

## Reporting Requirements for Responsible Investment in Burma OMB Number 1405-xxxx (New)

### A. Justification

1. Section 203(a)(1)(B) of the International Emergency Economic Powers Act (IEEPA) grants the President authority to, inter alia, prevent or prohibit any acquisition or transaction involving any property, in which a foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States, if the President declares a national emergency with respect to any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States. See 50 U.S.C. 1701 et seq.

In Executive Order 13047 of May 20, 1997, the President determined that the actions and policies of the Government of Burma, including its large-scale repression of the democratic opposition in Burma, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, declared a national emergency to deal with that threat, and prohibited new investment in Burma. In subsequent Executive Orders, the President modified the scope of the national emergency to address additional concerns with the actions and policies of the Government of Burma. In Executive Order 13448 of October 18, 2007, the President modified the emergency to address the continued repression of the democratic opposition in Burma, manifested in part through the commission of human rights abuses and pervasive public corruption. In Executive Order 13619 of July 11, 2012, the President further modified the emergency to address, inter alia, human rights abuses particularly in ethnic areas.

In response to several political reforms by the Government of Burma and pursuant to authority granted by IEEPA, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a general license (GL 17) on July 11, 2012 authorizing new investment in Burma, subject to certain restrictions and conditions.

In order to support the Department of State's efforts to assess the extent to which new U.S. investment authorized by GL 17 furthers U.S. foreign policy goals of improving human rights protections and facilitating political reform in Burma, GL 17 requires U.S. persons engaging in new investment in Burma to report to the Department of State information related to such investment, as laid out in the "Reporting Requirements on Responsible Investment in Burma," (hereafter referred to as the "collection"). This reporting requirement is authorized by section 203(a)(2) of IEEPA, which grants the President authority to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in section 203(a)(1) of IEEPA.

It is the overarching policy goal of the U.S. Government to support political reform in Burma towards the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law. Over the past two years, the Burmese government has made strides toward democratization, including: holding largely free and fair parliamentary by-elections in which democratic opposition parties were permitted to compete, and in which Aung San Suu Kyi was elected to parliament; easing restrictions on media, speech, and assembly; permitting the

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

formation and registration of trade unions; establishing an anti-corruption commission; and releasing approximately 800 political prisoners, among other reforms. This reporting requirement is designed to help support responsible investment in Burma, which will in turn help to advance the political and economic reform effort.

In the past, some foreign investment in Burma has been linked to human rights abuses, particularly in the area of natural resource development in ethnic minority regions. For example, some foreign investments have entailed acquisition and control of land in disputed ethnic minority territories exacerbating or contributing to both social unrest and armed conflict and leading to adverse community and environmental impacts. Increased military/security presence in disputed ethnic minority areas to provide security for foreign investment projects is reported to have led to seizures of farm land, involuntary relocations, forced labor, torture, summary execution, and sexual violence. In June 2011, a 17-year ceasefire agreement with the Kachin Independence Army (KIA) broke down, and both the Burmese Government and the KIA have publicly attributed armed fighting at least partially to foreign-funded investment projects, which include power generation, oil and gas, jade, and gold mining investment projects in the region. The Burma Army has reportedly forced civilians to work as porters in northern Shan State in connection with the Shwe Gas pipeline and there have been numerous recent reports of forced labor, torture, forced conscription, rape and sexual violence in Kachin and Shan states along the Shwe Gas pipeline corridor.

The oil and gas sector in Burma has had reported links to human rights abuses and the diversion of public funds to the military and other business associates connected with senior officials. It is widely believed that Myanma Oil and Gas Enterprise (MOGE), Burma's national oil company with which all foreign oil and gas investors must currently partner, is diverting revenue from oil and gas development to offshore accounts and working directly with the Burmese military to develop projects in ethnic minority areas where human rights abuses are ongoing. The U.S. Government continues to have significant concerns about MOGE's transparency and accountability to the people of Burma. Therefore the collection requests U.S. persons entering into new investment with MOGE to notify the Department of State within 60 days of such investment, so that the Department can track U.S. investment with MOGE and conduct targeted consultations with respondents on human rights due diligence and anti-corruption measures.

The collection will also more broadly help the U.S. Government evaluate whether its engagement policies, including easing the new investment ban, advances its foreign policy goals with respect to Burma. To that end, investors with more than \$500,000 in aggregate new investment in Burma will be required to file a report with the State Department on an annual basis. Key information that companies will report on include information regarding policies and procedures with respect to human rights, workers' rights, environmental stewardship, land acquisitions, arrangements with security service providers, and, aggregate annual payments exceeding \$10,000 to Burmese government entities, including state-owned enterprises. The information requested will assist the U.S. Government to recalibrate policies, as needed, to facilitate U.S. investment that furthers political reform and avoids contributing to corruption, conflict, and human rights abuses.

U.S. persons to whom this requirement applies will also be required to submit a second version of the report to the U.S. Government for public release, from which information considered in good faith to be exempt from disclosure under FOIA Exemption 4 -- i.e. trade

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

secrets or commercial or financial information that is privileged or confidential – may be withheld. The Department of State will make this version of the report publically available in order to promote transparency with respect to new U.S. investments in Burma. In the past, the Department of State has found that the absence of transparency or publicly available information with respect to foreign investment activities in Burma has contributed to corruption and misuse of public funds, the erosion of public trust, and social unrest in ethnic minority areas and led to further human rights abuses and repression by the government and military. Public disclosure of certain aspects of the collection therefore will promote the policy of transparency through new U.S. investment, a key U.S. foreign policy objective in Burma.

Burmese civil society groups, particularly those representing ethnic minority communities, have requested that the Department of State make public certain information obtained through the collection on investments purportedly made for the benefit of the Burmese people, as a means of holding their own government accountable. Nobel Peace Prize laureate Aung San Suu Kyi, leader of Burma’s democratic opposition party and recently elected to a seat in Burma’s parliament, also underscored the importance of transparency in her recent remarks in Bangkok, noting that she did not want “more investment to mean more possibilities for corruption.” This was among the most specific of the recommendations she made to the international community:

Transparency is very important if we are going to avoid problems in the future... So whatever investments, governmental agreements, whatever aid might be proposed, please make sure that it is transparent, that the people of Burma are in a position to understand what has been done, and how and for whom the benefits are intended.

Therefore public release of portions of this collection is aimed at providing civil society this type of information to both ensure the transparency of U.S. investment in Burma and to encourage civil society to partner with U.S. companies towards building responsible investment which ultimately promotes U.S. foreign policy goals.

2. The Department of State, in consultation with other relevant government agencies, will use the information to evaluate whether easing the ban on investment by U.S. persons advances U.S. foreign policy goals to address the national emergency with respect to Burma. In addition, the Department of State will use the collection as a basis to conduct informed consultations with U.S. businesses to encourage and assist such businesses to develop robust policies and procedures to address any potential adverse human rights, worker rights, anti-corruption, environmental, or other impacts resulting from their investments and operations in Burma. The Department of State will use the collection of information about new investment with MOGE to track investment that involves MOGE and to identify investors with whom it may be beneficial to have targeted consultation on anti-corruption and human rights policies. The public, including civil society actors in Burma, may use publicly available information resulting from the collection to engage U.S. businesses on their responsible investment policies and procedures and to monitor the Burmese government’s management of revenues from investment.

3. Because the reporting threshold for new investment is \$500,000, and the annual report pertains mostly to existing policies and procedures, the Department of State expects, given the reliance on

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

computers not only for business but also for personal use, that much of the information requested is already maintained in respondents' electronic files. Respondents will submit the information responding to the collection to the Department of State in electronic form through the email addresses provided in the collection. The reporting requirements can be found at: <http://www.humanrights.gov/2012/07/11/burmaresponsibleinvestment/>.

4. The Department of State is unaware of any other U.S. Government requirements currently in force that is duplicative of this reporting requirement.

5. U.S. persons with aggregate investments under \$500,000 are exempt from this collection, partly in an effort to minimize the burden on small businesses and other small entities that engage in new investment in Burma. In addition, U.S. persons who purchase or lease land or real property, or any rights related thereto, either under 30 acres or valued under \$500,000, are exempt from reporting on the impact of land acquisition. Further, aggregate payments to any governmental entity in Burma during the reporting year that are less than \$10,000 are exempt from reporting, partly in an effort to minimize the reporting burden on small business and other small entities.

In addition, the collection is designed such that entities that do not have in place policies and procedures related to human rights, worker rights, anti-corruption, and the environment can fulfill the terms of the collection by stating that there is no information to report and including a brief explanation. Therefore small businesses and entities, which are in general are less likely to have complex human rights due diligence policies and procedures in place, will have a minimal reporting burden.

6. Absent the information provided by the collection, it would be difficult for the Department of State to assess whether GL 17's authorization of new investment by U.S. persons in Burma advances U.S. foreign policy goals. As Secretary Clinton said in her May 18<sup>th</sup>, 2012 announcement of the upcoming sanctions easing, "We'll expect U.S. firms to conduct due diligence to avoid any problems, including human rights abuses. We expect our businesses to create a grievance process that will be accessible to local communities; to demonstrate appropriate treatment of employees, respect for the environment; to be a good corporate citizen; and to promote equitable, sustainable development that will benefit the people." Without conducting the collection, the U.S. Government would not have adequate information to evaluate whether the investment authorized by GL 17 furthers such U.S. policy goals.

In addition, the U.S. Government intends to carry out targeted consultations with U.S. investors engaged in new investment in Burma based on responses to the collection; without knowing which U.S. persons are investing more than \$500,000 and what their basic policies and procedures are, the ability to carry out informed consultations would be hampered and the U.S. Government would risk having extremely limited or no visibility into the commercial activities of U.S. persons in Burma and their impact on the policies and procedures of the Government of Burma that gave rise to the national emergency.

The collection will help the U.S. Government advance its foreign policy goal of facilitating transparent and responsible investment in Burma. The public report additionally meets the foreign policy goal of empowering civil society to take an active role in the economic development of

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

resources located in their communities and to partner with companies to encourage responsible, transparent investment. Without making the appropriate information from the collection public, the U.S. Government may not be able to engage Burmese civil society in its activities to promote responsible investment in Burma and would not achieve the intended “force multiplier” effect of civil society allies whose efforts to promote human rights, transparency, and responsible investment and resource management in Burma align with the President’s concerns underlying the declaration of the national emergency.

7. The collection could potentially require respondents to submit information that is a trade secret or commercial or financial information that is privileged or confidential. A respondent will be required to submit any information responsive to the collection to the Department of State in a report to the U.S. Government (the “U.S. Government Report”). The Department will not make public the information in the U.S. Government Report except to the extent authorized by law. A respondent also will be required to submit a version of its report that the Department will make publically available (the “Public Report”). For the public version of the report, the Department has instituted procedures to protect from disclosure trade secrets and confidential commercial or financial information obtained from a person that is privileged or confidential. If a respondent determines in good faith that it considers any information covered by items 1 through 8 provided in the collection to be exempt from disclosure under Freedom of Information Act (FOIA) Exemption 4, it shall take the following steps:

(1) It shall designate by appropriate markings such information in the U.S. Government Report, indicate which information so designated is not included in the Public Report, and provide a detailed explanation for withholding this information.

(2) The respondent’s explanation must specifically identify the reasons why the information is either (a) a trade secret; or (b) commercial or financial information that is privileged or confidential, and must provide any arguments as to why the public release of the information would cause substantial harm to the competitive position of the respondent.

(3) The respondent shall include in the Public Report an acknowledgement that the respondent understands that the Public Report will be made public, and that the respondent has redacted before submission any information it considers in good faith to be exempt under FOIA Exemption 4.

The collection could require U.S. persons who enter into new investment with MOGE to report such investment to the Department of State more than quarterly if the U.S. person enters into new investment with MOGE more than quarterly. However, this is a notification requirement only and has no additional reporting requirements attached. All other information requested in the collection is due annually by July 1.

This collection does not impose record retention requirements beyond those already applicable to records relating to transactions authorized under GL 17 by 31 CFR Part 501.

8. The Federal Register published a 60-day notice of proposed information collection for the Reporting Requirements for Responsible Investment in Burma on August 6, 2012. See Federal Register Volume 77, Number 151, pages 46786-46788: <http://www.gpo.gov/fdsys/pkg/FR-2012-08-06/html/2012-19283.htm>

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

### Background

It is the overarching policy goal of the U.S. Government to support political reform in Burma that leads to the establishment of a peaceful, prosperous, and democratic state that respects human rights and rule of law.

To that end, the general license (GL-17) issued by the Department of the Treasury's Office of Foreign Assets Control on July 11, 2012, requires U.S. persons whose aggregate new investment in Burma exceeds \$500,000 to submit to the Department of State information related to such investment, as laid out in the proposed Reporting Requirements for Responsible Investment in Burma (hereafter referred to as the "Reporting Requirements").

The Reporting Requirements will provide the U.S. Government with information about the investment activities of U.S. persons in Burma and therefore advance the Department of State's efforts to assess the extent to which new U.S. investment authorized by GL-17 furthers U.S. foreign policy goals in Burma. The reports will assist the U.S. Government in calibrating policies in order to support U.S. investment that furthers political reform and does not contribute to corruption, conflict, and human rights abuses, and working with U.S. persons investing in Burma to assist and encourage them to align their activities with best practices aimed at addressing the concerns that gave rise to U.S. sanctions.

The Reporting Requirements also will support U.S. Government objectives by making publicly available certain information which will help other actors—including other governments, civil society actors and non-governmental organizations, and companies—take steps to support responsible investment and the U.S. Government's overall policy objectives in Burma. The initial 60-day comment period for the Reporting Requirements closed on October 5, 2012. The summary of comments and rationale for U.S. Government's changes to the Reporting Requirements based on these comments is reflected in this report.

Overall, the vast majority of the comments requested clarifications and interpretive guidance. We have responded to them by including clarifying language as well as references to additional resources and information. A few comments focused on substantive concerns are also addressed.

### General Comments on Reporting Requirements

#### *a. Summary of comments*

Several comments requested overall guidance in drafting a submission in accordance with the Reporting Requirements. Many requested we add references to relevant international standards, principles, and tools throughout the report and/or as an attachment; one suggested the U.S. Government provide an appendix that outlines existing legal requirements. Comments also requested the U.S. Government provide guidance on human rights and anti-corruption standards tailored to Burma, and suggested providing a checklist that draws on international standards to guide investors in their responses. One comment suggested that submitters report according to the most sector- and industry-specific guidelines applicable to them. One comment requested

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

clarification whether submitting a company-wide sustainability report satisfies the Reporting Requirements.

Several comments sought clarification of the terms “investment”, “operations”, and “new investment,” to determine the extent to which business activities and business relationships are covered by the Reporting Requirements. One comment suggested that the U.S. Government publish a non-exhaustive list of examples of activities that are outside the scope of “new investment.” Some comments suggested broad interpretations of these terms. One suggested that the Reporting Requirements include all U.S. persons operating in Burma, not just new investment. Another suggested that companies include any information that applies to related entities throughout their reports.

Comments also requested that the U.S. Government carry out spot checks or audit companies for compliance with the Reporting Requirements. In a similar vein, many comments suggested we include penalties for failure to comply with the Reporting Requirements; one comment suggested that failure to comply with the Reporting Requirements should not be regarded as a failure to comply with the OFAC general license and therefore should not be subject to associated penalties. Some comments also requested a sunset clause be included with annual renewal of the Reporting Requirements.

To avoid submitting a duplicate report each year, comments suggested that submitters be required to submit a progress report regarding implementation of policies and procedures over the past year.

### *b. Response*

In response to all of the comments received requesting guidance and a checklist to assist submitters in drafting their submissions under the Reporting Requirements, we created an Appendix to the Reporting Requirements that contains a chart of tools, guidelines, and principles that may be relevant to the Reporting Requirements. As one comment requested industry and sector-specific guidance, we responded by referencing applicable sectors in the chart provided in the Appendix. We also updated the Reporting Requirements by referencing relevant guidelines, tools, and standards throughout the document.

We did not include a provision on spot checks and audits, due to the resource-intensive nature of this undertaking. We did not include language on penalties because OFAC includes information on penalties for violations of the Burmese Sanctions Regulations, 31 C.F.R. part 573, in its regulations (see 31 C.F.R. § 537.701). OFAC also posts additional information related to penalties on its Web site. A sunset clause was not included, as the Reporting Requirements are intended to be effective so long as GL-17 remains in place. GL-17 may be amended or revised based on the situation in Burma and consistent with evolving U.S. policy on Burma.

Regarding the progress in implementing policies and procedures over time, we responded to this request by updating the due date section of the general instructions to require submitters to provide that “in each report following the initial report, submitter is to report only on any changes or updates for each of the Reporting Questions.”

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

### Issues of Confidentiality

#### *a. Summary of comments*

One comment sought clarity on whether the public report was simply a copy of the government report with redacted information, or whether an entity should submit two reports. Other comments requested that there be a sole report, whereby confidential information is redacted on a case-by-case basis.

#### *b. Response*

Two reports – a public and U.S. Government (USG) report – are to be submitted. We clarified that the submitter should indicate in the Public Report where it has excluded information that is contained in the USG Report, and explain the basis for not including such information in the Public Report. For example, submitter could state that additional information was not disclosed in the Public Report in response to a particular question because such information is a trade secret exempt from disclosure under FOIA. We also clarified that if the submitter does not have information to report with respect to one or more of the questions, submitter should provide a brief explanation of why. For example, the submitter could state that it is not providing a summary of its workers' rights policies because it does not have formal policies in place. To address comments that information in the USG report should be made public, we noted that items requested in questions 9 through 11 do not need to be included in the Public Report, but may be included in the Public Report if the submitter so chooses.

The purpose of two reports is the following. The USG report is to provide the U.S. Government with information about the investment activities of U.S. persons in Burma, and advance the Department of State's effort to assess the extent to which investment authorized by GL-17 furthers U.S. foreign policy goals. The public report is designed to ensure that sensitive information is protected from public release.

### \$500,000 Threshold

#### *a. Summary of comments*

Some comments suggested the \$500,000 threshold be removed entirely, or reduced substantially. Others suggested increasing the threshold up to \$2 million or \$5 million. Clarification was also sought regarding what an "aggregate investment" entailed to reach the threshold.

#### *b. Response*

There was no change to the \$500,000 threshold. The threshold was not lowered in order to minimize the reporting burden on small business and other small entities. The threshold was not increased because it is important that the requirements capture sufficient data about U.S. investment to enable the USG to evaluate the extent to which such investment furthers U.S. policies.



## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Similarly, no clarification was provided regarding “aggregate investment” as this term is defined in by statute and regulation.

### Direct and Indirect Investment

#### *a. Summary of comments*

Overall, comments requested clarification on whether the Reporting Requirements apply to direct and indirect investment, and whether they apply to joint ventures, partnerships, contractors, subsidiaries, distributors, and supply chains; one comment sought clarity on if indirect investment counts toward the \$500,000 threshold amount. There was also a request to clarify whether the Reporting Requirements apply to financial institutions. One comment requested that submitter identify key business and trading partners.

#### *b. Response*

We did not believe clarity was needed in the general guidance regarding direct and indirect investment. The term “new investment” is defined by regulation in 31 C.F.R. § 537.311 to mean any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Burma or a nongovernmental entity in Burma on or after May 21, 1997: (1) the entry into a contract that includes the economic development of resources located in Burma, as defined in 31 C.F.R. § 537.302; (2) the entry into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma; (3) the purchase of a share of ownership, including an equity interest, in the economic development of resources located in Burma; or (4) the entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma, without regard to the form of the participation. U.S. persons should consult this definition in determining whether their investment triggers these reporting requirements. As explained in OFAC’s Frequently Asked Questions Related to Burma Sanctions, “[w]hether specific activities constitute ‘new investment’ is dependent on the facts and circumstances of each particular situation. U.S. persons considering new investment in Burma should examine any proposed agreement or contract in light of the definition of ‘new investment’ in 31 C.F.R. § 537.311. Regardless, new investment in Burma by U.S. persons is now authorized, subject to the limitations and requirements described in GL 17....”

If potential investors are uncertain about whether their circumstances constitute new investment, we suggest erring on the side of caution and reporting in compliance with the requirements set forth in the State Department’s ‘Reporting Requirements on Responsible Investment in Burma.’”

On the question regarding joint ventures, partnerships, contractors, subsidiaries, and supply chains, due diligence involves looking into these relationships. In response to the question regarding identification of key business and trading partners, the Reporting Requirements provide explicit instances when information regarding subsidiaries, subcontractors, and other business partners should be provided.

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

U.S. persons seeking additional guidance may also contact OFAC in writing, providing specific information regarding a proposed investment in Burma.

### MOGE Notification

#### *a. Summary of comments*

Comments requested clarity on when the requirement to notify the U.S. Department of State becomes effective – whether at the timing of signing an agreement or at the timing of intent to enter into an agreement. Some comments suggested pre-notification of intent to enter into an agreement, as well as public reporting that submitter intends to enter into a contract with MOGE. Comments also sought clarity on whether the requirement applies to a broad set of business partners, and others sought clarification on the types of agreements captured under the MOGE Notification requirement.

#### *b. Summary of changes*

Given that the term “new investment” is defined in statutory and regulatory provisions, and further explained in OFAC’s Frequently Asked Questions Related to Burma Sanctions, it did not appear necessary to further elaborate in these reporting requirements. Regarding the question on pre-notification, the collection provides that the Department of State must be notified within 60 days after new investment with MOGE. Pre-notification of investment with MOGE is not required because the Department of State intends to use the information collected to conduct targeted consultations with U.S. persons who are already undertaking investment with MOGE. This question is not intended as a screening process prior to investing with MOGE, and it is therefore not necessary to collect information on the intent to invest with MOGE in advance. Furthermore requiring pre-notification of intent to invest would more than likely also necessitate respondents to submit a second notification to the Department after the investment is undertaken, increasing the burden on respondents.

### Due Date

#### *a. Summary of comments*

Comments requested an increase in the frequency of the reporting to ensure that civil society has access to up-to-date information. One comment suggested that a report should be submitted within 180 days of the start of a new investment and thereafter twice yearly on April 1 and October 1 in line with the SEC10Q reporting requirement deadlines.

#### *b. Response*

We addressed comments—and particularly the concern about ensuring transparency during the initial period after a new investment is made—by adding that reports are due 180 days after \$500,000 threshold is reached, and thereafter annually on July 1. This means that there will be two sets of reports submitted during the first 18 months by every submitter, which helps civil

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

society have access to more timely information. July 1 was selected as the annual reporting date as suggested in the comments.

### Questions 1 and 3: Contact Details

#### *a. Summary of comments*

One comment requested contact details for related entities over which submitter exercises control or influence.

#### *b. Response*

We determined this is unnecessary, as contact details for the submitter will be provided and questions and comments about related entities can be posed directly to the submitter.

### Question 4: Overview of Operations in Burma

#### *a. Summary of comments*

One comment requested that data be separated by management level and/or rank. Another comment requested that the U.S. Government include a broad range of business relationships.

#### *b. Response*

We did not separate data by management level and/or rank, nor include a broad range of business relationships as this would be overly burdensome when weighed with the benefit derived from such a change.

### Question 5: Human Rights, Worker Rights, Anti-Corruption, Environmental Policies and Procedures

#### *a. Summary of comments*

Generally, comments sought to expand the nature of reporting in question 5. Some sought clarity on the degree to which policies and procedures apply to related entities, affiliates, and partners. Some comments sought to clarify the distinction between “policies” and “procedures.” Other comments suggested that this question address implementation and progress made on implementation. Another requested inclusion of a “comply or explain” provision, and for submitter to explain when “not applicable” applies. Comments also suggested referencing relevant tools, standards and guidelines to assist submitter in completing question 5. Specifically regarding footnote 1, one comment suggested revising the footnote to explain that the sources listed are not an exhaustive list of the range of rights at issue. Another requested movement of footnote 1 so that it includes not only human rights and worker rights, but also anti-corruption and environmental policies and procedures.

Some comments suggested updating question 5 to include a request for detailed information such as percentage of sites that have undergone assessments, suppliers trained on anti-corruption,

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

suppliers screened for human rights risks, etc. Another requested the disclosure of vetting processes for contracting.

### *b. Response*

We responded to comments by clarifying that submitter must report on the extent to which policies and procedures described in questions 5(a) through (d) are applied to, required of, or otherwise communicated to related entities in Burma, including but not limited to subsidiaries, subcontractors, and other business partners. Language asking submitter to respond “none” or “not applicable” where it does not have the requisite policies and procedures in place, was removed. In its place, we updated the Reporting Requirements general instructions to provide that if submitter does not have the information requested for any question, it should briefly explain why.

Regarding progress in implementing policies and procedures over time, we responded by updating the general instructions to require submitters to use subsequent reports after their first to report on any changes or updates for each of the Reporting questions, to keep them relevant and minimize the burden on respondents. We responded to comments on footnote 1 by moving it to the end of the phrase “Human Rights, Worker Rights, Anti-Corruption, and Environmental Policies and Procedures” to capture anti-corruption and environmental policies and procedures, and clarifying the language in line with the comment. Footnotes were added to this section in response to comments suggesting that relevant tools, standards, and guidelines be referenced to assist the submitter in completing question 5.

We did not clarify the language to distinguish between policies and procedures, as it was observed that these words have commonly accepted meanings.

### Question 6: Arrangements with Security Providers

#### *a. Summary of comments*

Comments generally sought to expand the nature of reporting on security arrangements by asking for expansion of the requirement to entities with which submitter has a business relationship; reporting on more due diligence including whether security arrangements are subject to assessments or audits; and reporting on whether contracts with security providers have provisions on adherence to human rights or anti-corruption requirements. Comments also sought clarification that submitters report on all assistance from security providers, including in-kind assistance. One comment requested removal of reference to the International Code of Conduct for Private Security Services (ICoC) in 6(c), as many security providers in Burma are not ICoC signatories.

Some comments requested inclusion of a “comply or explain” provision, and for submitter to explain when “not applicable” applies. Other comments sought to add a reference the Voluntary Principles on Security and Human Rights (VPs) as relevant guidance to assist submitter in completing question 6 and ask whether submitter implements the VPs.

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

### *b. Response*

We responded to comments by updating the reporting requirements to require a concise summary of due diligence policies or practices for engaging security providers including human rights and anti-corruption, and provided an illustration to clarify information requested. Language asking submitter to respond “none” or “not applicable” where it does not have the requisite policies and procedures in place, was removed. In its place, we updated the Reporting Requirements general instructions to provide that if submitter does not have the information requested, it should briefly explain why. In response to comments, a footnote was added that referenced the Voluntary Principles on Security and Human Rights.

We did not update question 6 to explain that it includes all assistance, including in-kind, as this is self-evident and no clarification is needed. In response to the comment that the ICoC reference in question 6(c) be removed, we left this in as we strongly believe that it is important for submitters to report on whether security providers are ICoC signatories and added a footnote referencing current ICoC signatories. Our view is that the requirement to report on this will encourage companies that have not yet signed the ICoC (more than 600 have worldwide) to consider doing so. We also added a provision to 6(c) that requests the submitter to provide whether the private security service provider has been certified to national or international standards.

### Question 7: Property Acquisition

#### *a. Summary of comments*

Comments generally sought to expand the nature of reporting on property acquisition in the following ways: eliminating or reducing the threshold dollar amount and acreage requirements that trigger reporting; expanding application of reporting to entities with which the company has a business relationships; reporting on land use (in addition to land leased or purchased); expanding due diligence undertaken to assess property-related risks; and more reporting on compensation agreements and grievance mechanisms related to property acquisition. Some comments requested inclusion of a “comply or explain” provision, and for submitter to explain when “not applicable” applies, others sought to expand its application to entities with which the submitter has a business relationship. Several comments sought to reference relevant tools, standards, and guidelines, including IFC Performance Standard 5, as relevant guidance to assist submitter in completing question 6.

Comments also sought to clarify specific provisions. One sought to clarify 7(a) by adding the words “history of land ownership and acquisition”, one sought to include land abandonment issues, others sought removing “of which submitter is aware” from 7(d), and another sought clarification of the term “involuntary resettlement or relocation” in 7(e).

#### *b. Response*

We responded to comments by including land use (in addition to land purchased or leased) in question 7 of the Reporting Requirements. Language asking submitter to respond “none” or “not

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

applicable” where it does not have the requisite policies and procedures in place, was removed. In its place, we updated the Reporting Requirements general instructions to provide that if submitter does not have the information requested, it should briefly explain why. A footnote was added in response to comments suggesting that IFC Performance Standard 5 be referenced to assist the submitter in completing question 7. We also clarified that available grievance mechanisms, with respect to resettlement, would be relevant to reporting on this item. We did not update the language in specific provisions as it did not add utility or strengthen the Reporting Requirements: adding “history of land ownership and acquisition” to 7(a) would not strengthen this provision; addressing land abandonment would cause confusion; removing “of which submitter is aware” does not strengthen 7(d); and clarifying the terms “involuntary resettlement or relocation” is unnecessary as these issues are addressed in tools, guidelines, and principles provided in the Appendix.

### Question 8: Transparency

#### *a. Summary of comments*

While one comment sought to limit reporting on transparency by raising the threshold for reporting to \$100,000 consistent with SEC Rule 13q-1, and explicitly excluding information required to be kept confidential under contract, others sought to expand reporting on transparency by preserving the \$10,000 threshold and clarifying that in-kind assistance was included. Those who sought to expand reporting on transparency also suggested that Question 8 be clarified to include reporting on direct and indirect investment, that language be broadened to include government entities that possess authority over the submitter’s new investment activities in Burma, that the provision apply to a broad set of entities with which submitter has a business relationships, and that Question 8 be clarified to explain whether revenue-sharing or other forms of payments to non-state armed groups must be reported. One comment sought clarity on what types of government payments are within the scope of this question.

There were also several comments requesting that payments to the Burmese government be disaggregated to align with, as well as be publicly disclosed in compliance with, Section 1504 of the Dodd Frank Wall Street Reform and Consumer Protection Act, and that the Extractives Industry Transparency Initiative be referenced for guidance in completing Question 8.

#### *b. Response*

We did not raise the reporting threshold, as the \$100,000 threshold referenced by comments applies only to extractive industries, where the scale of investments makes \$100,000 a reasonable threshold. These reporting rules apply to all sectors of the economy in Burma, not just the extractive industries.

We updated Question 8 based on comments to clarify that payments to non-state groups that possess or claim to possess governmental authority must be accounted for in reporting. We also clarified that payments must be reported based on a company’s share of production in addition to other previously specified payment types.

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

In response to comments on Dodd-Frank Section 1504, we did not add language on Dodd Frank. A footnote was added in response to comments suggesting that the Extractives Industry Transparency Initiative be referenced to assist the submitter in completing Question 8.

### Question 10: Military Communication

#### *a. Summary of comments*

Several comments sought to broaden and clarify question 10: requesting that the confidentiality provision be removed; requesting removal of “to the best of your knowledge” and “material to” language; and expansion of reporting to include contact with those persons subject to targeted U.S. sanctions.

Some comments sought to narrow question 10, requesting clarity on whether routine operational contact with armed forces was included, and asked that if included, whether a simplified reporting process for routine communications could be established.

#### *b. Summary of changes*

To address comments that information in the confidential report should be made public, we noted that items requested in Questions 9 through 11 do not need to be included in the Public Report, but may be included in the Public Report if the submitter so chooses. We also removed “to the best of your knowledge” and “material to” language. Further, we addressed concerns regarding routine meetings by adding language at 10(c) that provides “for frequent/regular meeting on similar topics, submitters can provide one brief summary of issues discussed with a listing of dates under appropriate header.”

We did not expand Question 10 to include communications with persons subject to U.S. sanctions, given that transactions or dealings by U.S. persons with such sanctioned individuals are prohibited.

### Question 11: Risk Mitigation

#### *a. Summary of comments*

Comments generally sought to broaden Question 11, requesting: removal of the confidentiality requirement; removal of “if submitter conducted due diligence” language; reporting on due diligence and risk mitigation related to anti-corruption (in addition to human rights, worker rights and environmental issues); reporting on implementation of policies and procedures, reporting on prevention in addition to risk mitigation; and reporting on outcomes in addition to policies and processes. One comment sought to fold Question 11 into Question 5. Another sought clarity on whether due diligence applies only to activities meeting the new investment reporting threshold. Some comments requested inclusion of a “comply or explain” provision, and for submitter to explain when “not applicable” applies, others sought to expand its application to entities with which the submitter has a business relationship.

## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

### *b. Response*

To address comments that information in the confidential report should be made public, we noted that items requested in questions 9 through 11 do not need to be included in the Public Report, but may be included in the Public Report if the submitter so chooses. Whenever possible, we encouraged submitters to include this information in the public report to increase transparency and access to information. To address comments regarding when “not applicable” applies, general guidance for the collection was updated to provide: “if the submitter does not have information to report with respect to one or more of the reporting questions below, please note in response to the question(s) that there is no information to report and include a brief explanation.”

We also removed “if submitter conducted due diligence” language, and added requirements to report on due diligence and risk mitigation related to anti-corruption, as suggested by comments. Further, as suggested we added requirements to report on implementation and prevention. Additionally, we believe it is clear that Question 11 applies to investment that meets the Reporting Requirements threshold of \$500,000.

9. No payment or gift has been or will be provided to any respondent.

10. The collection states that the U.S. Government will not make public the information contained in the U.S. Government Report except to the extent authorized by law. Relevant legal provisions include provisions for confidentiality or nondisclosure included in the Freedom of Information Act or any other federal statutes or regulations that apply with respect to both the U.S. Government Report and the Public Report. Otherwise, no promises of confidentiality have been made to the respondent.

11. No information of a sensitive or private nature is requested in this collection.

12. Overall the reporting burden on respondents is designed to be minimal as the collection requests summaries of policies and procedures that already exist as opposed to mandating that investors develop and/or implement such policies and procedures. Therefore if a respondent does not have such policies/procedures already in place it may respond to questions with a single sentence indicating that respondent has no information to report and include a brief explanation, or another appropriate response. In the case where respondents do have such policies/procedures in place, they shall provide a brief summary of the existing policy/procedures or due diligence conducted.

Similarly, with regard to the disclosure of payments above \$10,000 to governmental entities in Burma, it is assumed investors maintain records of payments made to Government of Burma officials and entities as a matter of routine accounting and record keeping.

The collection is likely to request one new category of information that, but for the collection, respondents would be unlikely to maintain: a brief summary of any meetings with military officials related to an investment.



## SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Because the collection was designed to be flexible and minimally burdensome, there will be a range of burden hours on the respondent likely to be correlated with the type of industry and size of the respondent's investment in Burma. For example, a U.S. person intending to open a restaurant or small hotel in Burma might not spend more than \$500,000 to purchase or lease land or other real property, or purchase or lease more than 30 acres of land or real property, might not have extensive contact with military officials related to its investment, might have minimal arrangements with security providers, might have a minimal number of payments to Government of Burma entities, and might only carry out a small number of consultations with local stakeholders, if any, before entering into the new investment. The reporting burden for this "small" range respondent is estimated at 5 hours.

Medium sized investments that entail the purchase or lease of large plots of land or entail investment in ethnic minority or conflict areas such as but not limited to medium-sized mining operations are likely to have a larger reporting burden. For example, this type of respondent might meet with a number of military officials, might conduct multiple rounds of community and stakeholder engagement before acquiring large plots of land in areas that are sensitive and/or conflict prone, and might have existing human rights, worker rights, anticorruption, and environmental stewardship policies and procedures already in place. Information on large land acquisitions and on security arrangements, also likely to be more complex in this scenario, presumably will already be collected in some form in company records, but will have to be summarized for this collection. The reporting burden estimate for this "medium" range respondent is 20 hours.

The largest investments are likely to be multinational enterprises in the oil, gas, and mining industry, large scale infrastructure development, and large-scale agribusiness sectors. These companies are more likely to have complex human rights policies and procedures in place, might purchase or lease large parcels of land, might have complex arrangements with security providers to guard mines, pipelines, and other physical infrastructure, and might be the most likely to communicate with the Burmese military on a regular basis. Based on informal consultation with industry experts the upper range of the "large" range respondent is estimated at 45 hours.

It is estimated that in the first three years there will be fewer than 150 new investments in Burma over the \$500,000 threshold triggering the reporting requirement under GL 17. We estimate 60 respondents in the "small" range estimated at 5 burden hours, 50 respondents in the "medium" range at 20 burden hours, and 40 respondents in the "large" range at 45 burden hours. Taking the weighted average of these three categories the estimated weighted average reporting burden is 21 hours.

Assuming an estimate of 150 respondents the estimated total hour burden is 3,150 hours.

To determine the estimated income per hour, the Bureau of Labor Statistics (BLS), "Table 1 Summary: mean hourly earnings and weekly hours for selected worker and establishment characteristics" were reviewed (<http://bls.gov/ncs/ncswage2010.htm#overview>). The specific data table is located at <http://bls.gov/ncs/ocs/sp/nctb1475.pdf>. Average mean hourly private industry worker earnings are \$20.47.

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION**

Table: Estimated total annual cost to respondent for hours burden

<b>Description of the Collection Activity</b>	Estimated Total Annual Burden on Respondent (Hours)	Estimated Average Income Per Hour	Estimated Cost to Respondents
Submission of Report	1,050  (calculated by taking weighted average of 21 hours x 50 respondents per year)	\$23	\$24,150

It should be noted that this hour burden estimate applies to the full collection as it will be submitted to the U.S. Government and does not include or calculate time spent by corporate counsel editing/redacting portions of the full report for the “public” report. This is for two reasons 1) The Public Report does not necessitate respondents to collect any new information; therefore the U.S. Government Report presents the most complete basis for estimating the PRA information collection burden; and 2) The State Department expectation is that the Public Report and the U.S. Government Report will be similar except for those circumstances in which the respondent determines in good faith that it considers certain information to be exempt from disclosure under FOIA Exemption 4.

13. As discussed in the previous question, the collection requests a summary of information that is either already a part of company policies and procedures (human rights, environmental, worker rights, and anti-corruption due diligence) or are incidental to company operations (payments made to Government entities). Therefore the only costs associated with the collection are internal costs based on the burden hour estimates provided above. In the case of keeping records of meetings with military officials, which may not be incidental to company operations, it is estimated that the company official conducting the meeting will log and maintain a short record of the meeting using basic word processing software which any company making foreign investments over \$500,000 is likely to already own. Therefore, there are no anticipated additional costs to respondents to collect this information.

14. Total estimated annual cost to the Federal government is \$6,800. (See attached spreadsheet).

15. This is a new collection.

16. A respondent shall submit a public version of the collection that redacts before submission any information it considers in good faith to be exempt from disclosure under FOIA Exemption

## **SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION**

4, as outlined in #7 above. Respondents will submit this public version of the report to the Department of State annually by July 1, which will then be published at state.gov.

17. No such approval is sought; the current OMB expiration date will be displayed on the instrument.

18. The Department does not seek any exception to the statement, "Certification for Paperwork Reduction Act Submissions," of DS 83-I.

### **B. Collections of Information Employing Statistical Methods**

This collection does not employ statistical methods.