the Board to collect the local jurisdiction’s or local agency’s local charge from sellers in accordance with the Prepaid MTS Surcharge Collection Act (described above) after the local jurisdiction or local agency entered into the required contract with the Board. (RTC, §§ 42101.5, 42103.) Also, the Prepaid MTS Surcharge Collection Act required the Board to calculate the combined total of the rates of the prepaid MTS surcharge and the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, and post the combined rates on its website. (RTC, § 42010.)

Prepaid MTS Regulations

The Board adopted chapter 5.7 to provide Prepaid MTS regulations that implement, interpret, and make specific the provisions of the Prepaid MTS Surcharge Collection Act and Local Prepaid MTS Collection Act. Chapter 5.7 became operative on January 11, 2017.

California Department of Tax and Fee Administration

AB 102 (Stats. 2017, ch. 16) established the Department and transferred the Board’s duties, powers, and responsibilities to administer and enforce numerous tax and fee laws to the Department effective July 1, 2017, including the ETUS Act, Prepaid MTS Surcharge Collection Act, Local Prepaid MTS Collection Act, Fee Collection Procedures Law (FCPL) (RTC, § 55001 et seq.), and Sales and Use Tax Law (RTC, § 6001 et seq.). (Gov. Code (GC), §§ 15570,

15570.22.) AB 102 also deemed the references to the Board in the ETUS Act, Prepaid MTS Surcharge Collection Act, Local Prepaid MTS Collection Act, FCPL, Sales and Use Tax Law, old ETUS Act regulations in chapter 5.5, and Prepaid MTS regulations in chapter 5.7 to refer to the Department on and after July 1, 2017. (GC, § 15570.24.)

As a result, the Local Prepaid MTS Collection Act requires a local jurisdiction or local agency imposing a local charge on prepaid MTS to contract with the Department to collect and administer the local charge, instead of the Board, on and after July 1, 2017. The Department also updated the Prepaid MTS regulations in 2018 to refer to the Department, instead of the Board.

Prepaid MTS Surcharge Collection Act Litigation

On November 15, 2018, the United States District Court for the Northern District of California enjoined state agencies from enforcing the Prepaid MTS Surcharge Collection Act because it conflicts with and is preempted by federal law. (*MetroPCS Cal., LLC v. Picker, et al.* (N.D. Cal. 2018) 348 F.Supp.3d 948.) A notice of appeal of the district court's decision was filed on December 14, 2018, but a judicial stay of the injunction was not requested. In December 2018, the Department advised prepaid MTS sellers that they are only required to collect applicable local charges on their sales of prepaid MTS, but not the enjoined prepaid MTS surcharge. The Department also advised service suppliers that, effective January 1, 2019, they were required to collect and remit the 911 surcharge on charges for prepaid MTS in the same manner as they did prior to January 1, 2016.

On August 14, 2020, the Ninth Circuit Court of Appeals reversed the district court and concluded that the Prepaid MTS Collection Act was not preempted by federal law. (*Metro PCS Cal., LLC v. Picker, et al.*, (9th Cir. 2020) 970 F.3d 1106.) The case was remanded for further proceedings. However, the Prepaid MTS Surcharge Collection Act was repealed by its own terms on January 1, 2020. (RTC, § 42024.)

SB 96

SB 96 added RTC sections 41007.1, 41007.2, 41007.3, and 41016.5 to the ETUS Act to define "access line" to mean a wireline communications service line, a wireless communications service line, and a VoIP service line that has access to the 911 emergency system. SB 96 repealed and reenacted RTC sections 41020 and 41030 in the ETUS Act to repeal the percentage based 911 surcharge and instead impose a flat monthly 911 surcharge amount on each access line in this state for each month or part thereof for which a service user subscribes with a service supplier, beginning January 1, 2020. The rate is to be set at an amount no greater than \$0.80 and is based on OES' estimate, pursuant to a specified formula, of the rate that will produce sufficient revenue to fund the current fiscal year's 911 costs when applied to the number of access lines to which the 911 surcharge will be applied per month for the calendar year. (RTC, § 41030.) Service suppliers continued to be required to collect the 911 surcharge amount from service users, generally on the monthly service billings (RTC, § 41021), but SB 96 also amended RTC section 41051 to require service suppliers to pay the entire surcharge to the Department.

Additionally, SB 96 amended RTC section 41020 and added RTC section 41028 to the ETUS Act to impose the 911 surcharge on the purchase of prepaid MTS in this state beginning on

January 1, 2020. RTC section 41028 requires sellers to collect the 911 surcharge from each prepaid consumer at the time of each retail transaction in this state at a rate equal to the monthly surcharge amount per access line and pay it to the Department. It clarifies when a retail transaction occurs in this state for purposes of the 911 surcharge. It also requires sellers, other than service suppliers, to remit the 911 surcharges they collect to the Department, along with a return filed using electronic media, and requires the Department to administer such remittances and returns as prescribed pursuant to the Sales and Use Tax Law. However, RTC section 41051 still requires service suppliers to remit all the 911 surcharges they collect to the Department pursuant to the ETUS Act, including the 911 surcharges imposed on the purchase of prepaid MTS.

Furthermore, SB 96 amended RTC section 41040 to require every service supplier and seller in this state to register with the Department. The 911 surcharge funds collected under the ETUS Act help make emergency telephone service available to persons in this state by supporting the costs of installing, administering, and supplying communication services for the 911 emergency telephone number system.

SB 334 and SB 1441

RTC section 42111 would have repealed the Local Prepaid MTS Collection Act on January 1, 2020. However, SB 344 and SB 1441 amended RTC section 42111 to change January 1, 2020, to January 1, 2021, and then January 1, 2026, respectively. SB 344 and 1441 also amended the Local Prepaid MTS Collection Act to replace obsolete references to the Board with references to the Department.

In addition, SB 1441 added RTC section 42101.6 to the Local Prepaid MTS Collection Act to require the Department to post on its website the combined total of the rates of the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5. SB 1441 amended RTC section 42103 to require the Department to collect and administer local charges pursuant to the FCPL, instead of the repealed Prepaid MTS Surcharge Collection Act. SB 1441 also amended RTC section 42103.2 to require every seller, except a seller that is not required to collect local charges pursuant to RTC section 42101.7, to register with the Department regardless of whether they are in this state.

Also, a seller, other than a direct seller, with de minimis sales of prepaid MTS during the previous calendar year is not required to collect local charges under RTC section 42101.7. The de minimis sales threshold was originally sales of prepaid MTS of less than \$15,000 and the Department of Finance is required to adjust the threshold annually as necessary to minimize program administration costs and maintain revenues to support program administration and enforcement activities. However, nothing prevents a seller that meets the de minimis sales threshold from collecting and remitting local charges on a voluntary basis.

AB 988

AB 988 amended several provisions in the ETUS Act, including RTC sections 41020, 41028, and 41030, to impose a separate and additional 988 surcharge amount on each access line for each month or part thereof for which a service user subscribes with a service supplier and on the

purchase of prepaid MTS in this state, beginning January 1, 2023. The rate of the 988 surcharge is set at eight cents (\$0.08) per access line per month and at a flat rate of eight cents (\$0.08) on each retail transaction involving a sale of prepaid MTS for calendar years 2023 and 2024. (RTC, § 41030.) The rates for subsequent calendar years are to be determined by OES, pursuant to a specified formula, and may not exceed thirty cents (\$0.30) per access line or retail transaction. (*Ibid.*). Service suppliers and sellers must collect the 988 surcharge and pay it to the Department in the same manner as the 911 surcharge. (RTC, §§ 41021, 41022, 41028, 41050.)

The 988 surcharge funds the national 988 system in California so that all people experiencing a mental health crisis can receive life-saving care.

Effects, Objectives, and Benefits of the Proposed Regulatory Action

After SB 96 was enacted, the Department determined that it is reasonably necessary to keep the old ETUS Act regulations in chapter 5.5 in place because they continue to apply to existing appeals of 911 surcharges imposed prior to January 1, 2020. It is reasonably necessary to adopt new ETUS Act regulations, to be included in new chapter 5.6, to have the effect and accomplish the objectives of addressing issues (or problems within the meaning of GC, § 11346.2, subd. (b)) regarding the registration requirements and imposition, collection, reporting, and payment of the 911 surcharge imposed by the ETUS Act as amended by SB 96 beginning January 1, 2020. It is also reasonably necessary to amend the old ETUS Act regulations and draft the new ETUS Act regulations to have the effect and accomplish the objective of addressing issues (or problems) readers may have distinguishing the old ETUS Act regulations in chapter 5.5 from the new ETUS Act regulations in chapter 5.6.

In addition, the Department determined that there are issues (or problems) with the Prepaid MTS regulations in chapter 5.7 because the Prepaid MTS Surcharge Collection Act was repealed by its own terms on January 1, 2020, but the repeal of the Local Prepaid MTS Collection Act was delayed by SB 334. The Department also determined that it is reasonably necessary to amend the Prepaid MTS regulations to make them consistent with the repeal of the Prepaid MTS Surcharge Collection Act to have the effect and accomplish the objective of addressing those issues.

On June 10, 2020, the Department distributed a discussion paper with drafts of the new ETUS Act regulations and proposed amendments to the old ETUS Act regulations and Prepaid MTS regulations. An interested parties meeting was held on June 24, 2020, to obtain public input. During the interested parties meeting, the Department explained the rationale for the new regulations and proposed amendments. The Department also explained that the new regulations and proposed amendments may change if SB 1441, which was pending at the time, was signed into law. Following the interested parties meeting, Lisa Volpe McCabe submitted comments and suggested changes on behalf of CTIA, the trade association for the wireless communications industry. Based on comments received, industry was generally supportive of the new regulations and proposed amendments.

After reviewing and considering CTIA's comments and suggested changes, the amendments to the Local Prepaid MTS Collection Act made by SB 1441, and the amendments made to the ETUS Act by AB 988, the Department determined that it was necessary to revise the drafts of the new regulations and proposed amendments read as discussed below.

Amendments to Old ETUS Act Regulations

The Department initially determined that it is reasonably necessary to propose the following amendments to the old ETUS Act regulations to have the effect and accomplish the objective of helping readers distinguish between the old ETUS Act regulations and the new ETUS Act regulations:

- Change the name of chapter 5.5 from “Emergency Telephone Users Surcharge Law” to “Emergency Telephone Users Surcharge Act Operative Prior to January 1, 2020”;
- Change the name of article 1 in chapter 5.5 from “Imposition of Surcharge” to “Imposition of Surcharge and Application of Chapter”; and
- Adopt new Regulation 2400, Application of Chapter, which clarifies that chapter 5.5 “applies to the Emergency Telephone Users Surcharge Act (Rev. & Tax. Code, 41101 et seq.), operative prior to January 1, 2020. Chapter 5.6 (commencing with Reg. 2435) applies to the Emergency Telephone Users Surcharge Act, operative on and after January 1, 2020.”

The Department also determined that there is an issue (or problem) because readers may not understand that the references to the Board in the old ETUS Act regulations currently mean the Department. Therefore, the Department determined that it is reasonably necessary for proposed Regulation 2400 to clarify that the administration of the ETUS Act was transferred from the Board to the Department, operative July 1, 2017, and any references to the “Board” in chapter 5.5 refer to the Department on and after July 1, 2017, to have the effect and accomplish the objective of addressing that issue.

New ETUS Act Regulations

The Department determined that it is reasonably necessary to propose to adopt new chapter 5.6 to contain the new ETUS Act regulations. Also, to have the effect and accomplish the objective of helping readers distinguish between the old ETUS Act regulations and the new ETUS Act regulations, the Department determined that it is reasonably necessary to:

- Name proposed chapter 5.6 “Emergency Telephone Users Surcharge Act Operative on and after January 1, 2020”; and
- Include new Regulation 2435, Application of Chapter, in chapter 5.6 to clarify that chapter 5.6 applies to the ETUS Act operative on and after January 1, 2020, and that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020.

The Department also determined that it is reasonably necessary to include proposed Regulations 2436 through 2446 (discussed below) in chapter 5.6 to have the effect and accomplish the objective addressing the issues (or problems) regarding the registration requirements and imposition, collection, and reporting of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. Proposed chapter 5.6 also includes provisions from chapter 5.5 that implement, interpret, or make specific provisions in the ETUS Act that still apply on or after January 1, 2020.

The Department determined that it is reasonably necessary for chapter 5.6 to define the important terms used throughout chapter 5.6 to have the effect and accomplish the objective of addressing issues (or problems) readers may have understanding the meanings of those terms. Therefore, proposed Regulation 2436, Definitions, defines the important terms used throughout chapter 5.6. It incorporates the ETUS Act's current definitions for the terms "access line," "access line in this state," "in this state," "person," "prepaid consumer," "prepaid MTS," "public agency," "retail transaction," "seller," "service supplier," "service user," "wireless communications service line," and "wireline communication service." It incorporates the provisions in RTC section 41028 specifying when a retail transaction occurs in this state. It defines the terms "911 surcharge," "988 surcharge," and "surcharges" based on the ETUS Act's current definition of "surcharges." It incorporates and clarifies the industry terms "billing agent" and "billing aggregator" used in the old ETUS Act regulations. It also incorporates Prepaid MTS Regulation 2460's current definitions for the terms "business information," "contact information," "identifying information," "ownership information," and "representative Information" because those terms are used in chapter 5.6's registration provisions.

In addition, proposed Regulation 2436 defines "account" to mean an account issued and maintained by the Department to uniquely identify a service supplier that is registered with the Department pursuant to proposed Regulation 2437 (discussed below) or a seller that is registered with the Department pursuant to Regulation 2437 or Prepaid MTS Regulation 2460 (discussed below). It clarifies that an "emergency telephone account" shall be issued and maintained for a registered service supplier. It clarifies that a "prepaid MTS account" shall be issued and maintained for a seller, other than a service supplier, that is registered with the Department pursuant to Regulation 2437 or 2460, except as provided in Regulation 2460. It also defines the terms "Department" and "regulation" to clarify the references to the Department and simplify the references to the Department's regulations throughout the chapter.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2437, Imposition of and Liability for the 911 and 988 Surcharges, to have the effect and accomplish the objective of addressing the issues (or problems) regarding the registration requirements and imposition, collection, and reporting of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2437 clarifies the provisions of RTC section 41020 that impose the 911 and 988 surcharges on each access line for each month or part thereof for which a service user subscribes with a service supplier. It clarifies that service suppliers are required to register with Department pursuant to RTC section 41040 and prescribes the requirements for a service supplier to register with the Department. It clarifies that service users are liable for the surcharges until they are paid to this state or a registered service supplier pursuant to RTC section 41024, that a service supplier is liable for the surcharges it is required to collect pursuant to RTC section 41023, and that billing aggregators and billing agents are not liable for the surcharges they collect on behalf of service suppliers. It also clarifies that service suppliers are required to report and pay the surcharges they are required to collect to the Department as provided in proposed Regulation 2440 (discussed below) and prescribes the requirements for a billing aggregator to report and remit surcharges on behalf of a service supplier.

In addition, proposed Regulation 2437 clarifies the provisions of RTC section 41020 that impose the 911 and 988 surcharges on the purchase of prepaid MTS in a retail transaction that occurs in

this state. It clarifies that sellers in this state are required to register with Department under RTC section 41040 and prescribes the requirements for a seller in this state to register with the Department. It clarifies that sellers, other than service suppliers, that are not in this state are required to register with the Department as provided in Prepaid MTS Regulation 2460 (discussed below). It clarifies that consumers of prepaid MTS are liable for the surcharges pursuant to RTC section 41028 until they are paid to the Department, unless they obtain a receipt, as provided in proposed Regulation 2441 (discussed below), showing the surcharges were paid to a seller that has an emergency telephone account or a prepaid MTS account. It clarifies that a seller is liable for the surcharges it is required to collect pursuant to RTC section 41028. It also clarifies that sellers are required to report and pay the surcharges they are required to collect to the Department as provided in proposed Regulation 2440 (discussed below).

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2438, Exemptions for Access Lines, to have the effect and accomplish the objective of addressing issues (or problems) regarding the imposition of the 911 and 988 surcharges imposed on access lines by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2438 incorporates and clarifies the exemptions from the 911 and 988 surcharges for specified access lines, including the exemptions for:

- Access lines supplying lifeline services (RTC, § 41046);
- Access lines connected to public telephones (RTC, § 41046);
- Access lines provided for no charge (RTC, § 41046);
- Accesses lines where imposition of the surcharges would violate federal or state laws (RTC, § 41027);
- Access lines supplying wide-area telephone service used by common carriers (old ETUS Act Regulation 2413); and
- Access lines supplied to a nonprofit hospital or educational organization or specified public agency (RTC, § 41003).

In addition, subdivision (c) of the June 2020 draft of proposed Regulation 2438 was revised, as suggested by CTIA, to include the word “for” in the phrase “access lines for which no charges are billed.” Also, subdivision (d)(5) was deleted from the June 2020 draft of Regulation 2438 and the other subdivisions were renumbered accordingly because the exemption for banks referred to in subdivision (b)(5) of old ETUS Act Regulation 2413 was repealed.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2439, Exemptions for Sales of Prepaid MTS for Resale and to Prepaid Consumers Eligible for a Lifeline Program, Seller’s Deductions and Credits for Bad Debts from Sales of Prepaid MTS, and Prepaid Consumers’ Credits for Surcharges Paid to Another State on Purchases of Prepaid MTS, to have the effect and accomplish the objective of addressing issues (or problems) regarding the imposition of the 911 and 988 surcharges imposed on the purchase of prepaid MTS by the ETUS Act as amended by SB 96 and AB 988. Subdivision (a) of proposed Regulation 2439 clarifies that the seller has the burden to establish that a sale of prepaid MTS is not a retail transaction subject to the 911 and 988 surcharges and local charges. It establishes a rebuttable presumption that a sale is for resale and not subject to the surcharges if the seller timely takes a resale certificate from the purchaser in the form prescribed by the regulation in good faith. It also clarifies that other evidence, including XYZ letters, may be used

to prove that a sale was not in fact a retail transaction subject to the surcharges or that the purchaser reported or paid the surcharges and local charges due on the transaction to the Department.

Subdivision (b) of proposed Regulation 2439 incorporates and clarifies the provisions of subdivision (d) of RTC section 41028, that relieve a seller from liability for the 911 and 988 surcharges, insofar as the base upon which the surcharges are imposed is represented by accounts found worthless and charged off for income tax purposes by the seller. Subdivision (b) further implements and clarifies subdivision (d) by providing that a seller that previously paid the surcharges may claim a bad debt deduction for the percentage of the surcharges paid that is equal to the percentage of the base upon which the surcharges were imposed that is represented by the account(s) found worthless and charged off for income tax purposes by the seller because the surcharges are imposed at a flat rate. Subdivision (b) clarifies the types of records a seller must maintain to support such a deduction, when such a deduction must be claimed on a return, and that the failure to take such a deduction on the proper return will not prohibit the seller from filing a timely claim for refund for the amount that could have been timely deducted. Subdivision (b) also clarifies the provisions of subdivision (d) that make a seller liable for the surcharges when the seller subsequently collects on such account(s), in whole or in part.

Subdivision (c) of proposed Regulation 2439 incorporates the lifeline exemption from the surcharges imposed on purchases of prepaid MTS provided by subdivision (h) of RTC section 41028, clarifies that the exemption does not apply if the seller is not an authorized provider of lifeline service, and clarifies the meaning of the state lifeline program as used in the exemption. Subdivision (d) of proposed Regulation 2439 implements the credit allowed by subdivision (c)(2) of RTC section 41028 to the extent that a prepaid consumer has paid surcharges on the purchase of prepaid MTS to any other state.

CTIA submitted written comments concerning the lifeline exemption provisions in the June 2020 draft of Prepaid MTS Regulation 2461, subdivision (e), that are relevant to proposed Regulation 2439, subdivision (c); therefore, CTIA's comments were treated as though they were made to comparable provisions in proposed Regulation 2439. CTIA commented that the part of those provisions defining "lifeline transaction" limited the exemption and should be revised to clarify that the exemption applies to subsidized lifeline services. The Department determined that it is not necessary to define "lifeline transaction" in proposed Regulation 2439 and that the proposed language in Regulation 2439 will not limit the exemption like the provisions that concerned CTIA.

CTIA also suggested removing provisions from the June 2020 draft of Prepaid MTS Regulation 2461, subdivision (e)(3), that incorporated repealed limitations on the lifeline exemption and provided that the lifeline exemption is applied only to the amount paid for the portion of the prepaid MTS that the lifeline program specifies is exempt from the surcharges and fees. Similar provisions were included in the prior draft of proposed Regulation 2439; however, the provisions were deleted because they implemented RTC section 41028, subdivision (h)(3), which was repealed.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2440, Returns, Reporting, and Payment, to have the effect and accomplish the

objective of addressing issues (or problems) regarding the reporting and payment of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. It separately clarifies the reporting and payment requirements for service suppliers under the ETUS Act, and for sellers of prepaid MTS, other than service suppliers, under the Sales and Use Tax Law, as incorporated into RTC section 41028. It also clarifies that returns are required to be filed electronically through the Department's website and separately report the amounts of 911 and 988 surcharges collected.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2441, Receipts, to have the effect and accomplish the objective of addressing issues (or problems) regarding the collection of the 911 and 988 surcharges imposed on the purchase of prepaid MTS by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2441 clarifies that RTC section 41028 requires sellers of prepaid MTS to provide an invoice, receipt, or other similar document to prepaid consumers separately stating the 911 and 988 surcharges or the combined 911 and 988 surcharges collected, unless otherwise disclosed electronically to the prepaid consumer at the time of the retail transaction. It also clarifies that prepaid MTS is sold on a tax-included basis if the seller discloses to the consumer in the receipt that the price of the prepaid MTS includes applicable taxes and fees.

CTIA suggested adding a new subdivision to Regulation 2441 to separately address when prepaid MTS is sold on a tax-included basis and the 911 surcharge is not separately disclosed. CTIA suggested the following language:

(4) If the prepaid MTS is sold on a tax-included basis and the 911 surcharge is not separately disclosed to the purchaser, it is presumed that the price includes the 911 surcharge unless an exemption applies and the seller can prove the exemption through documentation.

The Department did not incorporate CTIA's suggested language because subdivision (a)(2) of RTC section 41028 requires the 911 surcharge and 988 surcharge to be separately stated or stated as a combined "911/988 Surcharge" on the invoice, receipt, or similar document provided to a prepaid consumer or disclosed to the prepaid consumer electronically at the time of the retail transaction, and CTIA's suggested language is inconsistent with RTC section 41028.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2442, Payment by Electronic Funds Transfer, to have the effect and accomplish the objective of addressing issues (or problems) regarding the payment of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. It clarifies that service suppliers must remit the 911 and 988 surcharges to the Department by electronic funds transfer, as required by Regulation 4905, which currently implements RTC section 41060's requirements for service suppliers to remit surcharges by electronic funds transfer. It also clarifies that sellers, other than service suppliers, must remit the 911 and 988 surcharges to the Department by electronic funds transfer, as required by Regulation 1707, which currently implements the Sales and Use Tax Law's requirements to remit sales and use tax by electronic funds transfer.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2443, Records, to have the effect and accomplish the objective of addressing issues

(or problems) regarding the records service suppliers and sellers are required to maintain and make available under RTC section 41129 so that the Department can verify that they reported and paid the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2443 clarifies that service suppliers and sellers are required to maintain and make available records in accordance with Regulation 4901, Records, which currently implements the ETUS Act's record keeping requirements. It also specifically requires service suppliers to keep complete and accurate records showing:

- (1) Total number of access lines in this state billed to service users.
- (2) Total number of retail transactions.
- (3) All exemptions allowed by law.
- (4) Amount of 911 and 988 surcharges collected.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2444, Reasonable Reliance on Written Advice, to have the effect and accomplish the objective of addressing issues (or problems) regarding the provisions of RTC section 41098, which authorize the Department to relieve a person from liability for the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988 due to reasonable reliance on written advice from the Department. Proposed Regulation 2444 clarifies that a person may be relieved from the liability for the payment of the 911 and 988 surcharges, including any penalties and interest added to the surcharges, under RTC section 41098, when that liability resulted from the failure to make a timely return or a payment and such failure is found by the Department to be due to reasonable reliance on written advice given by the Department under the conditions set forth in Regulation 4902, Relief from Liability, which currently implements RTC section 41098.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2445, Innocent Spouse Relief, to have the effect and accomplish the objective of addressing issues (or problems) regarding the provisions of RTC section 41099, which authorize the Department to relieve a spouse from liability for the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988, under specified circumstances. Proposed Regulation 2445 clarifies that a spouse or registered domestic partner claiming relief from liability for the 911 and 988 surcharges, interest, penalties, and other amounts under RTC section 41099 shall be relieved from such liability where all the requirements set forth in Regulation 35055 are met because Regulation 35055 currently implements RTC section 41099.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2446, Refunds of Excess Charges Collected, to have the effect and accomplish the objective of addressing issues (or problems) regarding the provisions of:

- RTC section 41023 providing that any amount unreturned to the service user that is not owed as part of the surcharges but was collected from the service user under the representation by the service supplier that it was owed as part of the surcharges, constitute debts owed by the service supplier to this state; and

- RTC section 41028 providing that any amount unreturned to the prepaid consumer of MTS that is not owed as part of the surcharges, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharges, constitutes debts owed by the seller to this state.

Proposed Regulation 2446 clarifies that:

- Service suppliers and sellers that have collected any amount of 911 and 988 surcharges in excess of the amount actually due may refund that amount even if it has already been paid to the Department;
- Any excess charges that are not refunded constitute a debt to the state;
- A service supplier or seller can claim credit for the overpayment of excess charges that were refunded; and
- Any person that believes it has overpaid 911 and 988 surcharges, including a service supplier or seller, may file a timely claim for refund, within the statute of limitations.

Amendments to Prepaid MTS Regulations

The Department determined that there are issues (or problems) with the Prepaid MTS regulations in chapter 5.7 because the Prepaid MTS Surcharge Collection Act was repealed by its own terms on January 1, 2020, but the repeal of the Local Prepaid MTS Collection Act was delayed by SB 334 and SB 1441 and the Local Prepaid MTS Collection Act was also amended by SB 334 and SB 1441. The Department also determined that it is reasonably necessary to amend the Prepaid MTS regulations to make them consistent with the repeal of the Prepaid MTS Surcharge Collection Act and amendments to the Local Prepaid MTS Collection Act to have the effect and accomplish the objective of addressing those issues.

The Department determined that it is reasonably necessary to propose to change the name of chapter 5.7 from “Prepaid Mobile Telephony Services” to “Local Charges on Prepaid Mobile Telephony Services” to have the effect and accomplish the objective of clarifying that chapter 5.7 only applies to local charges imposed on prepaid MTS after the repeal of the Prepaid MTS Collection Act.

The Department determined that it is reasonably necessary to propose to add definitions to subdivision (a) of Regulation 2460, Administration, to have the effect and accomplish the objective of:

- Defining “account” to mean an account issued and maintained by the Department to uniquely identify a seller that is registered with the Department pursuant to new ETUS Act Regulation 2437 or Regulation 2460, and clarifying that an “emergency telephone account” shall be issued and maintained for a registered direct seller, a “prepaid MTS account” shall be issued and maintained for a registered seller, other than a direct seller, and each account shall have its own unique account number.
- Defining “911 surcharge,” “988 surcharge,” “surcharges,” and “911 and 988 surcharges.”
- Defining “regulation” to simplify the references to the Department’s regulations throughout the chapter.

- Clarifying when a “retail transaction occurs in this state” under RTC section 42101.8.

The Department determined that it is reasonably necessary to propose to delete the definition of “Emergency telephone users surcharge” from subdivision (a) of Regulation 2460 because that term is being replaced by the term “911 surcharge.” The Department determined that it is reasonably necessary to propose to delete the definition of “Prepaid MTS Account” from subdivision (a) of Regulation 2460 because the new definition of “account” includes prepaid MTS accounts. The Department determined that it is reasonably necessary to propose to delete the definitions of “Prepaid MTS Surcharge,” “Public Utilities Commission,” and “Public Utilities Commission Surcharges” from subdivision (a) of Regulation 2460 because they are unnecessary after the repeal of the Prepaid MTS Surcharge Collection Act. The Department also determined that it is reasonably necessary to propose to renumber the remaining definitions in subdivision (a) of Regulation 2460 and move the definition of “Department” so that all the definitions are in alphabetical order.

The Department determined that it is reasonably necessary to propose to update Regulation 2460’s definitions of “business information,” “contact information,” and “identifying information” to have the effect and accomplish the objective of making them consistent with the revised registration requirements (discussed below) and replacing the references to the repealed prepaid MTS surcharge with references to the 911 and 988 surcharges. The Department determined that it is reasonably necessary to propose to clarify that contact information includes an “email address” and “identifying information” includes a federal Employer Identification Number, rather than a federal Taxpayer Identification Number. The Department determined that it is reasonably necessary to propose to amend Regulation 2460’s definitions of “local charge” or “local charges” and “prepaid mobile telephony services” or “prepaid MTS” to have the effect and accomplish the objective of making them consistent with RTC section 42101’s definitions of “local charge” and “prepaid mobile telephony services.” The Department determined that it is reasonably necessary to propose to amend Regulation 2460’s definition of “retail transaction” to have the effect and accomplish the objective of making it consistent with the provisions of subdivision (c) of RTC section 42101.9 regarding sales of a minimal amount of prepaid MTS for a single, nonitemized price with a mobile telephony communications device, and clarifying that multiple items of prepaid MTS may be purchased at one time in a single retail transaction. The Department also determined that it is reasonably necessary to propose to amend Regulation 2460’s definition of “seller” to have the effect and accomplish the objective of clarifying that the term includes “direct sellers.”

The Department determined that it is reasonably necessary to propose to amend subdivision (b) of Regulation 2460 to have the effect and accomplish the objective of clarifying that every seller in this state is required to register with the Department under new ETUS Act Regulation 2437 (discussed above) and a seller that is not in this state is required to register under Regulation 2460, except a seller with de minimis sales of prepaid MTS that is not required to collect local charges under RTC section 42101.7. However, such a seller may voluntarily register with the Department by completing an application for registration.

The Department determined that it is reasonably necessary to propose to amend subdivisions (c), (d), (e), (g), and (h) of Regulation 2460 to have the effect and accomplish the objective of deleting the references to the prepaid MTS surcharge. The Department also determined that it is

reasonably necessary to propose to amend subdivision (c) to have the effect and accomplish the objective of clarifying that the subdivision is only referring to local charges subject to collection under chapter 5.7.

The Department determined that it is reasonably necessary to propose to amend subdivision (d) of Regulation 2460 to have the effect and accomplish the objective of replacing “the combined prepaid MTS surcharge and local charges” with “any local charges” because the prepaid MTS surcharge was repealed. The Department also determined that it is reasonably necessary to propose to amend subdivision (d) to have the effect and accomplish the objective of clarifying that the subdivision only applies to sellers that are required to collect local charges under chapter 5.7, replacing “service” with “prepaid MTS” in subdivision (d)(2), and clarifying in subdivision (d)(3) that RTC section 42101.6 requires receipts to show the amount of any local charges collected, unless otherwise disclosed electronically to the prepaid consumer at the time of the transaction.

The Department determined that it is reasonably necessary to propose to amend subdivision (e) of Regulation 2460 to have the effect and accomplish the objective of deleting the references to the repealed prepaid MTS surcharge and Prepaid MTS Surcharge Collection Act. The Department determined that it is reasonably necessary to propose to amend subdivision (e)(1) to have the effect and accomplish the objective of clarifying that it only applies to payments of local charges subject to collection under chapter 5.7. The Department determined that it is reasonably necessary to propose to amend subdivision (e)(2) to have the effect and accomplish the objective of clarifying that it only requires a person to file returns if they are liable for local charges under chapter 5.7. The Department determined that it is reasonably necessary to propose to amend subdivision (e)(3) to have the effect and accomplish the objective of clarifying that it only applies to local charges required to be reported to the Department pursuant to the Local Prepaid MTS Collection Act. The Department determined that it is reasonably necessary to propose to shorten subdivision (e)(5)’s reference to Regulation 1707. The Department also determined that it is reasonably necessary to propose to amend subdivision (e)(6) to have the effect and accomplish the objective of clarifying that direct sellers are required to report and remit the 911 and 988 surcharges to the Department as provided in new ETUS Act Regulation 2440 (discussed above).

The Department determined that it is reasonably necessary to propose to move the reference to “records” and shorten the reference to Regulation 4901 in subdivision (f) of Regulation 2460 to have the effect and accomplish the objective of making the subdivision read more clearly. The Department determined that it is reasonably necessary to propose to shorten the reference to Regulation 4902 in subdivision (g) of Regulation 2460. The Department also determined that it is reasonably necessary to propose to amend subdivision (h) of Regulation 2460 to have the effect and accomplish the objective of replacing the reference to Regulation 4903 with a reference to Regulation 35055 because Regulation 35055 currently implements RTC section 55045.1 in the FCPL and prescribes the substantive requirements for innocent spouse relief.

The Department determined that it is reasonably necessary to propose to amend subdivision (i)(1) of Regulation 2460, so it uses the past tense to refer to contracts that were or were not entered into on or before September 1, 2015. The Department determined that it is reasonably necessary to propose to amend subdivision (i)(1) to have the effect and accomplish the objective

of clarifying that local charges are required to be collected at the time prepaid MTS is sold in a retail transaction that occurs in the state, pursuant to the Local Prepaid MTS Collection Act and chapter 5.7, rather than at the same time and manner as the prepaid MTS surcharge. The Department also determined that it is reasonably necessary to propose to delete the last sentence from subdivision (i)(1), which refers to subdivisions (i)(2) through (5), because it's unnecessary.

The Department determined that it is reasonably necessary to propose to amend subdivision (i)(3) of Regulation 2460 to have the effect and accomplish the objective of clarifying that it is only referring to increases in local charges required to be collected under subdivisions (i)(1) or (2). The Department determined that it is reasonably necessary to propose to amend subdivision (i)(4) of Regulation 2460 to have the effect and accomplish the objective of clarifying that it is only referring to local charges required to be collected under subdivision (i), clarifying that the first paragraph applies when timely written notice is provided not less than 110 days prior to the date a local charge is scheduled to expire or decrease, and clarifying that the second paragraph applies when written notice is provided in advance of such a change, but less than 110 days prior to the change. The Department also determined that it is reasonably necessary to propose to delete "scenarios" from subdivision (i)(5) of Regulation 2460 because the word is unnecessary.

The Department determined that it is reasonably necessary to propose to amend subdivision (j) of Regulation 2460 to have the effect and accomplish the objective of changing the name of subdivision (j) from "Posting and Calculation of Combined Rates" to "Posting Rates," deleting subdivisions (j)(1) and (2) regarding the calculation of the prepaid MTS surcharge rate and combined rates, and reformatting subdivision (j)(3) as subdivision (j) because the Department is no longer required to calculate the prepaid MTS surcharge rate or total combined rates of the prepaid MTS surcharge and local charges. The Department also determined that it is reasonably necessary to propose to amend reformatted subdivision (j) to have the effect and accomplish the objective of implementing, interpreting, and making specific the current requirements for the Department to post the combined total of the rates of the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, on its website.

The Department determined that it is reasonably necessary to propose to amend Regulation 2461, Exemptions, Deductions, Credits, and Specific Applications of Tax, to have the effects and accomplish the objectives of deleting subdivision (a) because it is redundant, deleting subdivision (e) because the Local Prepaid MTS Collection Act does not provide an exemption from local charges for lifeline transactions, and renumbering the other subdivisions accordingly. The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (a) of Regulation 2461 to have the effects and accomplish the objectives of clarifying that the burden of proving that a sale of prepaid MTS is for resale in the regular course of business is on the seller, clarifying that timely taking a resale certificate from the purchaser in good faith raises a rebuttable presumption that a sale of prepaid MTS is for resale for purposes of local charges and the 911 and 988 surcharges, clarifying when a resale certificate is required to contain the purchaser's emergency telephone account or prepaid MTS account number, clarifying the current requirements for purchasers to issue blanket and qualified resale certificates, clarifying the current requirements for a seller to accept a resale certificate in good faith, clarifying the other evidence a seller can provide to show that they are not liable for local charges on a sale of prepaid MTS, and clarifying the use of XYZ letters and alternative methods for that purpose.

The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (b) of Regulation 2461 to have the effects and accomplish the objectives of clarifying that RTC section 42101.6 relieves a seller from liability to collect local charges insofar as the base upon which local charges are imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes, clarifying that a seller that has previously paid the local charges must take a bad debt deduction for the local charges on the proper return or file a timely claim for refund, clarifying how payments and credits may be applied to an account for purposes of determining a bad debt deduction, clarifying how local charges apply to amounts subsequently collected on accounts previously found to be worthless and charged off for income tax purposes under RTC section 42101.6, and clarifying the records a seller must maintain to support relief of liability, a deduction, or a claim for refund. The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (c) of Regulation 2461 to have the effects and accomplish the objectives of clarifying how local charges apply under RTC section 42101.9 when prepaid MTS is sold in combination with other services or products for a single price and including language CTIA suggested before that language was added to section 42101.9.

The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d) of Regulation 2461 to have the effect and accomplish the objective of clarifying that prepaid consumers are only allowed a credit for local charges paid to another state on the purchase of prepaid MTS. The Department determined that it is reasonably necessary to propose to add new subdivision (e) to Regulation 2461 to have the effect and accomplish the objective of clarifying that sellers, other than direct sellers, with de minimis sales are not required to, but may voluntarily collect local charges. The Department also determined that it is reasonably necessary to propose to amend the resale certificate in appendix A of Regulation 2461 to have the effects and accomplish the objectives of deleting the unnecessary introductory paragraph, revising paragraph 1 to require a purchaser to certify that they hold a valid emergency telephone account or prepaid MTS account with a specific account number or explain why they are not required to register with the Department under Regulations 2437 and 2460, replacing the references to “property” and “items” in paragraphs 2, 3, and 4 with “prepaid MTS” because the certificate is specifically for purchases of prepaid MTS, and deleting the unnecessary language after “business operations” in paragraph 3.

The Department determined that it is reasonably necessary to propose to amend Regulation 2462, Refunds of Excess Charges Collected, to have the effects and accomplish the objectives of:

- Deleting the references to the repealed prepaid MTS surcharge;
- Clarifying subdivision (a) and making it consistent with the wording in subdivision (h) of RTC section 42101.6;
- Updating the reference to repealed RTC section 42014 in subdivision (c)(1) to refer to current RTC section 42105; and
- Making non-substantive edits to language throughout the regulation for clarity.

Second Discussion Paper

On November 9, 2023, the Department distributed a second discussion paper with the revised drafts of the new ETUS Act regulations and proposed amendments to the old ETUS Act

regulations and Prepaid MTS regulations. An interested parties meeting was held on November 30, 2023, to obtain public input. However, the Department did not receive any comments regarding the revised amendments or new regulations.

Determinations

The Department subsequently determined that there is an issue (or problem) because there are no longer any pending appeals of 911 surcharges imposed prior to January 1, 2020, and it is no longer necessary to continue to publish the old ETUS Act regulations in the CCR. Therefore, the Department determined that it is reasonably necessary to propose to repeal chapter 5.5 prospectively, rather than amend it, to have the effect and accomplish the objective of addressing that issue. The Department also determined that there is an issue (or problem) because it is unnecessary for proposed Regulation 2435 to clarify that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020, now that the Department is proposing to repeal chapter 5.5. Therefore, the Department determined that it is reasonably necessary to revise new Regulation 2435, so it no longer clarifies that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020, to have the effect and accomplish the objective of addressing that issue.

The Department determined that the adoption of the revised drafts of the new ETUS Act regulations is reasonably necessary to have the effect and accomplish the objective of addressing the issues (or problems) discussed above by providing new ETUS Act regulations that:

- Implement the ETUS Act operative on and after January 1, 2020;
- Clarify the registration requirements in the ETUS Act as amended by SB 96;
- Clarify the imposition, collection, reporting, and payment of the 911 surcharge imposed by the ETUS Act as amended by SB 96 beginning January 1, 2020; and
- Clarify the imposition, collection, reporting, and payment of the 988 surcharge imposed by the ETUS Act as amended by AB 988 beginning January 1, 2023.

The Department also determined that the adoption of the proposed amendments to the Prepaid MTS regulations is reasonably necessary to have the effect and accomplish the objective of addressing the issues (or problems) discussed above by making the Prepaid MTS regulations consistent with the repeal of the Prepaid MTS Surcharge Collection Act and amendments to the Local Prepaid MTS Collection Act made by SB 344 and SB 1441.

The Department anticipates that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will promote fairness and benefit the Department, service suppliers, service users, sellers, and prepaid consumers by providing new ETUS Act regulations that clarify the ETUS Act operative on and after January 1, 2020, and making the Prepaid MTS regulations consistent with the repeal of the Prepaid MTS Surcharge Collection Act and amendments to the Local Prepaid MTS Collection Act made by SB 344 and SB 1441. The Department has performed an evaluation of whether the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations are inconsistent or incompatible with existing state regulations. The Department determined that the new ETUS Act regulations are not inconsistent or incompatible with existing state regulations because the Department is repealing the old ETUS Act regulations and the new ETUS Act regulations are consistent with other existing state regulations that implement specific statutes in the ETUS Act,

such as Regulations 1707, 4901, 4902, 4905, and 35055 (discussed above). The Department also determined that the proposed amendments to the Prepaid MTS regulations are not inconsistent or incompatible with existing state regulations because the Prepaid MTS regulations are the only regulations that implement the Local Prepaid MTS Collection Act, and the amendments to the Prepaid MTS regulations are consistent with Regulations 1707, 4901, 4902, and 35055 (discussed above).

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE-TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will result in an absorbable \$484 one-time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not result in any other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of repealing chapter 5.5 and adopting the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. Therefore, the Department prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the State of California and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations should be directed to Sarah Smith, Business Taxes Specialist II, by telephone at (916) 309-5292, by email at BTC.InformationRequests@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Sarah Smith, MIC:50, 651 Bannon Street, Suite 100, PO Box 942879, Sacramento, CA 94279-0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by email at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 651 Bannon Street, Suite 100, PO Box 942879, Sacramento, CA 94279-0050. Kim DeArte is the designated backup contact person to Sarah Smith.

WRITTEN COMMENT PERIOD

The written comment period ends on January 6, 2025. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to repeal chapter 5.5 and adopt the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to repeal chapter 5.5 and adopt the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department has prepared copies of the text of repealed chapter 5.5, the new ETUS Act regulations, and the proposed amendments to the Prepaid MTS regulations illustrating the express terms of the proposed action. The Department has also prepared an initial statement of reasons for the proposed repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations, which includes the economic impact assessment required by GC section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 651 Bannon Street, Suite 100, Sacramento, California. The express terms of repealed chapter 5.5, the new ETUS Act regulations, and proposed amendments to the Prepaid MTS regulations and the initial statement of reasons are also available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GC SECTION 11346.8

The Department may repeal chapter 5.5 and adopt the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made pursuant to GC section 11346.8, the Department will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed

to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider timely written comments it receives regarding a sufficiently related change.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Department repeals chapter 5.5 and adopts the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations, the Department will prepare a final statement of reasons. Upon its completion, the final statement of reasons will be made available for inspection at 651 Bannon Street, Suite 100, Sacramento, California, and available upon request by contacting the contact person(s) named above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, initial statement of reasons, and the text of repealed chapter 5.5, the new ETUS Act regulations, and proposed amendments to the Prepaid MTS regulations are available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm. If the Department publishes other related documents, they will also be available at that website.