

provide an identifier that is unique to each filing (e.g., NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (e.g., CBOT).

4. *Filing as a*—Check in the appropriate box indicating that the rule or product is being submitted by a designated contract market (DCM), derivatives clearing organization (DCO), swap execution facility (SEF), or swap data repository (SDR), electronic trading facility with a significant price discovery contract (the term will be removed on July 20, 2012).<sup>1</sup>

5. *Type of Filing*—An indication as to whether the filing is a new rule, rule amendment or new product. The registered entity should check the appropriate box to indicate the applicable category under that heading.

6. *Rule Numbers*—For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the registered entity, market participants, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*—A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the registered entity's responsibility to comply with applicable filing requirements (e.g., rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked "confidential treatment requested" on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in § 40.8 and, where appropriate, § 145.9 of this chapter, and will not substitute for notice or full compliance with such requirements.

Issued in Washington, DC, on July 19, 2011, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

### Appendices to Provisions Common to Registered Entities—Commission Voting Summary and Statements of Commissioners

**Note:** The following appendices will not appear in the Code of Federal Regulations.

<sup>1</sup> Even though ECM–SPDC was eliminated by the Dodd-Frank Act, the Commission will retain references to this entity in the cover sheet since ECMs may be allowed to operate until July 20, 2012, pursuant to grandfather relief issued by the Commission. See 75 FR 56513 (Sept. 16, 2010).

### Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to establish a process for the certification and approval of new rules and rule amendments for designated contract markets, derivatives clearing organizations, as well as new registrants, swap execution facilities and swap data repositories. The Dodd-Frank Wall Street Reform and Consumer Protection Act establishes enhanced CFTC review and certification of new rules and amendments. Today's final regulations provide important procedural guidance to registered entities on how to comply with Congress's mandate for the Commission's review of new rules and rule amendments.

[FR Doc. 2011–18661 Filed 7–26–11; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9539]

RIN 1545–BI09

#### Election of Reduced Research Credit Under Section 280C(c)(3)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that amend the regulations concerning the election to claim the reduced research credit. The final regulations simplify how taxpayers make the election and affect taxpayers that claim the reduced research credit.

**DATES:** *Effective Date:* These regulations are effective on July 27, 2011.

*Applicability Date:* For dates of applicability, see § 1.280C–4(c).

**FOR FURTHER INFORMATION CONTACT:** David Selig, (202) 622–3040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election for claiming the reduced research credit under section 280C(c)(3). On July 16, 2009, a notice of proposed rulemaking (REG–130200–08) was published in the **Federal Register** (74 FR 34523). No public hearing was requested or held.

Written and electronic comments responding to the notice of proposed rulemaking were received. After considering the comments received the proposed regulations are adopted as revised by this Treasury decision.

Section 280C(c)(1) provides that no deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

Similarly, section 280C(c)(2) provides that if the amount of the credit determined for the taxable year under section 41(a)(1) exceeds the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to section 280C(c)(1)), the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

Section 280C(c)(3)(A) provides, in general, that in the case of any taxable year for which an election is made under section 280C(c)(3), sections 280C(c)(1) and (c)(2) shall not apply, and the amount of the credit under section 41(a) shall be the amount determined under section 280C(c)(3)(B). Under section 280C(c)(3)(B), the amount of credit for any taxable year shall be the amount equal to the excess of the amount of credit determined under section 41(a) without regard to section 280C(c)(3), over the product of the amount of credit determined under section 280C(c)(3)(B)(i), and the maximum rate of tax under section 11(b)(1).

Section 280C(c)(3)(C) provides that an election under section 280C(c)(3) for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Section 1.280C–4(a) provides that the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply shall be made by claiming the reduced credit under section 41(a) determined by the method provided in section 280C(c)(3)(B) on an original return for the taxable year, filed at any time on or before the due date (including extensions) for filing the income tax return for such year. Such an election, once made, shall be irrevocable for that taxable year.

Section 280C(c)(4) provides that section 280C(b)(3) shall apply for

purposes of section 280C(c). Under section 280C(b)(3), in the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), section 280C(b) shall be applied under rules prescribed by the Secretary similar to the rules applicable under section 41(f)(1)(A) and (f)(1)(B).

Section 1.41-6(a)(1) provides that to determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must: (i) Compute the group credit in the manner described in § 1.41-6(b), and (ii) allocate the group credit among the members of the group in the manner described under § 1.41-6(c). All members of the controlled group are required to use the same computation method, that is, the section 41(a)(1) method or the section 41(c)(5) alternative simplified research credit method, in computing the group credit for the credit year.

#### Explanation and Summary of Comments

These final regulations simplify the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply by requiring the election to be made on Form 6765, "Credit for Increasing Research Activities." The form must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year. An election, once made for any taxable year, is irrevocable for that taxable year.

These final regulations also provide that each member of a controlled group may make the election under section 280C(c)(3) after the group credit is computed and allocated under §§ 1.41-6(b)(1) and 1.41-6(c).

One commentator was concerned that the controlled group rules in the proposed regulations might cause administrative complexity for some members of a controlled group filing a consolidated return because each member would be required to file a separate Form 6765 to make the election under section 280C(c)(3). Generally, the proposed regulations provided that each member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), could make the election

under section 280C(c)(3). In order to clarify and simplify the election procedure for members of consolidated groups, however, the final regulations add that only a common parent (within the meaning of § 1.1502-77(a)(1)(i)) of a consolidated group may make the election under section 280C(c)(3) on behalf of the members of the consolidated group. An attachment to a Form 6765 filed by a common parent of a consolidated group adequately identifying the members for which an election under section 280C(c)(3) is made is generally sufficient to clearly indicate the intent of the common parent to make the election for those members.

Another commentator believed that some members of a controlled group may fail to make a timely election under section 280C(c)(3) because, at the time of filing the Form 6765 with the original return, no credit was reported by such members. The election under section 280C(c)(3) may be made whether or not a taxpayer claims any amount of credit on its original return. An example has been added to the final regulations showing that a taxpayer may make an election under section 280C(c)(3) on its original return without reporting any credit.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an agency promulgates a final rule, the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to "prepare a final regulatory flexibility analysis" with "a description of and an estimate of the number of small entities to which the rule will apply." See 5 U.S.C. 604(a). Section 605 of the Regulatory Flexibility Act provides an exception to this requirement if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule affects individuals and small businesses engaged in research activities under section 41. The IRS has determined that the final rule will have an impact on a substantial number of small entities. However, the IRS also has determined that the impact on entities affected by the final rule will not be significant. This determination is based on the fact that the regulations would simplify the procedure for making the

election for the reduced research credit under section 280C(c)(3)(C). Instead of requiring such an election to be made by claiming the reduced credit "on an original return," the regulations specify that the election is made by clearly indicating an intent to make the election on Form 6765, "Credit for Increasing Research Activities," which is attached to the return. This form requires only a minimal amount of time to complete and places no greater burden on the taxpayer than the current procedure. Accordingly, a final regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is David Selig, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.280C-4 is revised to read as follows:

#### § 1.280C-4 Credit for increasing research activities.

(a) *In general.* An election under section 280C(c)(3) to have the provisions of section 280C(c)(1) and (c)(2) not apply and elect the reduced research credit under section 280C(c)(3)(B) shall be made on Form 6765, "Credit for Increasing Research Activities" (or any successor form). In order for the election to be effective, the Form 6765 must clearly indicate the taxpayer's intent to make the section 280C(c)(3) election, and must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year, regardless of whether any research

credits are claimed on the original return. An election, once made for any taxable year, is irrevocable for that taxable year.

(b) *Controlled groups of corporations; trades or businesses under common control*—(1) *In general.* A member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), may make the election under section 280C(c)(3). However, only the common parent (within the meaning of § 1.1502-77(a)(1)(i)) of a consolidated group may make the election on behalf of the members of a consolidated group. A member or trade or business shall make the election on Form 6765 and by the time prescribed in paragraph (a) of this section.

(2) *Example.* The following example illustrates an application of paragraph (b) of this section:

*Example.* A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2009 Form 6765, "Credit for Increasing Research Activities," showing A and C had stand-alone entity credits (within the meaning of § 1.41-6(c)(2)) that exceeded the group credit (within the meaning of § 1.41-6(a)(3)(iv)). A and C report their allocated portions of the group credit (as determined under § 1.41-6(c)) on the 2009 Form 6765 and B reports no research credit on the 2009 Form 6765. A and B, but not C, each make an election for the reduced credit on the 2009 Form 6765. In December 2010, A determines that it understated its qualified research expenses in 2009 resulting in the group credit exceeding the sum of the stand-alone credits. On an amended 2009 Form 6765, A, B, and C each report their allocated portions of the group credit (including the excess group credit). B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280C(c)(3)(B). C may not reduce its credit under section 280C(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c) *Effective/applicability date.* This section applies to taxable years ending on or after July 27, 2011.

**Steven T. Miller,**  
Deputy Commissioner for Services and Enforcement.

Approved: July 19, 2011.

**Emily S. McMahon,**  
Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011-18993 Filed 7-26-11; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Office of the Secretary**

**31 CFR Part 1**

**RIN 1505-AC27**

**Privacy Act of 1974; Implementation**

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to update its Privacy Act regulations, and to add an exemption from certain provisions of the Privacy Act for a system of records related to the Office of Financial Stability (OFS).

**DATES:** *Effective Date:* July 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brian Bressman, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927-0419 (fax) or via electronic mail at *Brian.Bressman@Treasury.gov*.

**SUPPLEMENTARY INFORMATION:** The Departmental Offices published a system of records notice on February 9, 2011, at 76 FR 7239, establishing a new system of records entitled "Treasury/DO.225—TARP Fraud Investigation Information System."

On February 9, 2011, the Department also published, at 75 FR 7121, a proposed rule amending 31 CFR 1.36(g)(1)(i). The proposed rule exempted the system of records from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The proposed rule requested that public comments be submitted to OFS, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department did not receive comments on the proposed rule. Accordingly the Department is hereby giving notice that the system of records entitled "Treasury/DO.225—TARP Fraud Investigation Information System" is exempt from provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) as set forth in the proposed rule.

This final rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. This certification is based on the fact that the final rule affects individuals and not small entities. The term "small entity"

is defined to have the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," as defined in the RFA.

As authorized by 5 U.S.C. 553(d)(3), the Department finds that good cause exists for dispensing with the 30-day delay in the effective date of this rule. These regulations exempt certain investigative records maintained by the Department from notification, access, and amendment of a record. Accordingly, to protect the integrity of the records system, the Department finds that it is in the public interest to make these regulations effective upon publication.

**List of Subjects in 31 CFR Part 1**

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

**PART 1—[AMENDED]**

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 paragraph (g)(1)(i) is amended by adding the following text to the table in numerical order.

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.**

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(g)	*	*	*	
(1)	*	*	*	
(i)	*	*	*	
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DO.225	....	TARP Fraud Investigation Information System.		
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Dated: May 9, 2011.

**Melissa Hartman,**  
Deputy Assistant Secretary for Privacy, Transparency and Records.

[FR Doc. 2011-18959 Filed 7-26-11; 8:45 am]

BILLING CODE 4810-25-P