LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2009–3]

Mandatory Deposit of Published Electronic Works Available Only Online

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend its regulations governing mandatory deposit of electronic works published in the United States and available only online. The amendments would establish that such works are exempt from mandatory deposit until a demand for deposit of copies or phonorecords of such works is issued by the Copyright Office. They would also set forth the process for issuing and responding to a demand for deposit, amend the definition of a ''complete copy'' of a work for purposes of mandatory deposit of online–only works, and establish new best edition criteria for electronic serials available only online. The Copyright Office seeks public comment on these proposed revisions.

DATES: Written comments must be received in the Office of the General Counsel of the Copyright Office no later than August 31, 2009. Reply comments must be received in the Office of the General Counsel of the Copyright Office no later than September 28, 2009.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room 401, 101 Independence Avenue, SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. E.D.T. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office. If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Deputy General Counsel, or Christopher Weston, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202)–707–8366.

SUPPLEMENTARY INFORMATION:

Historical Context

Under section 407 of the Copyright Act of 1976, Title 17 of the United States Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two complete copies (or, in the case of sound recordings, two phonorecords) of the best edition of the work with the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect copyright in the work, but it may subject the copyright owner to fines and other monetary liability if the owner fails to comply after a demand for deposit is made by the Register of Copyrights. These general provisions, however, are subject to limitations. Section 407 also provides that the Register of Copyrights ''may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories.'' 17 U.S.C. 407(c).

Accordingly, the Copyright Office, with the approval of the Librarian of Congress, established regulations governing mandatory deposit and deposit for registration of copyright, which are set forth in Chapter II, Part 202 of Title 37 of the Code of Federal Regulations (CFR). Section 202.19 establishes the standards governing mandatory deposit of copies and phonorecords published in the United States for the Library of Congress. Section 202.20 prescribes rules pertaining to the required deposit for registration of a copyright claim with the Copyright Office under section 408 of Title 17, and section 202.21 allows for a deposit of identifying material in lieu of copies or phonorecords in certain cases, for both mandatory deposit and registration deposit. In addition, the Library of Congress's Best Edition Statement in Appendix B of Part 202 specifies the required deposit in instances where ''two or more editions of the same version of a work have been published.''

When the mandatory deposit regulations were first issued in 1978, the Copyright Office adopted a regulation exempting machine–readable works. It reads as follows:

> Literary works, including computer programs and automated databases, published in the United States only in the form of machine–readable copies (such as magnetic tape or disks, punch cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device [are exempted]. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microform), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

37 CFR 202.19(c)(5) (1978). At the time this exemption was promulgated, copies of such machine–readable works were not widely marketed to the public. Thus, the Library decided not to require their deposit.

However, by the mid–1980s many important reference materials traditionally made available only in print form were being published in whole or in part in machine–readable form *(e.g, CD–ROM)* and the public's demand for access to and use of these materials had increased significantly. In addition, the Library''s interest in collecting computer programs published in IBM and Macintosh formats was growing, and it needed a way to obtain these works for its collection. As a result, the Library established a Machine–Readable Collections Reading Room, and, in 1989, the Copyright Office amended the machine–readable copies exemption so that machine–readable works *published in physical* form were subject to mandatory deposit and only ''automated databases available only online in the United States'' were exempted. 54 FR 42295 (Oct. 16, 1989).[1]

The 1989 amendments also added two classes of works to the list of those not covered by the exemption: ''automated databases distributed only in the form of machine–readable copies (such as magnetic tape or disks, punch cards, or the like) from which the work cannot

[1]The 1989 rulemaking did not suggest that electronic online–only works should also be subject to mandatory deposit, and there is no evidence that such an outcome was contemplated. In fact at that time, the Library did not possess the technological means of ingesting copies of online–only works.

ordinarily be visually perceived except with the aid of a machine or device'' and ''computerized information works in the nature of statistical compendia, serials, and reference works.'' Two years later, the Copyright Office amended section 202.19(c)(5) yet again to explicitly identify CD–ROM–formatted works as another category of works no longer included in the exemption. 56 FR 47402 (Sept. 19, 1991).

Regulatory Interpretation and Practice.

The term ''automated database,'' although used in the regulations to characterize a class of works, is a term that has not been defined in Title 17, and neither the Copyright Office regulations regarding mandatory deposit, nor the relevant Federal Register notices proposing and implementing regulatory changes, provide a definition of the term. However, the Copyright Office did provide a definition in its Circular 65: *Copyright Registration for Automated Databases*:[2] The circular defines an ''automated database'' as ''a body of facts, data, or other information assembled into an organized format suitable for use in a computer and comprising one or more files.'' This definition comports with the general understanding of what constitutes a database, in that a database usually would not include works like journals, newspapers or encyclopedias.

Even so, the Copyright Office practice to date has been, for purposes of mandatory deposit, to interpret this category broadly to encompass *all* electronic works published only online. To understand how this interpretation evolved, it should be noted that when section 202.19(c)(5) was amended in 1989, there was no tension involved in using the category ''automated databases available only on–line in the United States'' to refer to all online–only publications. For all practical purposes, the only works being published online at that time were automated databases, *e.g.* Westlaw and Nexis. The Copyright Office, however, did not revise its definition of automated databases as other categories of works, such as articles and serial titles, began to be published online. It chose instead to include these works in the exempted category ''automated databases available only on–line in the United States'' as a matter of convenience because, at that time, the Library exhibited neither the intention nor the technological ability to collect such works. Unfortunately, the effect of these practices has been to stretch the definition of the excluded category ''automated databases available only on–line in the United States'' beyond its generally understood limits. Hence, the proposed revision to the exemption will replace this category with the more accurate ''electronic works published in the United States and available only online.''

Proposed Qualified Exemption: Demand–Based Deposit of Electronic Works Published in the United States and Available Only Online

Twenty years have passed since the adoption of the regulation used to exclude from mandatory copyright deposit electronic works published in the United States and available only online. In that time, the Internet has grown to become a fundamental tool for the publication and dissemination of millions of works of authorship. To cite just one pertinent example, the Library has determined that there are now more than five thousand scholarly electronic serials available exclusively online, with no print counterparts. In some cases the Library has purchased subscriptions to these periodicals, but such subscriptions are typically ''access only,'' and rarely allow the Library to acquire a ''best edition'' copy for its collections. Thus, the current inability of the Library to acquire online–only works through mandatory copyright deposit places the long–term preservation of the works at risk.

To fulfill its mandate of sustaining and preserving a universal collection of knowledge, the Library is currently developing technological systems that will allow it to electronically ingest online–only works and maintain them in formats suitable for long–term preservation. As part of this process, the Library will also establish policies and practices to insure the security and integrity of its electronic collections, and to provide appropriate, limited access as allowed by law. So that this strategy may be implemented, the Copyright Office proposes to amend the mandatory copyright deposit regulations and thus enable the on–demand mandatory deposit of electronic works published in the United States and available only online (*i.e.*, not published in physical form). Via this notice, the Office seeks public comment on the proposed regulatory changes.

To date, mandatory copyright deposit has been one of the most important methods for building the Library''s collections and making it the world''s largest repository of knowledge and creativity. There is no reason why mandatory deposit cannot or should not serve this function in the digital environment as well. If, for example, a scholarly journal is subject to mandatory copyright deposit when published in paper copies, it is logical and reasonable to demand its deposit once it is published solely in an online–accessible format, and such is the goal of the proposed amendments.

a. Qualified Exemption for Electronic Works Published in the United States and Available Only Online

This notice proposes that the current section 202.19(c)(5) exemption be amended so that all electronic works published in the United States and available only online enjoy a qualified exemption from mandatory deposit, which would mean that any work in this class is exempt *until* the Copyright Office issues a demand for its deposit. This revised exemption would apply to all published electronic works available only online. It would apply to serials, monographs, sound recordings, automated databases, and all other categories of electronic works. Furthermore, because the revised exemption would apply exclusively to published online–only works, there will be no need to retain the current list of machine–readable works in physical formats to which the exemption does not apply. It is important to emphasize, however, that the revised exemption would not apply to those works published in both physical and online formats. These works, because they are not published ''only''online, were never exempted from mandatory deposit by § 202.19(c)(5).[3]

In proposing a qualified exemption, the Office seeks to balance the current needs of the Library of Congress against the imposition of a mandatory requirement on all copyright owners of works published exclusively online to deposit one complete copy of the best edition. Guidance for adopting this approach comes from the House and Senate Reports for the Copyright Act of 1976 which state that:

> The fundamental criteria governing regulations issued under section 407(c) . . . would be the needs and wants of the Library. The purpose of this provision is to make the deposit requirements as flexible as possible . . . so that reasonable

[2] Circular 65 is currently under revision.

[3] Note that the Library''s current Best Edition Statement for ''Works Existing in More Than One Medium'' does not currently list electronic formats. *See, e.g.*, 37 CFR 202.20(b)(1) (''For purposes of this section, if a work is first published in both hard copy, *i.e.*, in a physically tangible format, and also in an electronic format, the current Library of Congress Best Edition Statement requirements pertaining to the hard copy format apply.'') Nevertheless, the Library of Congress retains the authority to determine what constitutes ''best edition'' and it may decide at a future time that, when a particular work is published in both print and electronic editions, the electronic edition is the ''best edition'' for purposes of mandatory deposit.

> adjustments can be made to meet practical needs in special cases. The regulations, in establishing special categories for these purposes, would necessarily balance the value of the copies or phonorecords to the collections of the Library of Congress against the burdens and costs to the copyright owner of providing them.

H.R. Rep. No. 94–1476, at 150 (1976); S. Rep. No. 94–473, at 133 (1975). By exempting published electronic works available only online until a demand is made, the proposed qualified exemption addresses the practical difficulties of acquiring works published in non–physical formats, ensures that the Library will only receive those works that it needs for its collections, and reduces the burdens on copyright owners, who will only have to deposit those works demanded by the Copyright Office.

b. Single Copy of Work Demanded

Title 17's mandatory deposit provision requires the deposit of two copies or phonorecords [17 U.S.C. 407(a)(1)], but grants the Copyright Office authority to reduce that number to one by regulation. Pursuant to this authority, the proposed qualified exemption will state that only a single copy or phonorecord of a demanded work is required. The Office has determined that transmitting duplicate electronic files presents a risk of slowing down the electronic ingest system of the Library, particularly in the case of a work consisting of a single large file or of many small files. Upon receipt of the single copy of a demanded work, the Library may allow simultaneous access by two on–site users. This achieves the statute''s goal of providing two copies of a published work to the Library of Congress in a more efficient and flexible manner.

c. Demand Deposit Process

This notice proposes that published electronic works available only online be deposited only pursuant to a demand issued by the Copyright Office, under the authority of section 407(d) of Title 17. The Library intends to phase in its collection of online–only works on a category–by–category basis. The initial revision of § 202.19(c)(5) proposed in this notice identifies ''electronic serials'' as being exempt but subject to demand, because that is the first category of online–only works that the Library intends to collect. As the Library expands its collection of online–only works to other categories, these new categories would be identified in § 202.19(c)(5) as subject to demand, following a notice and comment period.

Under the proposed regulation, once a category of works is identified as being subject to demand under the qualified exemption of § 202.19(c)(5), the Copyright Office would be able to make a demand on the owner of copyright or of the exclusive right of publication for one complete copy of a work in that category, for any such work published on or after the date that this proposed regulation goes into effect. A demand for a copy of an online–only periodical or other serial would cover not only the issue or issues specified in the demand, but also all subsequent issues of the serial title.

The owner of copyright or of the exclusive right of publication would have three months from the date of receipt of the notice in which to make the deposit, in keeping with the time period allotted by statute for deposit of the best edition of a published work not subject to an exemption. *See* 17 U.S.C. 407(a). The proposed regulation also includes a provision governing requests for special relief from the requirements of the demand process to accommodate, for example, situations where the work is no longer available in any of the formats listed in the Best Edition Statement.

d. Notice of Publication

The Library intends to commence the demand–deposit program proposed by this notice with the ''electronic serials'' category of electronic works published in the United States and available only online. The Library believes that sufficient bibliographic information exists on electronic serials (such as indexes, online search tools, and announcement lists) that it will be able to independently determine which titles to demand. However, experience with the demand–deposit process may demonstrate that a number of important electronic serial titles are escaping the Library''s notice. Moreover, other categories of online–only works likely are not subject to the same level of bibliographic control as electronic serials, and hence may prove to be even more elusive.

The Copyright Office is thus soliciting comments on the question of whether the owner of copyright or of the exclusive right of publication in an online–only work should be required to notify the Library of Congress upon the publication of a new online–only work in the United States. Such a notice of publication would provide an additional source of information on which the Library could rely in ascertaining what works are available.

As a threshold matter, the Office is interested in comments regarding whether promulgating such a notice requirement as a condition of the qualified exemption from mandatory deposit is within the Office''s authority as granted by 17 U.S.C. 407. In addition, commenters should address whether a notice requirement is necessary and prudent and whether it would strike the appropriate balance between the needs of the Library for timely publication information and the imposition of a further requirement on copyright holders. Comments are also welcome on the content and frequency of notices of publication. For example, would it be preferable to require notification upon the publication of each new work or serial title, or instead to require the submission of a list of all new publications at a predetermined frequency (monthly, quarterly, etc.)? Finally, assuming the advisability of a notice of publication requirement, what should the consequences be for noncompliance?

e. Revised ''Complete Copy'' Definition

Section 407 of Title 17 requires the deposit of a complete copy of the best edition of a work published in the United States. Section 202.19(b)(2) of the Copyright Office regulations defines a ''complete copy'' of a work for purposes of mandatory deposit as one that ''includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph(c) of this section.'' Published electronic works often contain elements such as metadata and formatting codes that, while they are not perceptible to the naked eye or ear, are part of the unit of publication. These elements are also critical for continued access to and preservation of a work once it is deposited. Thus, this notice proposes to clarify that a ''complete copy'' of a published electronic work available only online includes the associated metadata and formatting codes that make up the unit of publication.

f. Best Edition Statement for Electronic Serials

This notice proposes the creation of a new section of the Best Edition Statement in Appendix B to Part 202, describing best edition criteria for published electronic works available only online in the United States. These criteria are based primarily upon the potential sustainability of the various digital formats currently in use. A work deposited in a sustainable format is one that is less difficult and more cost–effective to transform or migrate to future systems as technologies change.

Consistent with the Library''s current collection priorities, demands under the proposed amendments will initially

focus on material that has traditionally been published in hard copy. The first category of electronic works published in the United States and available only online for which the Library is proposing best edition criteria is electronic serials, a term that this notice proposes to define. It is the understanding of the Copyright Office that the formats listed in the proposed Best Edition Statement for electronic serials are all currently publication formats used by some, if not all, electronic serial publishers. Best edition criteria for other categories of electronic works published in the United States and available only online will follow as they are developed.

List of Subjects in 37 CFR Part 202

Copyright and registration of claims to copyright

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 202 of 37 CFR, as follows:

PART 202 – PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702

2. Amend § 202.19 as follows:

a. By revising paragraph (b)(2);

b. By adding a new paragraph (b)(4); and

c. By revising paragraph (c)(5).

The additions and revisions to § 202.19 read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(b) * * *

(2) A complete copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section.

(i) In the case of sound recordings, a (complete(phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container).

(ii) In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a (complete(copy; and

(B) If the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a (complete(copy.

(iii) In the case of a motion picture, a copy is (complete(if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(iv) In the case of an electronic work published in the United States and available only online, a copy is (complete(if it includes all elements constituting the work in its published form, i.e., the complete work as published, including metadata and formatting codes otherwise exempt from mandatory deposit.

* * * * *

(4) For purposes of § 202.19(c)(5) of these regulations, an *electronic serial* is an electronic work published in the United States and available only online, issued or intended to be issued in successive parts bearing numerical or chronological designations, and intended to be continued indefinitely. This class includes periodicals; newspapers; annuals; and the journals, proceedings, transactions, etc. of societies.

(c) * * *

(5) Electronic works published in the United States and available only online. This exemption includes electronic serials available only online only until such time as a demand is issued by the Copyright Office under the regulations set forth in § 202.24. This exemption does not apply to works that are published in both online, electronic formats and in physical formats, which remain subject to the appropriate mandatory deposit requirements.

* * * * *

3. Add a new § 202.24, as follows:

§ 202.24 Deposit of Published Electronic Works Available Only Online

(a) Pursuant to authority under 17 U.S.C. 407(d), the Register of Copyrights may make written demand to deposit one complete copy or phonorecord of an electronic work published in the United States and available only online upon the owner of copyright or of the exclusive right of publication in the work, under the following conditions:

(1) Demands may be made only for works in those categories identified in § 202.19(c)(5) of these regulations as being subject to demand.

(2)Demands may be made only for works published on or after [the effective date of the final regulation].

(3)The owner of copyright or of the exclusive right of publication must deposit the demanded work within three months of the date the demand notice is received.

(4)If the demanded work is not available in any of the formats listed in the Best Edition Statement, the owner of copyright or of the exclusive right of publication may request special relief under paragraph (c) of this section.

(b) *Definitions*. (1) ''Best edition'' has the meaning set forth in § 202.19(b)(1) of this part.

(2)''Complete copy'' has the meaning set forth in § 202.19(b)(2) of this part.

(c)*Special relief*. (1) In the case of any demand made under paragraph (a) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i)Extend the time period provided in section 407(d) of Title 17[e1];

(ii)Permit the deposit of incomplete copies or phonorecords; or

(iii)Permit the deposit of copies or phonorecords other than those normally comprising the best edition.

(2)Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3)Requests for special relief under this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

4.Amend Part 202, Appendix B, Section I as follows:

a.By redesignating section IX as section X; and

b.By adding a new section IX.

The revision to Part 202, Appendix B, Section I reads as follows:

Appendix B to Part 202 – ''Best Edition'' of Published Copyrighted

Works for the Collections of the Library of Congress

* * * * *

IX. Electronic Works Published in the United States and Available Only Online

For all deposits, UTF–8 encoding is preferred to ASCII encoding and other non UTF–8 encodings for non–Latin character sets in all categories below.

A.Electronic Serials

1. Content Format

a. Level 1: Serials–specific structured/markup format:

(i)Content compliant with the NLM Journal Archiving (XML) Document Type Definition (DTD), with presentation stylesheet(s), rather than without.

(ii)Other widely used serials or journal XML DTDs/schemas, with presentation stylesheet(s), rather than without.

(iii)Proprietary XML format for serials or journals (with documentation), with DTD/schema and presentation stylesheet(s), rather than without.

b.Level 2: Page–oriented rendition:

(i)PDF/A (Portable Document Format/Archival; compliant with ISO 19005).

(ii)PDF (Portable Document Format, with searchable text, rather than without).

c.Level 3: Other formats:

(i)XHTML/HTML, as made available online, with presentation stylesheets(s), rather than without.

(ii)XML (widely used, publicly documented XML–based word–processing formats, *e.g.* ODF/OpenDocument Format, OpenXML), with presentation stylesheets(s), if appropriate, rather than without.

(iii)Plain text.

(iv)Other formats (*e.g.*, proprietary word processing or page layout formats).

2.Metadata Elements:

If it has already been gathered and is available, descriptive data (metadata) as described below should accompany the deposited material.

a.Title level metadata: serial or journal title, ISSN, publisher, frequency, place of publication.

b.Article level metadata, as relevant/applicable: volume(s), number(s), issue dates(s), article title(s), article author(s), article identifier (DOI, etc.).

c.With other descriptive metadata (*e.g.*, subject heading(s), descriptor(s), abstract(s)), rather than without.

3.Access and copy controls:

a.Editions without access and copy controls, or with those controls disabled, are preferred over editions with such controls.

Dated: July 7, 2009.

Marybeth Peters,

Register of Copyrights.

[FR Doc. E9–16675 Filed 7–14–09; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2006–0922; FRL– 8930–6]

RIN 2060–AO19

Public Hearings for Primary National Ambient Air Quality Standards for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing two public hearings to be held for the proposed rule ''Primary National Ambient Air Quality Standards for Nitrogen Dioxide'' which is published elsewhere in this **Federal Register.** The hearings will be held in Arlington, Virginia, on Monday, August 3, 2009 and Los Angeles, California, on Thursday, August 6, 2009.

In the notice of proposed rulemaking, EPA proposes to make revisions to the primary nitrogen dioxide (NO_2) national ambient air quality standard (NAAQS) in order to provide requisite protection of public health. Specifically, EPA proposes to supplement the current annual standard by establishing a new short-term NO_2 standard based on the 3-year average of the 99th percentile (or 4th highest) of the annual distribution of 1-hour daily maximum concentrations. The EPA proposes to set the level of this new standard within the range of 80 to 100 parts per billion (ppb) and solicits comment on standard levels as low as 65 ppb and as high as 150 ppb. Also, EPA proposes to establish requirements for an NO_2 monitoring network that will include monitors within 50 meters of major roadways. In addition, EPA is soliciting comment on an alternative approach to setting the standard and revising the monitoring network. Consistent with the terms of a consent decree, the Administrator will sign a notice of final rulemaking by January 22, 2010.

DATES: The public hearings will be held on August 3, 2009 in Arlington, Virginia, and on August 6, 2009 in Los Angeles, California. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The hearings will be held at the following locations:

1. *Arlington, VA:* Environmental Protection Agency Conference Center, First Floor Conference Center South, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202. All visitors will need to go through security and present a valid photo identification, such as a driver's license.

2. *Los Angeles, CA:* Sheraton Los Angeles Downtown, 711 South Hope Street, Los Angeles, CA 90017, telephone (213) 488–3500.

Written comments on this proposed rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking for the addresses and detailed instructions for submitting written comments.

A complete set of documents related to the proposal is available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov* .

The EPA Web site for the rulemaking, which includes the proposal and information about the public hearings can be found at: *http://www.epa.gov/air/nitrogenoxides/.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearings or have questions concerning the public hearings, please contact Ms. Tricia Crabtree at the address given below under **SUPPLEMENTARY INFORMATION.**

Questions concerning the ''Primary National Ambient Air Quality Standards for Nitrogen Dioxide'' proposed rule should be addressed to Dr. Scott Jenkins, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division (C504–06), Research Triangle Park, NC 27711, telephone (919) 541–1167, *e-mail: jenkins.scott@epa.gov* .

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearings is published elsewhere in this **Federal Register** and is also available on the following Web site: *http://www.epa.gov/air/nitrogenoxides/.* The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be