

CHANGES WITHOUT REGULATORY EFFECT UNDER  
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulation 35017, *Review of a Petition by the Assigned Section*  
Regulation 35042, *Action on a Claim for Refund*  
Regulation 35067, *Public Record*

**A. Factual Basis**

Senate Bill No. (SB) 1496 (Stats. 2022 ch. 474) amended Revenue and Taxation (RTC) sections 6901 (refunds) and 6981 (cancellations) in the Sales and Use Tax Law, 8126 (refunds) and 8191 (cancellations) in the Motor Vehicle Fuel Tax Law, 9151 (refunds) and 9196 (cancellations) in the Use Fuel Tax Law, 30361 (refunds) and 30421 (cancellations) in the Cigarette and Tobacco Products Tax Law, 38601 (refunds) and 38631 (cancellations) in the Timber Yield Tax Law, 40111 (refunds) and 40121 (cancellations) in the Energy Resources Surcharge Law, 41100 (refunds) and 41107 (cancellations) in the Emergency Telephone Users Surcharge Act, 43451 (refunds) and 43491 (cancellations) in the Hazardous Substances Tax Law, 45651 (refunds) and 45801 (cancellations) in the Integrated Waste Management Fee Law, 46501 (refunds) and 46551 (cancellations) in the Oil Spill Response, Prevention, and Administration Fees Law, 50139 (refunds) and 50151 (cancellations) in the Underground Storage Tank Maintenance Fee Law, 55221 (refunds) and 55281 (cancellations) in the Fee Collection Procedures Law, and 60521 (refunds) and 60581 (cancellations) in the Diesel Fuel Tax Law, effective January 1, 2023.

Prior to the amendments, RTC sections 6901, 8126, 9151, 30361, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 required that the California Department of Tax and Fee Administration's (Department's) determinations to refund or credit an amount in excess of \$50,000 be available as a public record for at least 10 days prior to the effective date of the determination. Prior to the amendments, RTC sections 6981, 8191, 9196, 30421, 38631, 40121, 41107, 43491, 46551, 50151, 55281, 60581 required that the Department's determinations to cancel an amount in excess of \$50,000 be available as a public record for at least 10 days prior to the effective date of the determination. Also, RTC section 45801 required that the Department's determinations to cancel an amount in excess of \$15,000 under the Integrated Waste Management Fee Law be available as a public record for at least 10 days prior to the effective date of the determination. The amendments revised all of the statutes to require that the Department's determination to refund, credit, or cancel an amount in excess of \$50,000 be available as a public record for at least 10 days *after* the effective date of the determination.

In addition, the Prepaid Mobile Telephony Services Collection Act was repealed operative January 1, 2020, pursuant to RTC section 42024 (Stats. 2014 ch 885). Accordingly, the Department proposes to delete the authority citations to RTC section 42020 providing for the administration of the repealed Act.

California Code of Regulations, title 18, section (Regulation) 35017, *Review of a Petition by the Assigned Section*, prescribes procedures for reviewing a petition for redetermination, and subdivision (k) thereof incorporates the pre-SB 1496 requirements to make a determination to cancel an amount “in excess of \$50,000 (or \$15,000 for Integrated Waste Management Fee) . . . available as a public record for at least 10 days prior to its effective date.” Regulation 35042, *Action on a Claim for Refund*, prescribes procedures for reviewing a claim for refund, and subdivision (d) thereof incorporates the pre-SB 1496 requirements to make a determination to refund an amount in excess of \$50,000 “available as a public record, if required by law, for at least 10 days prior to its effective date.” Regulation 35067, *Public Record*, incorporates the pre-SB 1496 requirements to make a determination to cancel an amount exceeding \$15,000 pursuant to the Integrated Waste Management Fee Law or, otherwise, a determination to refund, credit, or cancel an amount exceeding \$50,000 “available as a public record, if required by law, for at least 10 days prior to the effective date of the refund, credit, or cancellation.”

Therefore, the Department proposes to change Regulation 35017 to require that a determination to cancel an amount in excess of \$50,000 be made available as a public record for at least 10 days “after the effective date of the determination” and delete the parenthetical that references the \$15,000 threshold for cancellations under the Integrated Waste Management Fee Law. The Department proposes to change Regulation 35042 to require that a determination to refund an amount in excess of \$50,000 be made available as a public record, if required by law, for at least 10 days “after the effective date of the determination.” The Department also proposes to change Regulation 35067 to require that a determination to refund, credit, or cancel an amount in excess of \$50,000 be made available as a public record, if required by law, for at least 10 days “after the effective date of the determination.” The Department also proposes to delete the reference to the \$15,000 threshold for cancellations under the Integrated Waste Management Fee Law.

The proposed changes to Regulations 35017, 35042, and 35067 are appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because they make the regulations consistent with the amendments SB 1496 made to the RTC sections listed above and they do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

In addition, Government Code section 15570.84 generally prohibits the Department from divulging any information concerning the business affairs of companies reporting to the Department, other than the assessment and the amount of taxes or fees levied, obtained by the Department in accordance with law from any company other than one for which that information is required by law to be made public. This includes, but is not limited to, the business affairs of suppliers required to report and remit taxes under the Motor Vehicle Fuel Tax Law, electric utilities required to collect and remit surcharges under the Energy Resources Surcharge Law, and service suppliers required to collect and remit surcharges under the Emergency Telephone Users Surcharge Act. Also, the following RTC sections generally prohibit the Department from disclosing specified taxpayer and feepayer information obtained under the specified tax and fee laws, including determinations to refund, credit, or cancel amounts under those laws: 7056 (Sales and Use Tax Law), 9255 (Use Fuel Tax Law), 30455 (Cigarette and Tobacco Products Tax Law), 38705 (Timber Yield Tax Law), 43651 (Hazardous Substances Tax Law), 45982 (Integrated Waste Management Fee Law), 46751 (Oil Spill Response, Prevention, and Administration Fees Law), 50159 (Underground Storage Tank Maintenance Fee Law), 55381 (Fee Collection Procedures Law), and 60609 (Diesel Fuel Tax Law). Therefore, the proposed changes to Regulations 35017, 35042, and 35067 are also appropriate for processing under Rule

100 because the Department does not have discretion to make its determinations to grant refunds, credits, and cancellations under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law available as a public record in a manner that differs from the requirements of RTC sections 6901, 6981, 8126, 8191, 9151, 9196, 30361, 30421, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 45801, 46501, 46551, 50139, 50151, 55221, 55281, 60521, and 60581.

## **B. Proposed Changes**

The following Rule 100 changes are proposed to title 18 of the California Code of Regulations:

### TEXT OF PROPOSED CHANGES

#### **Regulation 35017. Review of a Petition by the Assigned Section.**

(a) though (j) . . . (unchanged).

(k) If the assigned section determines that a cancellation, including an adjustment, in excess of \$50,000 (~~or \$15,000 for Integrated Waste Management Fee~~) should be granted, the fact that CDTFA will cancel or adjust such amount must be available as a public record for at least 10 days ~~prior to~~ after the effective date of the determination ~~its effective date~~.

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, ~~42020~~, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6562, 6981, 7711, 8191, 8852, 9196, 30175, 30262, 30421, 38443, 38631, 40093, 40121, 41087, 41107, 43303, 43491, 45303, 45801, 46353, 46551, 50116, 50151, 55083, 55281, 60352 and 60581, Revenue and Taxation Code.

#### **Regulation 35042. Action on a Claim for Refund.**

(a) through (c) . . . (unchanged).

(d) If the assigned section finds that a refund in excess of \$50,000 should be granted, the proposed finding must be available as a public record, if required by law, for at least 10 days ~~prior to~~ after the effective date of the determination ~~its effective date~~.

(e) . . . (unchanged).

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, ~~42020~~, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6901, 6902, 6906, 6933, 8126, 8128, 8148, 9151, 9152, 9173, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 30403, 38601, 38602, 38605, 38613, 40111, 40112, 40115, 40127, 41100, 41101, 41104, 41110, 43451, 43452, 43454, 43473,

45651, 45652, 45654, 45703, 46501, 46502, 46505, 46523, 50139, 50140, 50142, 50145, 55221, 55222, 55224, 55243, 60501, 60502, 60507, 60521, 60522 and 60543, Revenue and Taxation Code.

**Regulation 35067. Public Records.**

If the Appeals Bureau decision is ~~that an amount determined pursuant to the Integrated Waste Management Fee Law exceeding \$15,000 be canceled, or otherwise recommends~~ that an amount exceeding \$50,000 be refunded, credited, or canceled, the fact that CDTFA will refund, credit, or cancel such amount must be available as a public record, if required by law, for at least 10 days ~~prior to~~after the effective date of the determination~~the effective date of the refund, credit, or cancellation.~~

Note: Authority cited: Sections 15570.40 and 15606, Government Code; Section 25215.74, Health and Safety Code; Sections 7051, 8251, 9251, 30451, 34013, 38701, 40171, 41128, ~~42020~~, 42103, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

*Reference:* Sections 6901, 6981, 8126, 8191, 9151, 9196, 30361, 30421, 38601, 38631, 40111, 40121, 41100 41107, 43451, 43491, 45651, 45801, 46501, 46551, 50139, 50151, 55221, 55281 60521 and 60581, Revenue and Taxation Code.