

**SUPPORTING STATEMENT**  
**T.D. XXXX, Capital Costs Incurred to Comply With EPA Sulfur Regulations**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This temporary regulation provides rules for claiming the deduction allowable under section 179B of the Internal Revenue Code for qualified capital costs paid or incurred by a small business refiner. To claim this deduction, section 179B(a) requires the small business refiner to make an election. Further, section 179B(e) allows a cooperative small business refiner to make an election to allocate its deduction allowable under section 179B for the taxable year to the cooperative owners. If the cooperative small business refiner makes such an election, section 179B(e)(3) requires the cooperative small business refiner to provide a written notice to its cooperative owners of the amount of the allocation. The temporary regulations provide the time and manner for: (i) a small business refiner to make the election to claim this deduction for the taxable year; and (ii) a cooperative small business refiner to make the election to allocate its deduction allowable under section 179B for the taxable year to the cooperative owners and to provide the written notice to the cooperative owners.

2. USE OF DATA

The information will be used by revenue agents to determine if the taxpayer is entitled to claim the deduction allowable under section 179B.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking is being published simultaneously with temporary regulations that will afford the public a 60-day period in which to review and provide public comments relating to any aspect of the regulations. A public hearing will be held with respect to the notice of proposed rulemaking if any person who has submitted written comments requests one.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information are in paragraphs (d) and (e) of the temporary regulations. To claim the deduction allowable under section 179B, small business refiners must make an election. Paragraph (d) of the temporary regulations requires small business refiners to attach to their returns a statement with certain information to make this election. To allocate the deduction allowable under section 179B to cooperative owners, cooperative small business refiners must make an election and, as required by section 179B(e)(3), provide a written notice to the cooperative owners of the amount of the allocation. Paragraph (e) of the temporary regulations requires cooperative small business refiners to attach to their returns a statement with certain information about the allocation and to notify each cooperative owner in a written notice of the amount of the deduction allowable under section 179B that is allocated to that cooperative owner. The information will be used to verify that a small business refiner is entitled to claim the section 179B deduction and that a cooperative owner of a cooperative small business refiner is entitled to claim the section 179B deduction allocated to it. The estimated total annual burden is 50 hours. The estimated annual burden per respondent varies from .75 to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents is 50.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASON FOR CHANGE IN BURDEN

Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the temporary regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Note:** This is an emergency submission.

We are requesting emergency review of this submission and seek OMB approval by May 31, 2007. Section 179B was added to the Code by section 338(a) of the American Jobs Creation Act of 2004 ("AJCA") (October 22, 2004), and is amended by section 1324 of the Energy Policy Act of 2005 ("EPACT") (August 8, 2005). Although enacted in 2004, section 179B applies to expenses paid or incurred after December 31, 2002, in taxable years ending after December 31, 2002. The amendment by the EPACT is effective as if included in the amendment made by section 338(a) of the AJCA. Accordingly, section 179B is effective retroactively to taxable years beginning in 2003.

The statute of limitations for taxpayers to amend their original 2003 federal tax returns will expire for most small businesses during 2007, as early as on June 15, 2007. Unless guidance is available before that date, small business refiners will not be able to take the tax benefit available to them for 2003. We do not have OMB approval for the collection of information associated with this election. That election was added to section 179B by the Energy Policy Act of 2005 (August 8, 2005), retroactive to the 2003 taxable year. We waited 1.75 years to issue guidance because we were initially advised that there were no cooperatives eligible for this election; however, we recently learned that there a few eligible cooperatives.

Therefore, we respectfully request that the consideration of this submission and provision of an OMB number be completed by May 31, 2007. Any other result will be detrimental to the taxpaying public and will interfere with the mission of the IRS