SUMMARY: This document revises the mailing address and web-based submission procedures for filing certain notices under the Department of Labor (Department) Employee Benefits Security Administration’s fiduciary-level fee disclosure regulation under section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA). Responsible plan fiduciaries of employee pension benefit plans must file these notices with the Department to obtain relief from ERISA’s prohibited transaction provisions that otherwise may apply when a covered service provider to the plan fails to disclose information in accordance with the regulation’s requirements.

DATES: This amendment to the 408(b)(2) regulation is effective September 14, 2012, without further action or notice, unless significant adverse comment is received by August 15, 2012. If significant adverse comment is received, the Department will publish a timely withdrawal of this amendment in the Federal Register.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments submitted by RIN 1210–AB54, may be submitted by one of the following methods:

- Email: e-ORI@dol.gov.

FOR FURTHER INFORMATION CONTACT: Allison Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On February 3, 2012, the Department published a final regulation under ERISA section 408(b)(2) (the “408(b)(2) regulation”), requiring that certain service providers to pension plans disclose information about the service providers’ compensation and potential conflicts of interest. These disclosure requirements were established to provide guidance for compliance with a statutory exemption from ERISA’s prohibited transaction provisions. If the disclosure requirements of the 408(b)(2) regulation are not satisfied, a prohibited provision of services under ERISA section 406(a)(1)(C) will occur, with consequences for both the responsible plan fiduciary and the covered service provider. However, paragraph (c)(1)(ix) of the final regulation exempts a responsible plan fiduciary from the prohibited transaction restrictions, if the fiduciary takes certain specified steps upon discovery of a disclosure failure. Among other steps, the responsible plan fiduciary must make a written request to the covered service provider for the undisclosed information. If the covered service provider does not comply with this request within 90 days, the responsible plan fiduciary must so notify the Department.

The final 408(b)(2) regulation, in paragraph (c)(1)(ix)(F), provides two alternative methods for submitting such notices to the Department. Responsible plan fiduciaries may send notices to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave. NW., Suite 600, Washington, DC 20210. Alternatively, notices may be sent electronically to OE-DelinquentSPnotice@dol.gov. The direct final rule published today, and described below, amends these submission procedures to reflect a new mailing address and to provide for electronic submission through the Department’s Web site.

B. Overview of Amendment to 408(b)(2) Regulation

The direct final rule being published today as part of this notice amends 29 CFR 2550.408b–2(c)(1)(ix)(F) to revise the mailing address and enhance the web-based submission procedure for responsible plan fiduciaries to file required notices under the regulation’s fiduciary class exemption provision. Fiduciaries may continue to send paper notices to the Department; however, a dedicated post office box has been established to replace the original mailing address. The new mailing address is: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, DC 20013. Further, effective September 14, 2012, the Department is eliminating the previously available email address (OE-DelinquentSPNotice@dol.gov). Instead, pursuant to instructions that will be separately provided by the Department, responsible plan fiduciaries who wish to submit notices electronically will be able to do so through a dedicated link on the Department’s Web site, at www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html. This Web page will include clear instructions for how to submit the required notification and will provide immediate confirmation to responsible plan fiduciaries that the notice has been received by the Department.

The Department believes that the new web submission procedure will benefit both responsible plan fiduciaries and the Department and, therefore, does not anticipate any significant adverse comment on this amendment. The submission process will be easier for responsible plan fiduciaries, because the Web page will include clear instructions and will assist responsible plan fiduciaries by ensuring that they include all of the information required by the regulation’s notice provision. Plan fiduciaries, especially for small plans, will be more easily able to take advantage of the relief provided by the 408(b)(2) regulation’s class exemption.
D. Regulatory Impact Analysis

1. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, OMB has been determined that this action is not “significant” within the meaning of section 3(f)(4) of the Executive Order and therefore is not subject to review by OMB.

2. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. This direct final regulation is exempt from the APA’s notice and comment requirements because the Department made a good cause finding earlier in this preamble that a general notice of proposed rulemaking is not necessary. Therefore, the RFA does not apply and the Department is not required to either certify that this regulation would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Department carefully considered the likely impact of the rule on small entities. The direct final rule will enhance the web-based submission procedure for responsible plan fiduciaries, especially for small plans, to file required notices under the regulation’s fiduciary class exemption provision. The Web page will include clear instructions and ensure that responsible plan fiduciaries include all of the required information and provide an immediate electronic confirmation that their notice has been received. No additional burden is imposed on such fiduciaries, because, as discussed earlier in this preamble, the direct final rule allows them to continue to send notices to a dedicated post office box that the Department has established to replace the original mailing address provided in the final rule. Based on the foregoing, the Department hereby certifies that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

3. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d) for the final regulation that was published on February 3, 2012. OMB approved the ICR on March 29, 2012, under control number 1210-0133, which is currently scheduled to expire on March 31, 2015. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

PRA Addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N 5647, Washington, DC 20210. Telephone (202) 210-8410; Fax: (202) 219-4748. These are not toll free numbers.

OMB has determined that the direct final rule does not implement any substantive or material change to the information collection; therefore, no change is made to the ICR and no further review is requested of OMB at this time.

4. Congressional Review Act

This direct final rule is subject to the Congressional Review Act provisions of
the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and has been transmitted to Congress and the Comptroller General for review.

5. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the direct final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

6. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The direct final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the direct final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and, as such, have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, the Department amends chapter XXV, subchapter F, part 2550 of title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 continues to read as follows:


2. Section 2550.408b–2 is amended by revising paragraph (c)(1)(ix)(F) to read as follows:

§ 2550.408b–2 General statutory exemption for services or office space.

* * * * *

(c) * * *

(1) * * *

(ix) * * *

(F) The notice required by paragraph (c)(1)(ix)(C) of this section shall be furnished to the U.S. Department of Labor electronically in accordance with instructions published by the Department; or may be sent to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, DC 20013; and

* * * * *

Signed at Washington, DC, this 2nd day of July 2012.

Phyllis C. Borzi,
Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2012–17013 Filed 7–13–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SATS No. IN–160–FOR; Docket ID: OSM–2011–0008]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving amendments to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed to revise its rules concerning ownership and control provisions, periods of liability, performance bond release, revegetation standards, underground mining explosives, and cessation orders, to be no less effective than the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

DATES: Effective Date: July 16, 2012.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:
I. Background on the Indiana Program
II. Submission of the Amendment
III. OSM’s Findings
IV. Summary and Disposition of Comments
V. OSM’s Decision
VI. Procedural Determinations

I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that it has programs which provide for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Indiana program in the July 26, 1982, Federal Register (47 FR...