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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–53755]

Description of Duties of the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission) is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney appearing and practicing before the Commission may have violated Rule 102(e) of the Commission's Rules of Practice. The Office of the General Counsel of the Commission already has the authority to conduct Commission-authorized proceedings and formal investigations under Section 21 of the Securities Exchange Act of 1934 (Exchange Act), including for violations by attorneys of Rule 102(e) of the Commission's Rules of Practice.

An amendment of the description of the duties of the General Counsel to include preliminary investigations makes it clear that the General Counsel may gather evidence in Rule 102(e) cases without compulsory process where witnesses are willing to testify or provide information voluntarily. This amendment would enable the General Counsel to identify, through informal means, those matters that do not warrant full-blown investigation and compulsory process.

DATES: *Effective Date:* May 3, 2006.

FOR FURTHER INFORMATION CONTACT: Laura Walker, 202–551–5031, Office of the General Counsel, Office of Litigation and Administrative Practice.

SUPPLEMENTARY INFORMATION: Section 21(a)(1) of the Exchange Act authorizes the Commission to conduct investigations regarding violations of the Exchange Act or its related rules or regulations. Under 17 CFR 201.102(e), the Commission may discipline attorneys who practice before it who lack integrity or competence, engage in improper professional conduct, or who are determined to have violated the Federal securities laws. Under 17 CFR 200.21(a), the General Counsel is responsible for conducting administrative proceedings relating to the disqualification of lawyers from practice before the Commission.

The Commission is amending its description of the duties of the General Counsel to include preliminary investigations, in which no process is issued or testimony compelled, where it appears that an attorney may have violated Rule 102(e) of the Commission's Rules of Practice.

The Commission finds, in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provision of the APA requiring notice and opportunity for comment. Accordingly, it is effective May 3, 2006.

Text of Amendment

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

■ For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 2. Section 200.21 is amended by revising the fourth sentence of paragraph (a) to read as follows:

§ 200.21 The General Counsel.

(a) * * * In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for the conduct of administrative proceedings relating to the disqualification of lawyers from practice before the Commission; for conducting preliminary investigations, as described in 17 CFR 202.5(a), into potential violations of 17 CFR 201.102(e) by attorneys; for the preparation of the Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. * * *

* * * * *

By the Commission.

Dated: May 3, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–4399 Filed 5–10–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 542

RIN 3141–AA27

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Final rule revisions.

SUMMARY: In response to the inherent risks of gaming enterprises and the resulting need for effective internal controls in Tribal gaming operations, the National Indian Gaming Commission (Commission or NIGC) first developed Minimum Internal Control Standards (MICS) for Indian gaming in 1999, which have subsequently been revised several times. The Commission recognized from the outset that periodic technical adjustments and revisions would be necessary in order to keep the MICS effective in protecting Tribal gaming assets, the interests of Tribal stakeholders and the gaming public. To that end, the following final rule revisions contain certain corrections

and revisions, which are necessary to clarify, improve, and update the Commission's existing MICS. The purpose of these final MICS revisions is to address apparent shortcomings in the MICS and various changes in Tribal gaming technology and methods. Public comments on these final MICS revisions were received by the Commission for a period of 45 days after their publication in the **Federal Register** as a proposed rule on November 15, 2005. After consideration of all received comments, the Commission has made whatever changes to the proposed revisions that it deemed appropriate, and is now promulgating and publishing the final revisions to the Commission's MICS Rule, 25 CFR part 542.

EFFECTIVE DATES: May 11, 2006.

Compliance Date: On or before July 10, 2006, the Tribal gaming regulatory authority (TGRA) shall: (1) In accordance with the Tribal gaming ordinance, establish and implement Tribal internal control standards that shall provide a level of control that equals or exceeds the revised standards set forth herein; and (2) establish a deadline no later than September 8, 2006, by which a gaming operation must come into compliance with the Tribal internal control standards. However, the TGRA may extend the deadline by an additional 60 days if written notice is provided to the Commission no later than September 8, 2006. Such notification must cite the specific revisions to which the extension pertains.

FOR FURTHER INFORMATION CONTACT: Chief of Staff, Joseph Valandra (202) 632–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999 (64 FR 590, Jan. 5, 1999), the Commission first published its Minimum Internal Control Standards (MICS) as a final rule. As gaming Tribes and the Commission gained practical experience applying the MICS, it became apparent that some of the standards required clarification or modification to be effective, operate as the Commission had intended, and accommodate changes and advances in gaming technology and methods. Consequently, the Commission, working with an Advisory Committee composed of the Commission, NIGS staff and nominated Tribal representatives, published a new, final revised MICS rule on June 27, 2002.

Based on the practical experiences of the Commission and Tribes working with the revised MICS, it has again become apparent that additional corrections, clarifications and modifications are needed to ensure that the MICS continue to be effective and operate as the Commission intended. To identify which of the current MICS need correction, clarification or modification, the Commission initially solicited input and guidance from NIGC employees, who have extensive gaming regulatory expertise and experience, and work closely with Tribal gaming regulators in monitoring the implementations, operation and effect of the MICS in Tribal gaming operations. The resulting input from NIGC staff convinced the Commission that the MICS require continuing review and revision to keep them effective and up-to-date. To address this need, the Commission established a Standing MICS Advisory Committee to assist it in both identifying and developing necessary MICS revisions on an ongoing basis.

In recognition of its government-to-government relationship with Tribes, and its related commitment to meaningful Tribal consultation, the Commission asked gaming Tribes in January of 2004 for nominations of Tribal representatives to serve on its Standing MICS Advisory Commission. From the twenty-seven (27) Tribal nominations that it received, the Commission selected nine (9) Tribal representatives in March 2004 to serve on the Committee. The Commission's Tribal Committee member selections were based on several factors, including the regulatory experience and background of the individuals nominated; the size(s) of their affiliated Tribal gaming operation(s); the types of games played at their affiliated Tribal gaming operation(s); and the areas of the country in which their affiliated gaming operation(s) are located. The selection process was very difficult because numerous highly qualified Tribal representatives were nominated to serve on this important Committee.

As expected, the benefits of including Tribal representatives on the Committee, who work daily with the MICS, have been invaluable. The Tribal representatives selected to serve on the Commission's Standing MICS Advisory Committee are: Tracy Burris, Gaming Commissioner, Chickasaw Nation Gaming Commission, Chickasaw Nation of Oklahoma; Jack Crawford, Chairman, Umatilla Gaming Commission, Confederated Tribes of the Umatilla Indian Reservation; Patrick Darden, Executive Director, Chitimacha Gaming Commission, Chitimacha Indian Tribe of Louisiana; Mark N. Fox, former Compliance Director, Four Bears Casino, Three Affiliated Tribes of the Fort Berthold Reservation; Sherrilyn Kie, Senior Internal Auditor, Pueblo of Laguna Gaming Authority, Pueblo of Laguna; Patrick Lambert, Executive Director, Eastern Band of Cherokee Gaming Commission, Eastern Band of Cherokee Indians; John Meskill, Director, Mohegan Tribal Gaming Commission, Mohegan Indian Tribe; Jerome Schultze, Executive Director, Morongo Gaming Agency, Morongo Band of Mission Indians; and Lorna Skenandore, Assistant Gaming Manager, Support Services, Oneida Bingo and Casino, formerly Gaming Compliance Manager, Oneida Gaming Commission, Oneida Tribe of Indians of Wisconsin. The Advisory Committee also includes the following Commission representatives: Philip N. Hogen, Chairman; Cloyce V. Choney, Associate Commissioner; Joe H. Smith, Acting Director of Audits; Ken Billingsley, Region III Director; Nicole Peveler, Field Auditor; Ron Ray, Field Investigator; and Katherine Zebell, Staff Attorney, Office of General Counsel. Nelson Westrin, former Vice-Chairman of the Commission, was part of the Standing MICS Advisory Committee from its inception through December of 2005.

In the past, the MICS were comprehensively revised on a broad, wholesale basis. Such large-scale revisions proved to be difficult for Tribes to implement in a timely manner and were often unnecessarily disruptive to Tribal gaming operations. The purpose of the Commission's Standing Committee is to conduct a continuing review of the operation and effectiveness of the existing MICS. The primary purpose of the review is to promptly identify and develop needed revisions of the MICS on a manageable, incremental basis, in order to keep the MICS practical and effective. By making more manageable, incremental changes to the MICS on an ongoing basis, the Commission hopes to be more prompt in developing needed revisions, while, at the same time, avoiding larger-scale MICS revisions that take longer to implement and can be unnecessarily disruptive to Tribal gaming operations.

In accordance with the above-described approach, the Commission has developed the following set of final MICS rule revisions with the assistance of its Standing MICS Advisory Committee. In doing so, the Commission is carrying out its statutory mandate under the Indian Gaming Regulatory Act (Act or IGRA), 25 U.S.C. 2706(b)(10), to promulgate necessary and appropriate regulations to implement the provisions of the Act. In particular, the following final MICS rule revisions are intended to address Congress' purpose and concerns, stated in Section 2702(2) of

the Act, that it ''provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operations, and to assure that the gaming is conducted fairly and honestly by both the operator and the players.'' The Commission, with the Committee's assistance, identified three specific objectives for the following final MICS rule revisions: (1) To ensure that the MICS are reasonably comparable to the internal control standards of established gaming jurisdiction; (2) to ensure that the interests of the Tribal stakeholders are adequately safeguarded; and (3) to ensure that the interests of the gaming public are adequately protected.

It should be noted that the NIGC's authority to issue and enforce MICS for Class III gaming was recently challenged in Federal district court in *Colorado River Indian Tribes* v. *NIGC (CRIT)*, 383 F. Supp. 2d 123 (D.D.C. 2005); 2005 U.S. Dist. LEXIS 17722. The case arose after the Colorado River Indian Tribes objected to an NIGC audit of its Class III gaming operation, which led to the audit's discontinuation. The NIGC subsequently cited the Tribe for an access violation and imposed a fine. the Court ruled that the NIGC's notice of violation and imposition of a civil fine were improper, finding that, under IGRA, the NIGC lacked the authority to issue or enforce MICS for Class III gaming. While the Court held that the NIGC could not penalize the Colorado River Indian Tribes for resisting the NIGC's attempt to conduct an audit of its Class III gaming, it did not enjoin the NIGC from applying its MICS to other Class III operations, nor did the Court prohibit the NIGC from conducting audits to monitor compliance with those MICS. The CRIT decision applies only to the Colorado River Indian Tribes. The decision is currently on appeal.

In order to uphold the integrity of Indian gaming, it is important to maintain the continuity of the system of regulation that has been in place since 1999. This system has helped ensure adequate regulation and has facilitated growth and prosperity in the industry. Thus, with the exception of the gaming operations of the Colorado River Indian Tribes, the NIGC will continue to monitor Tribal compliance with the MICS with respect to Class II and III gaming, pending the results of our appeal in the CRIT case or further judicial or legislative direction.

The Advisory Committee met in person on January 25, 2005, May 10, 2005, and September 26, 2005, and by teleconference on March 13, 2006, to discuss the changes set forth in the following final MICS rule revisions. The input received from Committee members has been invaluable to the Commission in its development of the revisions. In accordance with the Commission's established government-to-government Tribal consultation policy, before formulation of the final rule revisions contained herein, the Commission provided a preliminary working draft of the revisions to gaming Tribes on August 26, 2005, for a thirty (30)-day informal review and public comment period. Furthermore, on November 15, 2005, the Commission published the proposed rule revisions in the **Federal Register** for public comment. Responses were received for a period of 45 days following publication. In response to its requests for comments, the Commission received 18 comments from Tribal Advisory Committee members, individual Tribes and Tribal gaming commissions, and other interested parties regarding the proposed revisions. A summary of these comments is presented below in the discussion of each final revision to which they relate.

General Comments to Final MICS Revisions

For the reasons stated above in this preamble, the NIGC is revising the following specific sections of its MICS rules, 25 CFR part 542. The following discussion addresses each of the final rule revisions and includes the Commission's response to public comments concerning the MICS.

Comments Questioning MIGC Authority To Promulgate MICS for Class III Gaming

Many of the comments to the preliminary working draft of the MICS revisions pertained to the Commission's authority to promulgate rules governing the conduct of Class III gaming. Positions were expressed asserting that Congress intended the NIGC's Class III gaming regulatory authority to be limited exclusively to the approval of Tribal gaming ordinances and management contracts. Similar comments were received concerning the first proposed MICS back in 1999. The Commission, at that time, determined, in its publication of the original MICS in 1999, that it possessed the statutory authority to promulgate Class III MICS. As stated in the preamble to those MICS: ''The Commission believes that it does have the authority to promulgate this final rule. * * * [T]he Commission's promulgation of the MICS is consistent with its responsibilities as the Federal regulator of Indian gaming.'' 64 FR 590, Jan. 5, 1999).

The current Commission reaffirms that determination. IGRA, which established the regulatory structure for all classes of Indian gaming, expressly provides that the Commission ''shall promulgate such regulations as it deems appropriate to implement the provisions of (the Act).'' 25 U.S.C. 2706(b)(10). Pursuant to this clearly stated statutory duty and authority under the Act, the Commission has determined that minimum internal control standards are necessary and appropriate to implement and enforce the regulatory provisions of the Act governing the conduct of both Class II and Class III gaming and to accomplish the purposes of the Act. The Commission believes that the importance of internal control systems in the casino operating environment cannot be overemphasized. While this is true of any industry, it is particularly true and relevant to the revenue-generation processes of a gaming enterprise, which, because of the physical and technical aspects of the games and their operation, and the randomness of game outcomes, makes exacting internal controls mandatory. The internal control systems and standards are the primary management procedures used to protect the operational integrity of gambling games; account for and protect gaming assets and revenues; and assure the reliability of the financial statements for Class II and III gaming operations. Consequently, internal control systems are a vitally important part of properly regulated gaming. Internal control systems establish a regulatory framework for the gaming enterprise's governing board, management and other personnel who are responsible for providing reasonable assurances regarding achievement of the enterprise's objectives. These objectives typically include operational integrity, effectiveness and efficiency; reliable financial statement reporting; and compliance with applicable laws and regulations.

The Commission believes that strict regulations, such as the MICS, are not only appropriate, but necessary, for it to fulfill its responsibilities under IGRA to establish necessary baseline, or minimum, Federal internal control standards for all Tribal gaming operations on Indian lands. 25 U.S.C. 2702(3). Although the Commission recognizes that many Tribes had sophisticated internal control standards in place prior to the Commission's original promulgation of its MICS, many Tribes did not. This absence of minimum Federal internal control

standards in all Tribal casinos adversely affected the adequacy of Indian gaming regulation nationwide, and threatened gaming as a means of providing the expected Tribal benefits intended by IGRA. The Commission continues to strongly believe that the promulgation and revisions of IGRA, and is within the Commission's clearly expressed statutory power and duty under Section 2706(b)(10) of the Act.

Comments Recommending Voluntary Tribal Compliance With MICS

Comments were also received suggesting that the NIGC should reissue the MICS as a bulletin or guideline for Tribes to use voluntarily, at their discretion, in developing and implementing their own Tribal gaming ordinances and internal control standards. The Commission disagrees. Minimum internal control standards are common in established gaming jurisdictions. To be effective in establishing a minimum baseline for the internal operating procedures of Tribal gaming enterprises, the rules must be concise, explicit and uniform for all Tribal gaming operations to which they apply. Furthermore, to nurture and promote public confidence in the integrity and regulation of Indian gaming, and to ensure its adequate regulation to protect Tribal gaming assets and the interests of Tribal stakeholders and the public, the Commission's MICS regulations must be reasonably uniform in their implementation and application, as well as regularly monitored and enforced by Tribal regulators and the NIGC to ensure Tribal compliance.

Final New or Revised Definitions in Section 542.2 of the MICS

The Commission has added or revised definitions of the following five terms in § 542.2. A discussion of each new or revised definition follows in alphabetical order.

''Account Access Card''

The Commission has revised the existing MICS definition to more accurately define the applicability of the term. Committee members recommended that the definition of ''account access card'' be revised to include the reference that account access cards are not ''smart cards.''

No comments were received concerning this final rule revision.

''Counter Game''

This is a new definition. Several Committee members recommended that a definition of the term ''counter game'' be added to the current MICS definitions. In conjunction with the proposal to add accounting standards to the MICS, which include the term, the NIGC has determined that, to ensure that such revisions and existing rules are clear and unambiguous, insertion of the definition is worthwhile. One comment was received questioning the need for the definition, since the MICS already addresses each of the relevant games. As noted, the term is pertinent to its use in the minimum internal control standards for accounting, which are added in conjunction with this final rule at § 542.19.

''Statistical Drop''

This is a new definition. Based on a comment received, the definition is being added to the current MICS definitions. In conjunction with other final rule revisions to the MICS, which include the term, the NIGC has determined that, to ensure that the rules are clear and unambiguous, insertion of the definition in the MICS is worthwhile.

''Statistical Win''

This is a new definition. Based on a comment received, the definition is being added to the current MICS definitions. In conjunction with other final rule revisions to the MICS, which include the term, the NIGC has determined that, to ensure that the rules are clear and unambiguous, insertion of the definition in the MICS is worthwhile.

Final Addition to Sections 542.7(g)(1) and 542.8(h)(1) Electronic Equipment

The Commission is revising the current standards to clarify the intent of the existing regulation. The amendment is to explicitly state that bingo electronic systems and pull-tab electronic systems utilizing patron account access cards will be required to comply with the applicable standards contained within the MICS. One comment was received concerning this final revision. The commenter put forth the position that it is confusing to apply Class III requirements to Class II games. The Commission disagrees, and notes that the MICS are not game-classification specific; instead, the regulations are pertinent to a game or activity without regard to the class distinction of the game or the relevancy of an activity to the game.

Additionally, the commenter noted that the regulation fails to explicitly identify the specific elements of § 542.13(o) that would be applicable to bingo and pull-tab games utilizing account access cards. It was recommended that the account access card standards, which are pertinent to bingo and pull-tabs, be added to the respective regulations. The Commission disagrees. The standards incorporated by reference from the gaming machine section represent minimum controls for games relying on a back-of-the-house server, in which the patrons place front money and use a magnetic card to gain access to their account. Because of the variations that exist in the industry, to amend the bingo and pull-tab sections would simply involve a reprint of the rules referenced in the gaming machine section. With regard to the revision referring to the account access controls that are relevant (''as applicable''), the Commission disagrees that management would be challenged to identify which rules pertain to their gaming facility. Other MICS use qualifying terms, and, from a compliance perspective, it has not proven to be problematic.

Final Addition and Revisions to Section 542.13(o)(4) Customer Account Generation Standards

The Commission is revising the noted regulation to clarify the intent of the existing rule. The amendment will explicitly represent that a patron's identification must be verified and that an account must identify a patron's name. The Commission believes this standard is not inconsistent with Section 103.36 of the Bank Secrecy Act and the regulations of other gaming jurisdictions, which also require that patron identification information be recorded and verified at the time an account is established. The intent of the clarification is to ensure that management is well aware that establishing cash accounts, which are identified only by a number or a fictitious identifier, such as Mickey Mouse, is explicitly prohibited by the MICS. The revision to the standards governing the obtaining of a new personal identification number (PIN) is intended to clarify that the Gaming Machine Information Center is a clerk who has access to the customer's file for the purpose of changing the PIN. A commenter noted that the revision fails to address a situation in which the system is utilized by casino personnel to track buy-in when a customer is approaching the $10,000 cash-reporting threshold of the Internal Revenue Service.

As a point of clarification, the Commission notes that, although it is not uncommon for the MICS to echo Bank Secrecy Act regulations, it is the intent of the NIGC rule to establish a minimum baseline for casino internal control systems. The Declaration of Policy Section of IGRA provides

guidance to the NIGC in the formulation of its regulations. The specific intent of the MICS is to ensure that the investment of a Tribe is appropriately safeguarded for the benefit of Tribal stakeholders and that the interests of the gaming public are adequately protected. The revisions in question possess the rather narrow objective of assuring that there is an exact accounting of the funds advanced by patrons for the purpose of wagering. The Bank Secrecy Act is motivated by other objectives, not least of which is the deterrence of money-laundering activities. Although patron-account records may be utilized by the gaming operation to identify and track in/out cash transactions, it is not the intent of the Commission to satisfy any specific rule contained within the Bank Secrecy Act, which, nonetheless, is still an obligation of casino management. Notwithstanding the overall objectives of the MICS, Tribal gaming regulators and operators should be well aware that 542.3(C)(2) requires Tribal internal controls standards for currency-transaction reporting that comply with 31 CFR part 103. The Commission stresses that Tribal gaming enterprises must fully comply with the Bank Secrecy Act.

One commenter questioned the applicability of the revision to player club accounts. To clarify, the rule is pertinent to patron accounts established by patrons via the deposit of monies for the purpose of performing wagering transactions. The rule is not applicable to player-tracking systems that reward patrons for their patronage based on their level of wagering activity. The commission refers the commenter to § 542.13(j) for standards governing player-tracking systems.

Comments were received recommending that the revision not require that the alternative identification be photographic. The basis for the recommendation is founded upon the premise that the requirement is inconsistent with industry practice and generally accepted gaming regulatory standards. The Commission agrees and has amended the final revision.

One commenter recommended that the revision address what factors should be considered when evaluating the validity of an identification document. The Commission disagrees, since reliance upon casino personnel to exercise due professional care in examining the identifying documents should be sufficient. However, the most obvious criteria would be whether a document matched the individual proffering the document. Other factors to consider would be whether the document appears to have been altered or whether data on multiple documents is inconsistent.

One commenter recommended that the revision require that gaming operations obtain a patron's social security number, which is a requirement of the Bank Secrecy Act. Although the Commission recognizes that casinos are required to obtain the information when establishing patron accounts, as previously noted, the NIGC's objective is to ensure that internal control systems are developed which are sufficient to safeguard the Tribal stakeholder and protect the public. Therefore, the Commission disagrees with the recommendation.

Final Removal of Section 542.16(f)(vi); Document Storage of Original Documents Until Audited

The Commission is removing the noted regulation, since it is in conflict with the final revision adding § 542.19 which pertains to accounting standards, specifically the maintenance and preservation of books, records and documents. No comments were received concerning this final revision.

Final Addition of Section 542.19; What Are the Minimum Internal Control Standards for Accounting?

The Commission is adding this new regulation to establish the basic tenets required of a casino accounting function. The standards are common to established gaming jurisdictions. Over the past few years, the Commission has become increasingly concerned about the number of financial statements received in which the independent accountant has been unable to render a ''clean'' opinion. Furthermore, since the MICS were initially adopted, many questions have arisen regarding the relationship of Section 571.7, *Maintenance and preservation of papers and records,* to part 542, *Minimum Internal Control Standards.* The final revision is also intended to clarify and define the scope of the five (5)-year record retention requirement as it relates to casino records.

One commenter requested that the part of the provision that reads ''any other records specifically required to be maintained'' identify who or what is establishing the retention requirement. The Commission disagrees, and considers the representation to be clear in that it pertains to other records required by the MICS.

One commenter recommended that the requirement that general accounting records be prepared according to GAAP on a double-entry system of accounting, maintaining detailed supporting and subsidiary records, not apply to records required by theTribal internal control standards. The basis for this recommendation is founded upon the premise that the regulation will allow the NIGC to audit the gaming operation for compliance with the Tribe's internal control standards as well as with the Federal rule. The Commission disagrees with the recommendation because, as warranted, the NIGC reserves the right to utilize the Tribe's internal control standards, particularly those adopted as gaming regulations of the regulatory entity, in the course of an audit, and expand the scope of the audit when justified. For example, under § 542.3(c)(3), a Tribe is required to develop internal controls for games not addressed in the MICS. With regard to such games, the Commission could rely on the Tribal internal controls to test for compliance. Although it has been the practice of the Commission to report those Tribal internal control compliance exceptions that do not represent a MICS' exception as merely an advisory comment, should a finding pose a material risk to operational integrity, follow-up by the Commission to verify the effectiveness of remedial action would be likely.

One commenter recommended that the standards addressing the maintenance and preservation of internal audit documentation and reports should be addressed in §§ 542.22, 542.32 and 542.42, *What are the minimum internal controls for internal audit?* The Commission appreciates the recommendation, but believes that the MICS would be better served to centralize the retention of all documents and records at one location.

One commenter questioned the need to have a regulation that addresses the process of calculating gross gaming revenue for individual games, since the result is relevant only to the determination of tier. The Commission disagrees. As previously noted, the identification of minimum internal controls for accounting is a common element of the regulations of established gaming jurisdictions. Furthermore, past experience has demonstrated a lack of consistency in the calculation of gross gaming revenue, which has often resulted in miscalculations of NIGC fees. The determination of gross revenue by game can be a complex process. The final rule is intended to provide additional guidance; however, the Commission also recognizes that more issues remain, such as when it is permissible to adjust handle for promotional items. It is anticipated that, at a minimum, bulletins are likely to follow which specifically address the

type of transaction noted. For informational purposes, the Commission has taken the position that items such as free-play coupons are acceptable adjustments, if there is a direct audit trail to the drop/count and there is appropriate accounting for, and controls over, the coupons.

One commenter noted that in jurisdicitions which require unredeemed property to be turned over to the state, the standards specific to the reversal of a cash-out ticket payout entry for items not redeemed could, or would, be in conflict with state law or regulation. State law or regulation only applies if made applicable by a Tribal-State compact. If there is a conflict between the Tribal-State compact and the revision in § 542.19(h), then § 542.4, which discusses how these regulations affect minimum internal control standards established in a Tribal-State compact, controls.

One commenter questioned the need to have regulations governing the calculation of gross gaming revenue since it is already addressed by FASB and GAAP pronouncements. The Commission disagrees. Although the referenced professional pronouncements do provide conceptual guidance relevant to the determination of casino revenues, they do not provide the specificity necessary to ensure uniformity in the Tribal gaming industry. Therefore, it is the position of the Commission that the final rule is warranted.

One commenter requested an explanation of statistical drop and statistical win for table games. Accordingly, the Commission has added definitions of both ''statistical drop'' and ''statistical win'' to § 542.2.

One commenter suggested that the terms ''reasonably ensure'' and ''reasonable intervals'' be defined. The Commission disagrees. The obligation of management to reasonably ensure that assets are safeguarded, financial records are accurate and reliable, and transactions are appropriately authorized, for example, necessitates the exercise of professional judgment by management. From a conceptual perspective, the requirement is pertinent to the users of the data. The information provided to owners, regulators and other interested parties should be sufficiently fair in its representation that a misstatement would not result in a flawed perspective or determination. Materiality to the overal data, such as total assets, risk of misstatement—such as what might be associated with accounts receivable or accounts payable—and past compliance exceptions, would influence the extent of the procedures employed by management to satisfy the obligation to reasonable ensure.

With regard to the obligation that booked assets be compared to actual assets at reasonable intervals, the position of the Commission is the same as expressed above. Essentially, management should confirm the existence of recorded assets with such frequency that confidence can be had in the financial data reported. For example, fixed assets should be tested on an annual basis; however, absolute verifiction is generally not necessary. The data will typically be analyzed from a risk of misstatement and a risk of loss perspective. In other words, management may determine that items particularly vulnerable to misappropriation or devaluation—for example, tools or assets possessing a useful life that is difficult to predict—may warrant verification more frequently than once a year.

One commenter questioned whether the ability to adjust gross revenues for uncollected credit issued pertains to the general ledger account or taxable revenues. To clarify, the standard pertains to the calculation of gross gaming revenues, as determined according to NIGC regulations, which would be relevant to the general ledger. With regard to the NIGC fee calculation, which is based on assessable gaming revenues, the calculation begins with gross gaming revenues and then adjustments are made thereto. When revenue has been included that was derived from the extension of credit to a patron and the patron's debt is deemed to be uncollectible, or is settled for a lesser amount, it is the position of the Commission that the facility should have the latitude of reducing current gross gaming revenue accordingly.

One commenter expressed the position that the reference in the MICS to ''gaming operation'' fails to recognize that gaming enterprises also include ancillary activities such as hotels, restautrants, parking garages and the like, which may, and often do, represent separate, but interrelated, revenue centers. The Commission disagrees with the commenter's interpretation of the term ''gaming operation'' as being too narrow. The term ''gaming operation'' relates to the entity licensed by the Tribe to conduct gaming, which would include all interrelated and dependent activities and revenue centers.

One commenter recommended that the requirement that gaming operations establish administrative and accounting procedures for the purpose of exercising effective control over its fiscal affairs lacks specificity and should include exacting standards. The Commission disagrees. Inherent to the regulation is the obligation of management to exercise professional judgment in accomplishing the well-recognized objective of ensuring the reliability of the financial data reported. An attempt by the Commission to codify specific procedures could result in the regulation being overly intrusive and burdensome for some operations and insufficient for others. The Commission's perspective is founded upon the premise that providing reasonable assurances regarding the reliability of the data reported has a direct correlation to materiality, risk of compromise, and past performance, and will vary from one casino to another, depending on these factors.

Final Revisions to the Following Sections: 542.21(f)(12) (Tier A—Drop and Count) Gaming

Machine Bill—Acceptor Count Standards; 542.31(f)(12) (Tier B—Drop and Count) Gaming

Machine Bill—Acceptor Count Standards; 542.41(f)(12) (Tier C—Drop and Count) Gaming

Machine Bill—Acceptor Count Standards

The referenced standards represent a duplicate control to an identical requirement contained within each of the respective Tier section's Gaming Machine Bill-Acceptor Drop Standards, refer to §§ 542.21(e)(4), 542.31(e)(5), and 542.41(e)(5). Specifically, the standard requires the bill-acceptor canisters to be posted with a number corresponding to that of the machine from which it was extracted. The subject control pertains to a drop function, as opposed to the count process. Therefore, the Commission is deleting the above subsections. No comments were received pertaining to the final revision.

Regulatory Matters

Regulatory Flexibility Act

The Commission certifies that the final revisions to the Minimum Internal Control Standards contained within this regulation will not have a significant economic impact on small entities, 5 U.S.C. 605(b). The factual basis for this certification is as follows:

Of the 330 Indian gaming operations across the country, approximately 93 of the operations have gross revenues of less than $5 million. Of these, approximately 39 operations have gross revenues of under $1 million. Since the final revisions will not apply to gaming operations with gross revenues under $1 million, only 39 small operations may

be affected. While this is a substantial number, the Commission believes that the final revisions will not have a significant economic impact on these operations for several reasons. Even before implementation of the original MICS, Tribes had internal controls because they are essential to gaming operations in order to protect assets. The costs involved in implementing these controls are part of the regular business costs incurred by a gaming operation. The Commission believes that many Indian gaming operation internal control standards are more stringent than those contained in these regulations. Further, these final rule revisions are technical and minor in nature.

Under the final revisions, small gaming operations grossing under $1 million are exempted from MICS compliance. Tier A facilities (those with gross revenues between $1 and $5 million) are subject to the yearly requirement that independent, certified pubic accountant testing occur. The purpose of this testing is to measure the gaming operation's compliance with the Tribe's internal control standards. The cost of compliance with this requirement for small gaming operations is estimated at between $3,000 and $5,000. This cost is relatively minimal and does not create a significant economic effect on gaming operations. What little impact exists is further offset because other regulations require yearly independent financial audits that can be conducted at the same time. For these reasons, the Commission has concluded that the final rule revisions will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

The following final revisions do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The revisions will not have an annual effect on an economy of $100 million or more. The revisions also will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions, and do not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that the final rule revisions do not impose an unfunded mandate on State, local or Tribal governments, or on the private sector, of expenditures of more than $100 million per year. Thus, this is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has, however, determined that the final rule revisions may have a unique effect on Tribal governments, as they apply exclusively to Tribal governments whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands, as defined by IGRA. Thus, in accordance with Section 203 of the Unfunded Mandates Reform Act, the Commission undertook several actions to provide Tribal governments with adequate notice and opportunities for ''meaningful'' consultation, input, sharing of information, advice and education regarding compliance.

These actions included the formation of a Standing MICS Tribal Advisory Committee and the request for input from Tribal leaders. Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with Tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was given to the applicant's experience in this area, as well as the size of the Tribe the nominee represented, the geographic location of the gaming operation, and the size and type of gaming being conducted. The Commission attempted to assemble a Committee that incorporates diversity and is representative of Tribal gaming interests. The Commission met with the Advisory Committee and discussed the pubic comments that were received as a result of the publication of the proposed MICS rule revisions, and considered all Tribal and public comments and Committee recommendations before formulating the final rule revisions. The Commission also plans to continue its policy of providing necessary technical assistance, information, and support to enable Tribes to implement and comply with the MICS as revised.

The Commission also provided the proposed revisions to Tribal leaders for comment prior to publication of this final rule and considered these comments in formulating the final rule (70 FR 69293, Nov. 15, 2005).

Takings

In accordance with Executive Order 12630, the Commission has determined that the following final MICS rule revisions do not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the following final MICS rule revisions do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The following final MICS rule revisions require information collection under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as did the rule it revises. There is no change to the paperwork requirements created by these final revisions. The Commission's OMB Control Number for this regulation is 3141–0009.

National Environmental Policy Act

The Commission has determined that the following final MICS rule revisions do not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 25 CFR Part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

■ Accordingly, for all of the reasons set forth in the foregoing preamble, the National Indian Gaming Commission amends 25 CFR part 542 as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

■ 1. The authority citation for part 542 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Amend § 542.2 to add, in alphabetical order, the definitions for ''Counter Game,'' ''Statistical Drop,'' ''Statistical Win''; by revising the definition for ''Account Access Card'' to read as follows:

§ 542.2 What are the definitions for this part?

* * * * *

Account access card means an instrument used to access customer accounts for wagering at a gaming machine. Account access cards are used

in connection with a computerized account database. Account access cards are not ''smart cards.''

* * * * *

Counter Game means a game in which the gaming operation is a party to wagers and wherein the gaming operation documents all wagering activity. The term includes, but is not limited to, bingo, keno, and pari-mutuel race books. The term does not include table games, card games and gaming machines.

* * * * *

Statistical drop means total amount of money, chips and tokens contained in the drop boxes, plus pit credit issued, minus pit credit payments in cash in the pit.

Statistical win means closing bankroll, plus credit slips for cash, chips or tokens returned to the cage, plus drop, minus opening bankroll, minus fills to the table, plus marker credits.

* * * * *

■ 3. Amend § 542.7 to add paragraph (g)(1)(iv) to read as follows:

§ 542.7 What are the minimum internal control standards for bingo?

* * * * *

(g) *Electronic equipment.*

(1) * * *

* * * * *

(iv) If the electronic equipment utilizes patron account access cards for activation of play, then § 542.13(o) (as applicable) shall apply.

* * * * *

■ 4. Amend § 542.8 to add paragraph (h)(1)(iv) to read as follows:

§ 542.8 What are the minimum internal control standards for pull tabs?

* * * * *

(h) *Electronic equipment.*

(1) * * *

* * * * *

(iv) If the electronic equipment utilizes patron account access cards for activation of play, then § 542.13(o) (as applicable) shall apply.

* * * * *

■ 5. Amend § 542.13 to redesignate paragraphs (o)(4)(ii) and (o)(4)(iii) as (o)(4)(iii) and (o)(4)(iv), add new paragraph (o)(4)(ii), and revise newly designated (o)(4)(iv) to read as follows:

§ 542.13 What are the minimum internal control standards for gaming machines?

* * * * *

(o) * * *

(4) * * *

* * * * *

(ii) For each customer file, an employee shall:

(A) Record the customer's name and current address;

(B) The date the account was opened; and

(C) At the time the initial deposit is made, account opened, or credit extended, the identity of the customer shall be verified by examination of a valid driver's license or other reliable identity credential.

* * * * *

(iv) After entering a specified number of incorrect PIN entries at the cage or player terminal, the customer shall be directed to proceed to a clerk to obtain a new PIN. If a customer forgets, misplaces or requests a change to their PIN, the customer shall proceed to a clerk for assistance.

* * * * *

§ 542.16 [Amended]

■ 6. Amend § 542.16 by removing paragraph (f)(1)(vi).

■ 7. Add § 542.19 to read as follows:

§ 542.19 What are the minimum internal control standards for accounting?

(a) Each gaming operation shall prepare accurate, complete, legible, and permanent records of all transactions pertaining to revenue and gaming activities.

(b) Each gaming operation shall prepare general accounting records according to Generally Accepted Accounting Principles on a double-entry system of accounting, maintaining detailed, supporting, subsidiary records, including, but not limited to:

(1) Detailed records identifying revenues, expenses, assets, liabilities, and equity for each gaming operation;

(2) Detailed records of all markers, IOU's, returned checks, hold checks, or other similar credit instruments;

(3) Individual and statistical game records to reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop by each table game, and to reflect statistical drop, statistical win, and the percentage of statistical win to statistical drop for each type of table game, by shift, by day, cumulative month-to-date and year-to-date, and individual and statistical game records reflecting similar information for all other games;

(4) Gaming machine analysis reports which, by each machine, compare actual hold percentages to theoretical hold percentages;

(5) The records required by this part and by the Tribal internal control standards;

(6) Journal entries prepared by the gaming operation and by its independent accountants; and

(7) Any other records specifically required to be maintained.

(c) Each gaming operation shall establish administrative and accounting procedures for the purpose of determining effective control over a gaming operation's fiscal affairs. The procedures shall be designed to reasonably ensure that:

(1) Assets are safeguarded;

(2) Financial records are accurate and reliable;

(3) Transactions are performed only in accordance with management's general and specific authorization;

(4) Transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes, and to maintain accountability of assets;

(5) Recorded accountability for assets is compared with actual assets at reasonable intervals, and appropriate action is taken with respect to any discrepancies; and

(6) Functions, duties, and responsibilities are appropriately segregated in accordance with sound business practices.

(d) *Gross gaming revenue computations.* (1) For table games, gross revenue equals the closing table bankroll, plus credit slips for cash, chips, tokens or personal/payroll checks returned to the cage, plus drop, less opening table bankroll and fills to the table, and money transfers issued from the game through the use of a cashless wagering system.

(2) For gaming machines, gross revenue equals drop, less fills, jackpot payouts and personal property awarded to patrons as gambling winnings. Additionally, the initial hopper load is not a fill and does not affect gross revenue. The difference between the initial hopper load and the total amount that is in the hopper at the end of the gaming operation's fiscal year should be adjusted accordingly as an addition to or subtraction from the drop for the year.

(3) For each counter game, gross revenue equals:

(i) The money accepted by the gaming operation on events or games that occur during the month or will occur in subsequent months, less money paid out during the month to patrons on winning wagers (''cash basis''); or

(ii) The money accepted by the gaming operation on events or games that occur during the month, plus money, not previously included in gross revenue, that was accepted by the gaming operation in previous months on events or games occurring in the month, less money paid out during the month to patrons as winning wagers (''modified accrual basis'').

(4) For each card game and any other game in which the gaming operation is not a party to a wager, gross revenue equals all money received by the operation as compensation for conducting the game.

(i) A gaming operation shall not include either shill win or loss in gross revenue computations.

(ii) In computing gross revenue for gaming machines, keno and bingo, the actual cost to the gaming operation of any personal property distributed as losses to patrons may be deducted from winnings (other than costs of travel, lodging, services, food, and beverages), if the gaming operation maintains detailed documents supporting the deduction.

(e) Each gaming operation shall establish internal control systems sufficient to ensure that currency (other than tips or gratuities) received from a patron in the gaming area is promptly placed in a locked box in the table, or, in the case of a cashier, in the appropriate place in the cashier's cage, or on those games which do not have a locked drop box, or on card game tables, in an appropriate place on the table, in the cash register or in another approved repository.

(f) If the gaming operation provides periodic payments to satisfy a payout resulting from a wager, the initial installment payment, when paid, and the actual cost of a payment plan, which is funded by the gaming operation, may be deducted from winnings. The gaming operation is required to obtain the approval of all payment plans from the TGRA. For any funding method which merely guarantees the gaming operation's performance, and under which the gaming operation makes payments out of cash flow (e.g. irrevocable letters of credits, surety bonds, or other similar methods), the gaming operation may only deduct such payments when paid to the patron.

(g) For payouts by wide-area progressive gaming machine systems, a gaming operation may deduct from winnings only its pro rata share of a wide-area gaming machine system payout.

(h) Cash-out tickets issued at a gaming machine or gaming device shall be deducted from gross revenue as jackpot payouts in the month the tickets are issued by the gaming machine or gaming device. Tickets deducted from gross revenue that are not redeemed within a period, not to exceed 180 days of issuance, shall be included in gross revenue. An unredeemed ticket previously included in gross revenue may be deducted from gross revenue in the month redeemed.

(i) A gaming operation may not deduct from gross revenues the unpaid balance of a credit instrument extended for purposes other than gaming.

(j) A gaming operation may deduct from gross revenue the unpaid balance of a credit instrument if the gaming operation documents, or otherwise keeps detailed records of, compliance with the following requirements. Such records confirming compliance shall be made available to the TGRA or the Commission upon request:

(1) The gaming operation can document that the credit extended was for gaming purposes;

(2) The gaming operation has established procedures and relevant criteria to evaluate a patron's credit reputation or financial resources and to then determine that there is a reasonable basis for extending credit in the amount or sum placed at the patron's disposal;

(3) In the case of personal checks, the gaming operation has established procedures to examine documentation, which would normally be acceptable as a type of identification when cashing checks, and has recorded the patron's bank check guarantee card number or credit card number, or has satisfied paragraph (j)(2) of this section, as management may deem appropriate for the check-cashing authorization granted;

(4) In the case of third-party checks for which cash, chips, or tokens have been issued to the patron, or which were accepted in payment of another credit instrument, the gaming operation has established procedures to examine documentation, normally accepted as a means of identification when cashing checks, and has, for the check's maker or drawer, satisfied paragraph (j)(2) of this section, as management may deem appropriate for the check-cashing authorization granted;

(5) In the case of guaranteed drafts, procedures should be established to ensure compliance with the issuance and acceptance procedures prescribed by the issuer;

(6) The gaming operation has established procedures to ensure that the credit extended is appropriately documented, not least of which would be the patron's identification and signature attesting to the authenticity of the individual credit transactions. The authorizing signature shall be obtained at the time credit is extended.

(7) The gaming operation has established procedures to effectively document its attempt to collect the full amount of the debt. Such documentation would include, but not be limited to, letters sent to the patron, logs of personal or telephone conversations, proof of presentation of the credit instrument to the patron's bank for collection, settlement agreements, or other documents which demonstrate that the gaming operation has made a good faith attempt to collect the full amount of the debt. Such records documenting collection efforts shall be made available to the TGRA or the commission upon request.

(k) Maintenance and preservation of books, records and documents. (1) All original books, records and documents pertaining to the conduct of wagering activities shall be retained by a gaming operation in accordance with the following schedule. A record that summarizes gaming transactions is sufficient, provided that all documents containing an original signature(s) attesting to the accuracy of a gaming related transaction are independently preserved. Original books, records or documents shall not include copies of originals, except for copies that contain original comments or notations on parts of multi-part forms. The following original books, records and documents shall be retained by a gaming operation for a minimum of five (5) years:

(i) Casino cage documents;

(ii) Documentation supporting the calculation of table game win;

(iii) Documentation supporting the calculation of gaming machine win;

(iv) Documentation supporting the calculation of revenue received from the games of keno, pari-mutuel, bingo, pull-tabs, card games, and all other gaming activities offered by the gaming operation;

(v) Table games statistical analysis reports;

(vi) Gaming machine statistical analysis reports;

(vii) Bingo, pull-tab, keno and pari-mutuel wagering statistical reports;

(viii) Internal audit documentation and reports;

(ix) Documentation supporting the write-off of gaming credit instruments and named credit instruments;

(x) All other books, records and documents pertaining to the conduct of wagering activities that contain original signature(s) attesting to the accuracy of the gaming related transaction.

(2) Unless otherwise specified in this part, all other books, records, and documents shall be retained until such time as the accounting records have been audited by the gaming operation's independent certified public accountants.

(3) The above definition shall apply without regards to the medium by which the book, record or document is generated or maintained (paper, computer-generated, magnetic media, etc.).

Signed in Washington, DC, this 2nd day of May, 2006.

Philip N. Hogen,

Chairman.

Cloyce Choney,

Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–0502; FRL–8168–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Six Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for six major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on June 12, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–0502. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 2, 2006 (71 FR 10626), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of formal SIP revisions submitted by Pennsylvania on November 21, 2005. These SIP revisions consist of source-specific operating permits, consent orders and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. The following table identifies the sources and the individual consent orders (COs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Operating permit (OP No.) Consent order (CO No.)	Source type	"Major source" pollutant
DLM Foods (formerly Heinz USA)	Allegheny	CO 211	Food Processing	NO_X
NRG Energy Center (formerly Pittsburgh Thermal Limited Partnership).	Allegheny	CO 220	Steam Generation	NO_X
Tasty Baking Oxford, Inc.	Chester	OP–15–0104	Bakery Operations	VOC
Silberline Manufacturing Company	Carbon	OP–13–0014	Paint and Lacquers Production	VOC
Adhesives Research, Inc.	York	OP–67–2007	Surface Coating	VOC
Mohawk Flush Doors, Inc.	Northumberland	OP–49–0001	Surface Coating	VOC

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on November 21, 2005 to establish and require VOC and NO_X RACT for six sources pursuant to the Commonwealth's SIP-approved generic RACT regulations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal