

**Initial Statement of Reasons for the Proposed Amendments
to California Code of Regulations, Title 18, Section 3500,
*Application of the Fee Collection Procedures Law***

SPECIFIC PURPOSES, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Background and Current Law

California Code of Regulations, title 18, section (Regulation) 3500, Application of the Fee Collection Procedures Law, clarifies what taxes and fees are collected pursuant to the Fee Collection Procedures Law (FCPL) (Revenue and Taxation Code (RTC) section 55001 et seq.). Regulation 3500 was adopted January 27, 2010, and was last updated on June 8, 2022.

The following taxes and fees are collected pursuant to the FCPL, but not currently listed in Regulation 3500:

1. The California Electronic Cigarette Excise Tax imposed by and collected pursuant to the FCPL in accordance with RTC section 31002.
2. The covered battery-embedded waste recycling fee imposed by Public Resources Code (PRC) section 42464 and collected pursuant to the FCPL in accordance with PRC section 42464.2.
3. The environmental mitigation surcharge imposed by and collected pursuant to the FCPL in accordance with RTC section 42064.
4. The firearm, ammunition, and firearm precursor part excise tax imposed by RTC section 36011 and collected pursuant to the FCPL in accordance with RTC section 36031.
5. The lithium extraction excise tax imposed by RTC section 47010 and collected pursuant to the FCPL in accordance with RTC section 47060.

Proposed Amendments to Regulation 3500

The California Department of Tax and Fee Administration (Department) determined that there is an issue (or problem) within the meaning of Government Code (GC) section 11346.2, subdivision (b) because the California Electronic Cigarette Excise Tax, covered battery-embedded waste recycling fee, environmental mitigation surcharge, firearm, ammunition, and firearm precursor part excise tax, and lithium extraction excise tax are collected by the Department pursuant to the FCPL, but not listed in Regulation 3500 and it may be causing confusion about whether those five taxes and fees are in fact collected pursuant to the FCPL. Therefore, the Department determined that it is reasonably necessary to propose to amend the text of Regulation 3500 to add “California Electronic Cigarette Excise Tax” after “California Battery Fee,” add “Covered Battery-Embedded Waste Recycling Fee” after “Cannabis Excise Tax,” add “Environmental Mitigation Surcharge,” “Firearm, Ammunition, and Firearm Precursor Part Excise Tax,” and “Lithium Extraction Excise Tax” after “Covered Electronic Waste Recycling Fee” for the specific purpose of addressing the issue (or problem) by clarifying that all five of the taxes and fees are collected pursuant to the FCPL. The Department also determined that it is reasonably necessary to propose to amend Regulation 3500’s reference note to refer to PRC section 42064

and RTC sections 31002, 36031, and 47060 for the specific purpose of addressing the issue (or problem) because those statutes are being implemented, interpreted, and made specific by the proposed amendments to the regulation's text, but not currently included in the reference note.

The Department anticipates that the adoption of the amendments to Regulation 3500 will promote fairness and benefit both the public and the Department by clarifying that the California Electronic Cigarette Excise Tax, covered battery-embedded waste recycling fee, environmental mitigation surcharge, firearm, ammunition, and firearm precursor part excise tax, and lithium extraction excise tax are collected pursuant to the FCPL. In addition, the Department has determined that the adoption of the proposed amendments to Regulation 3500 is not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 3500.

DOCUMENTS RELIED UPON

The Department relied upon its staff's understanding of the RTC and PRC in proposing the adoption of the amendments to Regulation 3500. The Department did not rely upon any technical, theoretical, or empirical study, report, or similar document.

ALTERNATIVES CONSIDERED

The Department considered whether to begin the regular rulemaking process to adopt the proposed amendments to Regulation 3500 as discussed above or, alternatively, whether to take no action at this time. The Department decided to begin the regular rulemaking process to adopt the proposed amendments to Regulation 3500 at this time because the Department determined that they were reasonably necessary for the reasons set forth above.

The Department did not reject any reasonable alternative to the adoption of the proposed amendments to Regulation 3500, including any reasonable alternative that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative to the proposed amendments to Regulation 3500 has been identified and brought to the Department's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes 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.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting the proposed amendments to Regulation 3500 on California businesses and individuals. The Department determined that businesses and individuals will not incur any costs to comply with the amendments to Regulation 3500 that they would not otherwise incur to comply with the FCPL. The Department also determined that businesses and individuals will generally benefit from the clarifications provided by the proposed amendments to Regulation 3500, but they will not receive a monetary benefit.

As a result, the Department determined that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. The Department also prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and the Department determined in the economic impact assessment that the adoption of the proposed amendments to Regulation 3500 will neither create nor eliminate jobs within the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California.

Furthermore, Regulation 3500 lists taxes and fees collected by the Department pursuant to the FCPL. Regulation 3500 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Department determined that the adoption of the proposed amendments will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

The foregoing information also provides the factual basis for the Department's initial determination that the proposed amendments to Regulation 3500 discussed above will not have a significant adverse economic impact on business.