

INFORMATION ON THE PANEL FORMATION PROCESS FOR THE EPA FIFRA SCIENTIFIC ADVISORY PANEL

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OUTLINE OF PANEL FORMATION PROCESS FOR CONSULTANTS SERVING THE FIFRA SCIENTIFIC ADVISORY PANEL THROUGH MEMBERSHIP ON THE FOOD QUALITY PROTECTION ACT SCIENCE REVIEW BOARD

Section 104 of the Food Quality Protection Act of 1996 (Public Law 104-70) established a Science Review Board (FQPA Science Review Board) consisting of at least 60 scientists who shall be available to the FIFRA Scientific Advisory Panel (FIFRA SAP) on an ad-hoc basis to assist in reviews conducted by the Panel. The purpose of this document is to describe the process of identifying candidates and selecting expert consultants to serve on the FQPA Science Review Board for a FIFRA SAP session.

Background

- FQPA Science Review Board members provide additional scientific expertise to augment the knowledge-base of the FIFRA SAP.
- Similar to FIFRA SAP members, Board members offer technically and scientifically sound, independent peer review, and have not previously been associated with either the Agency, associated regulated industries, or stakeholder communities, nor stated a position on the particular matter being reviewed.
- The Agency strives to have the panel formation process transparent to the public so they can understand and participate in the process.

Balanced Technical Expertise of the Panel

- Balanced membership is driven by a number of considerations characterized by: inclusion of the necessary areas of technical expertise, different scientific perspectives within each technical discipline, and the collective breadth of experience needed to address the Agency's charge.
- The FIFRA SAP is chartered to provide expert scientific advice. This charter distinguishes the FIFRA SAP from representative advisory committees that exist to provide advice related to stakeholder viewpoints. Thus, FIFRA SAP participation is balanced based on the function of the technical expertise required, not by various stakeholders' points of view.

Stages in Panel Formation Process

1) Identification of Candidates

Technical expertise required

- The FIFRA SAP Staff Office works with the Agency Program Offices to identify areas of technical expertise needed for each

meeting including, but not limited to, toxicology, pathology and environmental biology.

Nominations

- Nominations are solicited through a Federal Register notice announcing the FIFRA SAP meeting, Permanent Panel members, staff of the Agency Program Office, scientists already nominated, professional/scientific societies, and other identifiable stakeholder community representatives.
- Published scientific literature is reviewed in a search for technical experts.

2) Screening

Interview

- Each nominee is interviewed to assess interest, availability, and appropriateness to serve on a session (see the Checklist for Telephone Interviews . . . beginning on page 5).

Expertise

- Curriculum Vitae and related information (e.g. recent publications) are reviewed to verify relevant expertise for the topics under review.

Ethics considerations (see the Information Regarding EPA's Financial Disclosure Form Review Process . . . beginning on page 10)

- Expert Consultants to the FIFRA SAP through membership on the FQPA Science Review Board, are hired as Federal Special Government Employees and are subject to the provisions of the Federal Advisory Committee Act and Ethics in Government Act of 1978.
- A Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110-48) must be completed [sample form available on EPA FIFRA SAP web site].
- FIFRA SAP Staff Designated Federal Official, FIFRA SAP Executive Secretary and Office Deputy Ethics Official review completed form to determine whether there is a financial conflict between the Science Review Board member's public

responsibilities and private interests/activities and the appearance of impartiality.

3) Panel selection

- Technical and scientific expertise and experience are the primary selection criteria.
- Summary of other factors:
Availability and willingness to serve.
Scientific credibility and independence.
Lack or absence of a conflict of interest.
- Exercising professional judgment, the FIFRA SAP Executive Secretary, in consultation with the FIFRA SAP Designated Federal Official, Panel session chair and Permanent Panel members, makes final decision on expert consultant selection(s).

CHECKLIST FOR TELEPHONE INTERVIEW FOR EXPERT CONSULTANTS SERVING THE FIFRA SAP THROUGH MEMBERSHIP ON THE FQPA SCIENCE REVIEW BOARD (SRB)

Purpose

The purpose of this checklist is to provide a standard operating procedure (SOP) for SAP Designated Federal Officials (DFO) to follow when conducting telephone interviews with prospective candidates for membership on the FQPA SRB. The checklist covers DFO activities prior to the interview as well as points to cover during the telephone call (denoted by ● bullets). Key decisions points are highlighted throughout the checklist (denoted by ◆ bullets and larger, *italicized* text).

Background (Before Calling)

- Become familiar with the meeting profile sheet. Discuss profile sheet with Program Office leads for a full understanding of the topic and issues.
- ◆ *Decide whether topic is a particular matter of general applicability or a particular matter involving specific parties.*
- ◆ *Identify a Chair for the SAP session from the 7 permanent SAP members.*
- ◆ *Define expertise needed for the meeting discussions (e.g., toxicology, chemistry, risk assessment, statistics, etc.)*

Points to Cover During Interview

General

In general, the FIFRA SAP is looking for candidates who do not have financial conflict of interest concerns and can render impartial advice (e.g., do not have preformed positions that have been publicly stated).

- Keep copy of meeting profile sheet available for reference during telephone call.
- Discuss meeting topic and dates providing as much background as possible.
- Inquire about expertise, interest and availability.
- ◆ *Decide whether candidate has correct expertise.*

FIFRA § 25(d)

- Description and role of the FIFRA SAP (e.g., 7 members, scientific peer review, etc.)
- Description and role of the FQPA Science Review Board

FACA

- Requirements for open deliberations, public participation, and access to documents
- Ask about service on other FACAs (130 day limit for SGEs across all FACAs)

Ethics

- Background on financial conflict of interest (statutory conflicts and appearance problems)
- For particular matters involving specific parties - de minimis exemption of **\$15,000**.
- For particular matters of general applicability - de minimis exemptions of **\$25,000** for one entity or **\$50,000** for all affected entities.
- Requirement for Special Government Employees to file the Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. EPA (3110-48).
- Review Form 3110-48. A copy can be faxed or e-mailed to assist with this discussion. (Note - if the candidate has a current 3110-48, this part of the interview can be used to update the form by recording any changes to each Part).

- Part 1: Statement regarding any change. . .

Note to disregard Part 1 unless the candidate has a current Form 3110-48 filed with the Agency.

- Part 2: Compensated Employment

Candidate reports any positions for self or spouse held in the preceding 2 years.

- Part 3: Non-Compensated Employment

Candidate Reports any NC elected or leadership positions held by self or spouse in the preceding 2 years.

- Part 4: Research Support and Project Funding

Include grants, contracts, and other funding mechanisms for preceding 2 years if PI, PM, significant collaborator, or

Director (self and spouse).

- Part 5: Consulting Activities

For self and spouse for preceding 2 years - be sure to include name of client

- Part 6: Compensated Expert Testimony

For self and spouse for preceding 2 years.

- Part 7: Assets: Stocks, Bonds, Real estate, etc.

For self, spouse and dependent children, with collective, fair market value greater than \$15,000 during preceding 2 years. Not diversified mutual funds unless you have control over the specific investment assets.

- Part 8: Liabilities

For self, spouse, and dependent children, greater than \$10,000 during preceding 12 months (not mortgages and car loans).

- Part 9: Identification of other information

Any other information relevant to financial conflict of interest or the appearance of lack of impartiality.

- Questions about independence and bias (Note - record answers in Part 9 of Form 3110-48 if a current form is on file for the candidate; otherwise instruct the candidate to address these questions in completing Part 9).

- For the topic of the upcoming meeting, have you had any previous involvement with the review document(s) under consideration, including authorship, collaboration with the authors, or previous peer review functions? If so, please identify that involvement.

- Have you served on previous advisory panels or committees that have addressed the topic under consideration? If so, please identify those activities.

- Have you made any public statements (written or oral) on the issue? If so, please identify those statements.

- Have you made any public statements that would indicate to an observer

that you have taken a position on the issue under consideration? If so, please identify those statements.

Meeting Process

1. Pre-meeting

- Panel assignments: report coordinator and lead discussants; panel members are assigned to questions (though free to comment on any question or other relevant issues)
- Sometimes, a pre-meeting teleconference – to cover administrative issues
- Review background materials, prepare comments, and coordinate comments with report coordinator or lead discussants prior to meeting.
- Comments are not restricted solely to the charge questions

2. Meeting

- Must discuss comments at the meeting for them to be summarized in the report
- Meeting discussion focuses on scientific topics (not policy and regulation)
- Participate actively at the meeting - again, only issues discussed at meeting can be included in report (though sometimes, post meeting thoughts can be captured in an appendix).

3. Post-meeting

- Coordinate final comments (as conveyed during the meeting) with the report coordinator and lead discussants
- DFO coordinates with the session chair on the minutes to ensure accuracy, thoroughness, completeness, and timeliness.
- Panel session chair approves the minutes.

Additional Information

<http://www.epa.gov/scipoly/sap/index.htm>

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**INFORMATION REGARDING EPA'S FINANCIAL DISCLOSURE FORM
REVIEW PROCESS FOR EXPERT CONSULTANTS SERVING THE FIFRA
SCIENTIFIC ADVISORY PANEL THROUGH MEMBERSHIP
ON THE FQPA SCIENCE REVIEW BOARD**

**Identifying Financial Conflicts of Interest and the
Appearance of a Lack of Impartiality**

INTRODUCTION

Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides the statutory authority for the establishment of the Scientific Advisory Panel (SAP), a federal advisory committee providing advice and recommendations as to the impact on health and the environment of regulatory actions under FIFRA. Section 25(d)(1) specifically describes a permanent panel of seven members selected by the Administrator of the Environmental Protection Agency (EPA) from nominations provided by the National Institutes of Health and the National Science Foundation. Section 104 of the Food Quality Protection Act (FQPA) of 1996 amended Section 25(d) of FIFRA creating a Science Review Board (SRB) consisting of at least 60 scientists who shall be available on an ad hoc basis to assist in reviews conducted by the permanent panel (FIFRA §25(d)(2)). The SRB members provide additional scientific expertise to augment the knowledge base of the permanent panel.

The process of selecting SRB members involves three stages: identification of candidates, screening, and selection. After working with Agency scientists to define the areas of technical expertise needed for each meeting topic, FIFRA SAP staff identifies candidates through nominations from the permanent panel, staff of the Agency Program Offices, scientists already nominated, professional/scientific societies, and other identifiable stakeholder community representatives. Nominations are solicited from the public through the Federal Register notice announcing each upcoming meeting. In addition, FIFRA SAP staff identifies candidates through other means, such as a review of published scientific literature.

Screening each candidate for membership on the SRB involves interviews to assess their interest, availability, and appropriateness to serve on the FIFRA SAP. The FIFRA SAP is chartered to provide expert scientific advice. This charter distinguishes the FIFRA SAP from representative advisory committees that exist to provide advice related to stakeholder view points. Thus, FIFRA SAP participation is based on the technical expertise required to address the Agency's charge to the panel and on achieving an overall balance of different scientific perspectives on the panel (as required by the Federal Advisory Committee Act or FACA). Therefore, expertise, as verified through reviewing Curriculum Vitae and related information, is a key consideration in screening candidates.

Ethics considerations (e.g., absence of a conflict of interest or an appearance of a lack of impartiality, including independence from the topic under review and lack of bias)

are another key aspect of screening candidates for the SRB. Generally, members of the SRB serve as EPA Special Government Employees in the Office of Prevention, Pesticides, and Toxic Substances (OPPTS). As Special Government Employees, they are subject to applicable federal ethics statutes and regulations including the financial disclosure provisions of the Ethics in Government Act (5 U.S.C. §§101-111) and 5 C.F.R. Part 2634.

Availability and willingness to serve, scientific expertise, and absence of a conflict of interest or an appearance of lack of impartiality are key among the factors affecting the selection decision for each candidate for membership on the SRB. EPA weighs these factors using professional judgment and, in consultation with the permanent panel, makes the final selection decision.

The purpose of this document is to provide additional information regarding the ethics screening of candidates for membership on the SRB. This information is provided to supplement the “Outline of Panel Formation Process for Consultants Serving the FIFRA Scientific Advisory Panel through Membership on the Food Quality Protection Act Science Review Board” and the “Checklist for Telephone Interview for Expert Consultants Serving the FIFRA SAP through Membership on the FQPA Science Review Board.”

BACKGROUND

FIFRA provides the statutory authority for the Administrator of the Environmental Protection Agency (EPA) to register (license for use) and otherwise regulate the use of pesticides. The FIFRA registration and regulatory processes have a substantial effect on the manufacture, sale, and distribution of pesticide products with potential corresponding effects on the pesticide industry, commercial crop production, and other entities. High standards of ethical conduct are in place for those who are employed by EPA to perform FIFRA related work and the financial interests and organizational affiliations of such employees must be carefully reviewed to ensure that there are no conflicts between their public duties and their private interests. For example, EPA’s supplemental ethics regulations (5 C.F.R. 6401.102) prohibit employees in the Office of Pesticide Programs (OPP, EPA’s program office with primary responsibility for implementation of FIFRA) from having outside employment with or holding stock or any other financial interest in companies that manufacture or provide wholesale distribution of pesticide products registered by the EPA.

The remainder of this document characterizes how the standards in place for those who are employed by EPA to perform FIFRA related work and the associated careful reviews of financial interests and organizational affiliations extend to candidates for membership on the SRB. In particular, this document focuses on the review of financial disclosure forms and summarizes the policies and practices followed by the FIFRA SAP staff since 1996, when passage of the Food Quality Protection Act created the Science Review Board and mandated the implementation of new scientific methods, thereby increasing the panel’s review activities. It should be noted that although it is possible to

give general guides regarding EPA's review of financial disclosure forms, the complexity and diversity of financial interests and organizational affiliations necessitate case-by-case reviews that are informed by the specifics of the particular matter under review by the FIFRA SAP.

As noted previously, the selection of scientists to serve on the SRB is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the SRB. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel (as required by FACA).

Generally, members of the SRB serve as EPA Special Government Employees in the Office of Prevention, Pesticides, and Toxic Substances (OPPTS). As Special Government Employees, they are subject to applicable federal ethics statutes and regulations including the financial disclosure provisions of the Ethics in Government Act (5 U.S.C. §§101-111) and 5 C.F.R. Part 2634. To satisfy the financial disclosure requirements, candidates for membership on the SRB, who are not full-time federal employees, file EPA Form 3110-48, *Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency* (full time federal employees file the Office of Government Ethics Form 450 or, if appropriate, the Public Financial Disclosure Report, SF 278). EPA Form 3110-48 was developed specifically for use by EPA advisory committees whose members serve as Special Government Employees, such as the EPA Science Advisory Board and the FIFRA SAP. Candidates for SRB membership use Form 3110-48 to provide detailed information on financial interests, organizational affiliations, and other activities to help identify any financial conflicts of interest and/or an appearance of a lack of impartiality (including a lack of independence from the matters under review and bias).

FIFRA defines the primary duties of the FIFRA SAP at section 25(d). The FIFRA SAP generally provides advice and recommendations on scientific issues that lead to decisions by the Administrator in carrying out the provisions of FIFRA; including evaluating the scientific underpinning of actions under sections 6(b), 6(c), and 25(a) of the Act. In addition, the FIFRA SAP may provide advice on scientific issues related to toxic chemicals regulated under the Toxic Substances Control Act (TSCA). Given the statutorily defined duties of the SAP under FIFRA and the close connection between the advice rendered by the panel and potential impacts on the pesticide registration process, any financial interests or organizational affiliations with the regulated industry and other

stakeholders in the pesticide registration process must be carefully reviewed and may result in disqualification from service on the SRB. Similar criteria apply when the SAP reviews matters related to TSCA regulated toxic chemicals. Candidates' financial disclosure forms are reviewed by the FIFRA SAP Designated Federal Officers (DFO) in consultation with the Deputy Ethics Official for the EPA OPPTS Office of Science Coordination and Policy (OSCP). Many potentially disqualifying financial interests or affiliations with the regulated industry are readily identifiable through the review process. However, the impact of some affiliations is less apparent and requires professional judgment on the part of the reviewers and, when necessary, consultation with the EPA Senior Counsel for Ethics. In addition, some types of interests and affiliations that may not directly result in disqualification may still be weighed in the Agency's final selection decisions.

The following sections expand on EPA's review of Form 3110-48, highlighting some common types of financial interests and organizational affiliations that typically result in the disqualification of candidates for appointment to the SRB when the panel is reviewing FIFRA related scientific issues. The descriptions provided in the following sections should be regarded as general guides. Given the complexity and diversity of financial interests and organizational affiliations, EPA reviews each specific case on its own merits.

IDENTIFICATION OF FINANCIAL CONFLICTS OF INTEREST, AND THE APPEARANCE OF A LACK OF IMPARTIALITY THROUGH REVIEW OF EPA FORM 3110-48

Overview

The primary statutory and regulatory considerations for identifying financial conflicts of interest and an appearance of a lack of impartiality can be found at 18 U.S.C. section 208 and 5 C.F.R. Part 2635.

18 U.S.C. §208 – “. . . whoever, being an officer or employee of the executive branch of the United States Government . . . including a special Government employee, participates personally and substantially as a Government officer or employee, through . . . the rendering of advice . . . in a judicial or other proceeding, application, . . . or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest [and] shall be subject to the penalties set forth in section 216 of this title.”

5 C.F.R. Part 2635.502 – “Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and

where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance of a problem and received authorization from the agency designee.”

The first step in the financial disclosure form review process is to determine whether the particular matter under review by the FIFRA SAP involves specific parties or is a particular matter of general applicability. This determination guides certain aspects of the financial disclosure review. A particular matter involving specific parties is defined as “any judicial or other proceeding, application, request for a ruling or other determination . . . typically. . . affecting the legal rights of the parties” (5 C.F.R. 2640.102(l)). The FIFRA SAP frequently reviews particular matters involving specific parties as the scientific issues typically relate to specific pesticide registration decisions or may have a disproportionate effect on a few pesticide manufacturers. A particular matter of general applicability is defined as “a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties” (5 C.F.R. 2640.102 (m)). Particular matters of general applicability that are reviewed by the FIFRA SAP typically involve issues related to testing and assessment guidelines that could have a broader, industry-wide impact.

EPA Form 3110-48 consists of eight sections (Parts 2-9) where specific information related to financial interests and organizational affiliations is reported (Part 1 is for indicating whether there have been changes since the previous filing). These sections cover compensated employment, non-compensated employment, research support and project funding, consulting activities, compensated expert testimony, assets, liabilities, and other information related to conflicts of interest or the appearance of a lack of impartiality. Note that the information included on Form 3110-48 is not limited to financial interests. The Form includes information related to non-financial organizational affiliations and activities that may result in an appearance of a lack of impartiality (including a lack of independence with respect to the particular matter under review by the FIFRA SAP or bias). For example, a non-compensated organizational affiliation may result in an appearance of lack of impartiality, certain public statements may suggest that the individual has already reached conclusions based on stakeholder positions on questions to be considered by the SAP (possibly indicating bias), and prior involvement with the matter under review may indicate a lack of independence. These issues must be carefully identified and considered through EPA’s review of Form 3110-48 and follow up discussions between the DFO and the candidate.

Most sections of EPA Form 3110-48 request information for the candidate for SRB membership and their spouse and cover a time period that includes the 2 years preceding the date of filing the form. The exceptions include Parts 7, 8, and 9 which request information for the candidate for membership, their spouse, **and dependent children**. Further, Part 8 (liabilities) limits the requested information to the preceding 12 months from the date of filing while Part 9 (other information) requests information covering a period that includes the 5 years preceding the date of filing Form 3110-48.

Though the information requested for Form 3110-48 generally covers time periods that are greater than 1 year preceding the date of filing, financial interests and organizational affiliations that ended more than 1 year prior to the date of filing are not necessarily disqualifying unless there is a continuing relationship or ongoing negotiation for a future relationship. Financial interests and organizational affiliations that ended less than 1 year prior to the date of filing are considered on a case by case basis, taking into consideration whether the particular matter under review involves specific parties or is a particular matter of general applicability (5 C.F.R. Part 2635, Subpart E).

EPA Form 3110-48

In the following sections, the term “covered entities” is used to refer to those types of entities whose activities or interests may be affected by EPA decisions on matters brought before the FIFRA SAP in such a way that individuals having financial or other relationships with such entities may have a financial conflict of interest or an appearance of a lack of impartiality (including a lack of independence or bias). In particular, covered entities include companies or persons that manufacture or provide wholesale distribution of pesticide products registered by the EPA, are currently seeking a pesticide registration or other relevant regulatory or adjudicatory finding from EPA, or companies whose corporate parent, subsidiary, or affiliate engages in such activities. “Covered entities” also can include consulting firms, non-profit organizations, labor organizations, or educational institutions with financial interests in the entities listed above. “Covered entities” also can include other entities identified as stakeholders or parties generally interested in FIFRA related matters.

Part 2: Compensated Employment

In general, compensated employment (for the candidate member and/or their spouse) as an employee, officer, director, trustee, general partner, proprietor, representative or executor of a covered entity is a disqualifying factor. This disqualification also applies if the candidate member or their spouse is negotiating with a covered entity for future compensated employment.

Part 3: Non-Compensated Employment

In general, non-compensated employment (for the prospective member and/or their spouse) as an employee, officer, director, trustee, general partner, proprietor, representative or executor of a covered entity is a disqualifying factor. This disqualification also applies if the candidate member or their spouse is negotiating with a covered entity for future non-compensated employment.

Part 4: Research Support and Project Funding

In general, research support and project funding through grants, contracts, or other mechanisms (for the candidate member and/or their spouse) received from a covered

entity is a disqualifying factor if the candidate or their spouse is the Principal Investigator, Significant Collaborator, Project Manager, or Director of the effort. This disqualification also applies if the candidate member or their spouse is negotiating with a covered entity for future funding.

Part 5: Consulting Activities Not Reported in Part 2

In general, personal, compensated consulting activities (for the candidate member and/or their spouse) for a covered entity is a disqualifying factor. This disqualification also applies if the candidate member or their spouse is negotiating with a covered entity for future consulting activities.

Part 6: Compensated Expert Testimony

In general, compensated expert testimony (of the candidate member and/or their spouse) on behalf of a covered entity is a disqualifying factor. This disqualification also applies if the candidate member or their spouse is negotiating with a covered entity for future compensated expert testimony.

Part 7: Assets: Stocks, Bonds, Real Estate, Business, Patents, Trademarks, and Royalties

A de minimis exemption from 18 U.S.C. section 208 (Acts Affecting a Personal Financial Interest) is available which establishes the threshold for the value of assets derived from publicly traded, long-term Federal Government, or municipal securities that would represent disqualifying financial interests (5 C.F.R. 2640.202). For example, for particular matters involving specific parties, assets held by the candidate for SRB membership, their spouse, and/or their dependent children that have an aggregate fair market value greater than \$15,000 and that derive from the specific parties result in disqualification (5 C.F.R. 2640.202(a)). It should be noted that the regulatory thresholds are established to provide a “bright line” to identify legally prohibited financial conflicts of interest. Financial interests in a covered entity that are less than a regulatory threshold but are substantial may also be relevant to EPA’s case-by-case review of whether a candidate’s financial interests in such entities may present an appearance of a lack of impartiality.

Part 8: Liabilities

Total liabilities greater than \$10,000 (5 U.S.C. 102(a) (4)) that are owed by the candidate for SRB membership, their spouse, and/or their dependent children to covered entities are carefully reviewed for potential appearance problems and may result in disqualification.

Part 9: Identification of Any Other Information Related to Conflict of Interest or Appearance of Lack of Impartiality

The ethics regulations at 5 C.F.R. Part 2635.502 state “. . . where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance of a problem and received authorization from the agency designee.” To explore potential appearance problems, Part 9 asks the candidate to report any reason that they might be unable to provide impartial advice or any reason that their impartiality in the particular matter might be questioned.

In addition to financial interests and organizational affiliations that may create an appearance of a lack of impartiality, information in Part 9 can be used to identify a lack of independence arising from previous involvement with the review documents including authorship, collaborating with the authors, or previous peer review functions. Further, a lack of independence could be identified from service on previous advisory panels that have addressed the topic under consideration. Bias (in the sense of lacking impartiality with respect to stakeholder points of view) could be identified from written or oral public statements indicating the candidate has already formed a position on the topic (however, publication of peer reviewed scientific findings and conclusions in a refereed scientific journal does not necessarily raise a bias problem).

Information reported in Part 9 of Form 3110-48 is considered on a case-by-case basis. If the reviewing officials determine that an appearance problem exists (with respect to a lack of impartiality, including a lack of independence or bias), the candidate may be disqualified from service. Though some issues may not result in disqualification under 5 C.F.R. 2635.502, the information may still weigh into the final selection decision as it may be relevant to EPA’s overall goal of obtaining independent scientific peer reviewers as defined by the Agency’s Science Policy Council (see U.S. EPA Peer Review Handbook, 2nd Edition, December 2000).