David Gau

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OCT 31 2013
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STATE BOARD OF EQUALIZATION

# State of California
# Office of Administrative Law

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|---|---|
| **In re:** | **NOTICE OF APPROVAL OF CHANGES WITHOUT REGULATORY EFFECT** |
| **Board of Equalization** | |
| **Regulatory Action:** | **California Code of Regulations, Title 1, Section 100** |
| **Title 18, California Code of Regulations** | |
| **Adopt sections:**<br>**Amend sections:**<br>**Repeal sections: 474** | **OAL File No. 2013-0919-04 N** |

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The State Board of Equalization proposed to repeal section 474 of title 18 of the California Code of Regulations as a change without regulatory effect in that section 474 has been held invalid by the Supreme Court of the State of California (Western States Petroleum Association v. Board of Equalization (2013) 57 Cal. 4th 401). Section 474 defines "petroleum refining property" and establishes a rebuttable presumption, for purposes of recognizing declines in value, that land, improvement, and fixtures and other machinery and equipment classified as improvements constitute one appraisal unit, except when measuring declines in value caused by disaster, in which case land constitutes a separate appraisal unit.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 10/30/2013

Craig S. Tarpenning
Assistant Chief Counsel

For: DEBRA M. CORNEZ
Director

Original: Cynthia Bridges
Copy: Richard Bennion

**OFFICE OF ADMINISTRATIVE LAW**
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Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

**DEBRA M. CORNEZ**
**Director**

# MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 11/1/2013
RE: Return of Approval Rulemaking Materials
OAL File No. 2013-0919-04N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0919-04N regarding Petroleum Refining Properties).

Enclosures If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

(1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
(2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
(3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
(4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

**Please note this new requirement**: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.

2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

**NOTE ABOUT EXEMPTIONS**. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; and regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NONSUBSTANTIVE

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

# NOTICE PUBLICATION/REGULATION SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| OAL FILE NUMBERS | NOTICE FILE NUMBER | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
|---|---|---|---|
| | Z- | 2013-0919-04N | |

For use by Office of Administrative Law (OAL) only

2013 SEP 19 AM 11:45

OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED IN THE OFFICE OF

2013 OCT 30 PM 3:47

Debra Bowen

DEBRA BOWEN SECRETARY OF STATE

NOTICE | REGULATIONS

**AGENCY WITH RULEMAKING AUTHORITY**
State Board of Equalization

AGENCY FILE NUMBER (If any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
|---|---|---|---|
| | | | |

| 3. NOTICE TYPE | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
|---|---|---|---|
| ☐ Notice re Proposed Regulatory Action ☐ Other | | | |

| OAL USE ONLY | ACTION ON PROPOSED NOTICE | NOTICE REGISTER NUMBER | PUBLICATION DATE |
|---|---|---|---|
| | ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn | | |

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Petroleum Refining Properties

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

**SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)**

ADOPT

AMEND

TITLE(S)
18

REPEAL
474

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☐ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☒ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- ☐ Effective on filing with Secretary of State
- ☒ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify) _____

| 7. CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) |
|---|---|---|---|
| Richard E. Bennion | (916) 445-2130 | (916) 324-3984 | rbennion@boe.ca.gov |

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Joann Richmond

DATE
September 18, 2013

TYPED NAME AND TITLE OF SIGNATORY
Joann Richmond, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 30 2013

Office of Administrative Law

**Text of Proposed Changes to**

**Title 18. Public Revenue**

~~**474. Petroleum Refining Properties.**~~

~~(a) The provisions of this rule apply to the valuation of the real property, personal property, and fixtures used for the refining of petroleum.~~

~~(b) General.~~

~~(1) The unique nature of property used for the refining of petroleum requires the application of specialized appraisal techniques designed to satisfy the requirements of article XIII, section 1, and article XIII A, section 2, of the California Constitution. To this end, petroleum refineries and other real and personal property associated therewith shall be valued pursuant to the principles and procedures set forth in this section.~~

~~(2) Notwithstanding any other provision in this section, any appropriate valuation method described in section 3 of title 18 of this code may be applied in the event of a change in ownership in a petroleum refining property.~~

~~(c) Definitions. For the purposes of this section:~~

~~(1) "Petroleum refining property" means any industrial plant, including real property, personal property, and fixtures, used for the refining of petroleum, as identified in Standard Industrial Classification (SIC) System Codes 2911 and 2992, or North American Industry Classification System (NAICS) Codes 32411 and 324191.~~

~~(2) "Appraisal unit" consists of the real and personal property that persons in the marketplace commonly buy and sell as a unit.~~

~~(d) Declines in Value. For the purposes of this section:~~

~~(1) Declines in value of petroleum refining properties will be determined by comparing the current lien date full value of the appraisal unit to the indexed base year full value of the same unit.~~

~~(2) The land, improvements, and fixtures and other machinery and equipment classified as improvements for a petroleum refining property are rebuttably presumed to constitute a single appraisal unit, except when measuring declines in value caused by disaster, in which case land shall constitute a separate unit.~~

~~(3) In rebutting this presumption, the assessor may consider evidence that:~~

~~(A) The land and improvements including fixtures and other machinery and equipment classified as improvements are not under common ownership or control and do not typically transfer in the marketplace as one economic unit; or,~~

~~(B) When the fixtures and other machinery and equipment classified as improvements are not functionally and physically integrated with the realty and do not operate together as one economic unit.~~

~~Note: Authority cited: Section 15606(c), Government Code. Reference: Article XIII Section 1, and Article XIII A, Section 2, California Constitution; and Sections 51 and 110.1, Revenue and Taxation Code.~~