(FLTCIP). The purpose of the change is to enhance the ability of Federal agencies to provide for the needs of an increasingly diverse workforce, and to assist the Federal Government in competing with the private sector for talent. To promote both of these policies, OPM proposes to expand the term ''qualified relative'' to include additional individuals who are same-sex domestic partners and whose close association with the employee or annuitant constitutes a family relationship.

Currently, a ''qualified relative'' is defined to include:

- The spouse of an employee, annuitant, member of the uniformed services or retired member of the uniformed services;
- A parent, stepparent or parent in-law of an employee or member of the uniformed services;
- An adult child (natural, step or adopted) of an employee, annuitant, member of the uniformed services, or retired member of the uniformed services if such a child is at least age 18.

The proposed regulatory change will expand the definition of ''qualified relative'' under 5 U.S.C. 9001(5)(D) to provide eligibility to apply for FLTCIP coverage to the same-sex domestic partners of Federal and U.S. Postal Service employees and annuitants. Opposite-sex domestic partners are not included in the proposed regulation because they may obtain eligibility for federal long term care insurance through marriage, an option not currently available to same-sex domestic partners.

In order to demonstrate eligibility to apply for coverage under the FLTCIP, individuals will be required to provide documentation to establish they meet the criteria for domestic partners.

OPM's proposed regulations will not only modernize FLTCIP and provide for workforce equity, but also will make the Federal Government more competitive in recruiting and retaining highly qualified employees. A majority of Fortune 500 companies and thousands of smaller companies already provide the same-sex domestic partners of their employees with access to a variety of insurance benefits that are available to other family members. Such benefits also are provided by public-sector entities such as state and local governments, and by colleges and universities. The extension of such benefits to Federal employees would help the government compete for talent.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds an additional group to the list of groups eligible to apply for coverage under the FLTCIP. The FLTCIP is a voluntary, self-pay benefits program with no Government contribution.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local or tribal governments.

List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Employee benefit plans, Government contracts, Government employees, health insurance, military personnel, organization and functions, retirement.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to amend 5 CFR part 875, as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

1. The authority citation for 5 CFR part 875 continues to read as follows:

Authority: Authority: 5 U.S.C. 9008.

2. Add a new § 875.213 as follows:

§ 875.213 May I apply as a qualified relative if I am the domestic partner of an employee or annuitant?

(a) You may apply for coverage as a qualified relative if you are a domestic partner, as described in paragraph (b) of this section. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements.

(b) For purposes of this part, the term ''domestic partner'' is a person in a domestic partnership with an employee or annuitant of the same sex. The term ''domestic partnership'' is defined as a committed relationship between two adults, of the same sex, in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Have a common residence, and intend to continue the arrangement indefinitely;

(3) Are at least 18 years of age and mentally competent to consent to contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married to anyone else;

(6) Are not a domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the State in which they reside;

(8) Will certify they understand that willful falsification of the documentation described in paragraph (a) of this section may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation under *18 U.S.C. 1001.*

[FR Doc. E9–22028 Filed 9–11–09; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 214 and 274a

[CIS No. 2758–08; DHS Docket No. USCIS–2008–0035]

RIN 1615–AB75

E–2 Nonimmigrant Status for Aliens in the Commonwealth of the Northern Mariana Islands With Long-Term Investor Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) is proposing to amend its regulations governing E–2 nonimmigrant treaty investors to establish procedures for classifying long-term investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E–2 nonimmigrants. This proposed rule implements the CNMI nonimmigrant investor visa provisions of the Consolidated Natural Resources Act of 2008 extending the immigration laws of the United States to the CNMI.

DATES: Written comments must be submitted on or before October 14, 2009.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2008–0035 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at

rfs.regs@dhs.gov. Include DHS Docket No. USCIS–2008–0035 in the subject line of the message.

• *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2008–0035 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.

• *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Contact telephone number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Steven W. Viger, Office of Policy & Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2140 telephone (202) 272–1470.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) also invite comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2008–0035. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2140.

II. Background

The Commonwealth of the Northern Mariana Islands (CNMI) is a U.S. territory located in the western Pacific that has been subject to most U.S. laws for many years. However, the CNMI has administered its own immigration system under the terms of its 1976 covenant with the United States. *See* A Joint Resolution To Approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, (the Covenant Act), Public Law 94–241, sec. 1, 90 Stat. 263, 48 U.S.C. 1801 note (1976). On May 8, 2008, former President Bush signed into law the Consolidated Natural Resources Act of 2008 (CNRA). *See* Public Law 110–229, Title VII, 122 Stat. 754, 853 (2008). Title VII of the CNRA extends U.S. immigration laws to the CNMI with transition provisions unique to the CNMI. The stated purpose of the CNRA is to ensure effective border control procedures, to properly address national security and homeland security concerns by extending U.S. immigration law to the CNMI (phasing-out the CNMI's nonresident contract worker program while minimizing to the greatest extent practicable the potential adverse economic and fiscal effects of that phase-out), and to maximize the CNMI's potential for future economic and business growth.

Since 1978, the CNMI has admitted a substantial number of foreign workers from China, the Philippines, and other countries through an immigration system that provides a permit program for foreigners entering the CNMI, such as visitors, investors, and workers. In fact, foreign workers under this program represent a majority of the CNMI labor force. Such workers outnumber U.S. citizens and other local residents in most industries central to the CNMI's economy. Currently, the CNMI faces serious economic challenges, including a substantial decline in the garment industry and fluctuation in the tourism industry.[1]

Title VII of the CNRA became effective approximately one year after the date of enactment, subject to certain transition provisions unique to the CNMI. On March 31, 2009, DHS announced that the Secretary of Homeland Security, in her discretion under the CNRA, had extended the effective date of the transition program from June 1, 2009 (the first day of the first full month that commences one year from the date of enactment of the CNRA) to November 28, 2009. *http://www.dhs.gov/ynews/releases/pr_1238533954343.shtm.* The transition period concludes on December 31, 2014. The law also contains several CNMI-specific provisions affecting foreign workers and investors during the transition period. These temporary provisions are intended to provide for an orderly transition from the CNMI permit system to the INA and to mitigate potential harm to the CNMI economy before these foreign workers and investors are required to obtain U.S. immigrant or nonimmigrant visa classifications. *See* Section 6(d)(1) or (2) of Public Law 94–241, as added by sec. 702(a) of Public Law 110–229 (cited herein as ''§ 702 of the CNRA'').

Among the CNMI-specific provisions applicable during the transition period is a provision authorizing the Secretary of Homeland Security to classify an alien foreign investor in the CNMI as a CNMI-only ''E–2'' nonimmigrant investor under section 101(a)(15)(E)(ii) of the INA, 8 U.S.C. 1101(a)(15)(E)(ii). This status is provided upon application of the alien and notwithstanding the treaty requirements otherwise applicable. *See* § 702 of the CNRA. Eligible investors are those who:

• Were admitted to the CNMI in long-term investor status under CNMI immigration law before the transition program effective date;

• Have continuously maintained residence in the CNMI under long-term investor status;

• Are otherwise admissible to the United States under the INA; and

• Maintain the investment(s) that formed the basis for the CNMI long-term investor status.

DHS is required to promulgate implementing regulations no later than 60 days before the transition program effective date. *See id.*

Under the CNMI's current foreign investor programs, foreign investors can apply for the following entry permits:

• Foreign Investor Entry Permit, 4 N. Mar. I. Code section 5951 *et seq.* (2007), 5 N. Mar. I. Admin. Code section 5–40.3–240(g) (2009);

• Retiree Investor Entry Permit, 4 N. Mar. I. Code section 50101 *et seq.,* 5 N. Mar. I. Admin. Code section 5–40.3–240(o) (2009); and

• Long-Term Business Entry Permit, 4 N. Mar. I. Code section 5941 *et seq.,* 5 N. Mar. I. Admin. Code section 5–40.3–240(n) (2009).

Foreign investors may also obtain short-term or regular-term business

[1] GAO, *Commonwealth of the Northern Mariana Islands: Pending Legislation Would Apply U.S. Immigration Law to the CNMI with a Transition Period,* GAO–08–466 (Washington, DC: Mar. 18, 2008); GAO, *U.S. Insular Areas: Economic, Fiscal, and Accountability Challenges,* GAO–07–119 (Washington, DC: Dec. 12, 2006); and GAO, *Commonwealth of the Northern Mariana Islands: Serious Economic, Fiscal, and Accountability Challenges,* GAO–07–746T (Washington, DC: Apr. 19, 2007).

entry permits, may be authorized to enter the CNMI under its permit waiver program, or may invest without entering the CNMI.

The CNMI currently has a Foreign Investor Entry Permit available for an indefinite period of time to individuals who submit evidence of good moral character and who meet all of the requirements for the foreign investment certificate. These foreign investors must maintain an investment of at least $250,000 by an individual in a single investment or $100,000 per person in an aggregate investment exceeding $2 million. CNMI regulations for foreign investors also require a $100,000 security deposit. *See* 4 N. Mar. I. Code section 5951 *et seq.; see also* 5 N. Mar. I. Admin. Code section 5–40.3–240(g) (2009).

The CNMI also offers a Retiree Investor Entry Permit requiring a minimum investment of $100,000 in residential property on Saipan or $75,000 on the islands of Tinian or Rota by an applicant 55 years or older. Previously, the CNMI issued a different Retiree Investor Entry Permit to foreign investors over the age of 55 years; the previous certificate was issued for an unlimited term if the investor had invested and maintained a minimum of $150,000 in an approved residence to live in the CNMI.

The CNMI also has a Two-Year Foreign Retirees Investment Certification that is limited to Japanese nationals only, which allows retirees over the age of 55 years to live in the CNMI for a period not to exceed two years, during which each applicant makes a minimum investment in a residence equivalent to $1,500 in monthly lease or rent. This certificate is not renewable. *See* 4 N. Mar. I. Code 50101 *et seq.*

In addition, the CNMI's Long-Term Business Entry Permit for holders of long-term business certificates is valid for two years and requires an investment of at least $150,000 in a public organization or at least $250,000 in a private investment. Each applicant alien also must provide the CNMI with a security deposit of $25,000. *See* 4 N. Mar. I. Code section 5941 *et seq., see also* 5 N. Mar. I. Admin. Code section 5–40.3–240(n) (2009)

Under U.S. immigration law, foreign investors may enter the United States as nonimmigrants within the treaty investor classification with an ''E–2'' visa, or may change to E–2 treaty investor nonimmigrant status from within the United States. *See* INA sec. 101(a)(15)(E)(ii), 8 U.S.C. 1101(a)(15)(E)(ii); *see also* 8 CFR 214.2(e). To qualify for E–2 treaty investor status, treaty investors must invest a substantial amount of capital in a bona fide enterprise in the United States, must be seeking entry solely to develop and direct the enterprise, and must intend to depart the United States when their treaty investor status ends. Treaty investors must be nationals of a country with which the United States has a treaty of friendship, commerce, or navigation and must be entering the United States pursuant to treaty provisions.

This rule proposes to establish procedures for foreign investors in the CNMI to obtain nonimmigrant status within the E–2 treaty investor classification, in accordance with the CNRA. USCIS refers to this special group of E–2 treaty investors as ''E–2 CNMI Investors.'' With E–2 CNMI Investor nonimmigrant status, eligible CNMI investors would be able to remain in the CNMI for the duration of the transition period as investors under E–2 CNMI status, and to exit and enter the CNMI with valid E–2 CNMI Investor visas. The proposed rule is intended to provide a smooth transition for existing CNMI investors and to mitigate potential adverse consequences to the CNMI economy if the current investments could not be maintained as a basis for immigration status during the transition period because of the different provisions of the INA. At the end of the transition period, E–2 CNMI Investors and qualifying spouses and children must qualify for and obtain an appropriate immigrant or nonimmigrant status under the INA in order to remain in the CNMI or to enter the CNMI after a departure.

III. Proposed E–2 CNMI Investor Program

A. Eligibility Requirements

The proposed rule incorporates into DHS's immigration regulations the statutory eligibility requirements for E–2 CNMI Investor nonimmigrant status. *See* proposed 8 CFR 214.2(e)(23)(i). In order to be eligible for E–2 CNMI Investor nonimmigrant status, USCIS proposes to require that an alien must:

- Have been admitted to the CNMI in ''long term investor'' status before the transition program effective date;
- Have continuously maintained residence in long term investor status;
- Maintain an investment or investments forming the basis for such long term investment status; and
- Be otherwise admissible to the United States under the INA.

1. CNMI Admission

To qualify for E–2 CNMI Investor status, an alien must have been lawfully admitted to the CNMI under one of the eligible CNMI long-term investor classifications before the transition program effective date, now November 28, 2009. This proposed rule would not require the status to have been granted before the enactment date of the CNRA (May 8, 2008), but does provide that the eligible CNMI long-term investor classifications shall be only those in effect as of May 8, 2008. Such a limitation is necessary to create a practicable baseline for this rule that conforms with Congress' intent to provide an orderly transition period. It must be noted that the CNMI re-codified its regulations regarding immigration effective on January 1, 2009, but the substantive classifications based upon investment generally remained the same as those in effect as of May 8, 2008. *See* 5 N. Mar. I. Admin. Code section 5–40.0 *et seq.* (2009); *see* also 20 N. Mar. I. Admin Code section 20–30.2 *et seq.*; 4 N. Mar. I. Code section 5941 *et seq.*; 4 N. Mar. I. Code section 5951 *et seq.*; 4 N. Mar. I. Code section 50101 *et seq.*

Aliens who have not been admitted as eligible CNMI investors prior to the beginning of the transition period are not eligible for classification as E–2 CNMI Investors. Aliens who have investor applications pending with the CNMI as of the transition program effective date, or who have approved investor applications but have not been admitted to the CNMI as of the transition program effective date, will not be eligible for E–2 CNMI Investor status.

2. Continuous Maintenance of Residence in the CNMI

This rule proposes to define continuous maintenance of residence in the CNMI to mean residence in the CNMI from the date that an alien obtained his or her CNMI status through the future date on which USCIS grants the new E–2 CNMI Investor status. However, continuous residence does not mean continuous physical presence; thus, an alien would not need to have remained in the CNMI for the entire period in order to be deemed to have maintained continuous residence. ''Residence'' is defined by section 101(a)(33) of the INA (8 U.S.C. 1101(a)(33)) as ''the place of general abode; the place of general abode of a person means his or her principal actual dwelling place in fact, without regard to intent.'' This statutory definition is incorporated into DHS's immigration regulations by 8 CFR 1.1(a). The proposed rule provides that an alien must have been physically present in the CNMI during at least half the time for which continuous residence is

required. In addition, any single absence of over one year will break continuity of residence, as will any single absence of more than six months, unless the subject alien is able to demonstrate that he or she did not abandon his or her residence by such absence. *See, e.g.,* 8 CFR section 316.5(c).

3. Maintenance of Investment in the CNMI

To establish that an alien is maintaining the investment or investments that formed the basis for admission to the CNMI, the proposed rule would require each subject alien to provide specific evidence demonstrating that the investor is in compliance with the terms upon which the CNMI investor certificate was issued. All documentation previously submitted in each investor application to the CNMI government should also be submitted as part of E–2 CNMI petitions to USCIS. The rule proposes to require the following documentary evidence for submission with each E–2 CNMI Investor application, as applicable:

- Evidence that the applicant has invested capital in the CNMI. Such evidence may include bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, and any other agreements supporting the application.
- Evidence that the applicant has invested the minimum amount required. Such evidence may include evidence of assets that have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing which is secured by assets of the applicant.
- A comprehensive business plan for each new enterprise.
- Articles of incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital.
- Current business licenses.
- Foreign business registration records, recent tax returns of any kind, and evidence of other sources of capital.
- A listing of all resident and nonresident employees.
- A listing of all holders of business certificates for the business establishment.
- A listing of all corporations in which the applicant has a controlling interest.
- For the holder of a Certificate of Foreign Investment, copies of annual reports of investment activities in the CNMI showing whether the certificate holder is under continuing compliance with the standards of issuance. Each report must be accompanied by an annual financial audit report performed by an independent certified public accountant.
- *For Retiree Investors:*

—Proof that the alien applicant has an interest in property in the CNMI and the value of that property interest. Proof of the value of the property could be supported by a lease agreement for the property or an appraisal of the value of the property.
—Proof of the value of the improvements to the property, such as receipts or invoices regarding the costs of construction or the amount paid for a preexisting structure, or an appraisal of a structure.
—Any other evidence supporting proof of investment in a residence and the value of the property interest.

4. Categories of CNMI Foreign Investors

After consideration of CNMI law and consultation with the CNMI government, DHS is proposing to limit eligibility for E–2 CNMI Investor status to the following categories of long-term foreign investors in the CNMI.

- *Long-Term business investor.* An alien who has been lawfully admitted to the CNMI under a Long-Term Business Entry Permit and has been issued a Long-Term Business Certificate by CNMI for a period of two years on the basis of the alien's $150,000 (minimum) investment in the CNMI.
- *Foreign investor.* An alien who has been lawfully admitted to the CNMI as a Foreign Investor with a Foreign Investment Certificate on the basis of the alien's investment of either $100,000 (minimum) per individual in an aggregate investment in excess of $2,000,000, or $250,000 (minimum) in a single investment.
- *Retiree investor.* An alien who has been lawfully admitted to the CNMI on the basis of one of the following Foreign Retirees Investment Certificates issued by the CNMI:

—*Foreign Retirees Investment Certification.* This certificate is issued to an alien retiree over the age of 55 years who has an interest in a residential property either (1) on Saipan in which the alien has invested a minimum of $100,000, or (2) on Tinian or Rota in which the alien has invested a minimum of $75,000.
—*Foreign Retiree Investment Certificate.* This certificate was issued to an alien retiree over the age of 55 years who had invested and maintained a minimum of $150,000 in an approved residence to live in the CNMI.

In creating the E–2 CNMI Investor status, the CNRA refers to admission in ''long-term investor'' status under the laws of the CNMI, but does not define the term. *See* section 6(c)(1) of the Covenant Act. The admission categories under CNMI law that could potentially be referenced by the CNRA include the three categories listed above (Long-Term Business Investor, Foreign Investor, and Retiree Investor), a sub-category of the Retiree Investor specifically limited to Japanese retirees, discussed below, and Short- and Regular-Term Business Entry Permits. In order to meaningfully construe both ''long-term'' and ''investor,'' only CNMI categories that mandated a fixed minimum threshold amount of investment *and* are renewable over a period of multiple years were considered to be ''long-term investor'' statuses.

While the Retiree Investor category may not meet the current regulatory definition of investment for E–2 purposes (at 8 CFR 214.2(e)(12)), DHS believes that the Retiree Investor category falls within the meaning of ''long-term investor'' as it is used in the CNRA. USCIS understands that land ownership limitations in the CNMI generally prohibit alien ownership of real property, and that the maximum term of an interest in real property is a 55-year lease. For this reason, and consistent with the intent of sections 701(b) and sections 702(6)(c) and (6)(d) of the CNRA, USCIS has determined that a lease of residential property, which normally would not be considered ''investment,'' may serve as the basis for E–2 CNMI Investor status as long as the qualifying investment amount under CNMI law has been placed in the property through an upfront commitment to a long-term lease or improvements to the property. Therefore, USCIS has included this category in the proposed rule. Additionally, including the Retiree Investor is consistent with USCIS' objective to provide a smooth transition for current CNMI investors and to mitigate potential economic harm to the CNMI.

USCIS finds that CNMI status obtained through the two-year program for Japanese retirees requiring only monthly rental payments does not reasonably meet the statutory requirement of long-term investment

with respect either to its length, as the permit is non-renewable, or the character of the investment, and is thus not included in the E–2 CNMI Investor program proposed by this rule. USCIS notes that either the visa waiver program or B–1/B–2 visas may be available to such Japanese retirees.

Aliens lawfully admitted to the CNMI under any other categories, including the Short-Term Business Entry Permit or the Regular-Term Business Entry Permit are not included in this proposed rule as eligible to apply for E–2 CNMI Investor status. Aliens lawfully admitted under the Short-Term Business Entry Permit or the Regular-Term Business Entry Permit categories are not included because such permits are not long-term, nor do they require investments. These aliens, however, would be eligible to apply for other nonimmigrant classifications, such as the B–1 business visitor classification.

B. Application Procedures

In keeping with the language of the CNRA, which discusses an alien's application for a nonimmigrant investor visa, the rule proposes to require that those CNMI long-term investors seeking E–2 CNMI Investor status file applications requesting such status with USCIS, and pay the appropriate fees to USCIS, in accordance with instructions on the application form. USCIS will designate the form as Form I–129, ''Petitioner for a Nonimmigrant Worker,'' with Supplement E as the application form for requesting E–2 CNMI Investor status. The current fee for Form I–129 is $320.

1. Application Period

This rule proposes a limited application period. Applicants would be required to apply for E–2 CNMI Investor status either: (1) Before the start of the transition period; or (2) within the first two years following the start of the transition period. Therefore, USCIS would reject an application filed after the two-year period. Note, that while the rule would permit applications to be filed before the transition program effective date, USCIS would not be permitted to grant E–2 CNMI Investor status before that date. However, if USCIS completes its adjudication of an early-filed application prior to the transition program effective date, a consulate would be able to issue an E–2 CNMI Investor visa so that the subject alien would be able to seek admission to the CNMI as an E–2 CNMI Investor on or after the transition program effective date.

2. Physical Presence

Because E–2 CNMI Investor nonimmigrant status is a CNMI-only status, the rule proposes that each alien must be present in the CNMI or outside the United States at the time his or her application is filed with USCIS. Upon approval, an alien outside the CNMI would need to obtain an E–2 CNMI Investor nonimmigrant visa at a United States consulate abroad to be admitted to the CNMI as an E–2 CNMI Investor on or after the transition program effective date.

3. Fee Waiver

Waiver of the current $320 fee for filing Form I–129 is normally not permitted under the applicable regulations at 8 CFR 103.7. In recognition of adverse economic conditions in the CNMI as compared to many other U.S. places, and because of the inclusion of some retirees in this new nonimmigrant category and the likely participation by a number of proprietors of small businesses with CNMI Long-Term Business Entry Permits, the proposed rule permits waiver of the fee in cases where the subject alien is able to substantiate that he or she is unable to pay the prescribed fee, under the standards provided in 8 CFR 103.7(c)(1). Currently there is no fee-waiver provision for Form I–129 and this rule is proposing a specific waiver provision limited to investors under this rule. *See* proposed 8 CFR 103.7(c)(5)(iv). While such a provision may seem inconsistent with a benefit based upon a monetary investment, the CNMI E–2 Investor program proposed in this rule differs from the current E–2 program in that retiree investors are eligible. The waiver provision is limited to those who can make a showing of inability to pay. USCIS believes that some CNMI E–2 Investor eligible retiree investors may have invested the majority of their savings in their investment residences, may be living on fixed incomes, and may qualify for waivers. Applicants in the CNMI will also have to submit the $80 biometric service fee; this fee is waivable for inability to pay under current USCIS regulations. *See* 8 CFR 103.7(b)(1) (discussing the current biometric service fee); proposed 8 CFR 214.2(e)(23)(viii) (discussing ability to seek waiver of biometric service fee).

4. Discretionary Benefit and Appeal Rights

Adjudication of the application for E–2 CNMI Investor nonimmigrant status is a discretionary determination by USCIS. USCIS may deny an application for failure of the applicant to demonstrate eligibility or for other good cause. As with other adjudications of Form I–129, denial of an E–2 CNMI Investor application may be appealed to the USCIS Administrative Appeals Office for agency review of the denial.

5. Spouses and Children

USCIS proposes to extend E–2 CNMI Investor status to the spouse and children of each principal E–2 CNMI Investor if they accompany or follow-to-join the principal alien. The nationality of these dependents would not be material to their classification as dependents of E–2 CNMI Investors. Such spouse and dependents, however, must be otherwise admissible to the United States under the INA to qualify for the status. The rule proposes to require that those CNMI long-term investors seeking E–2 CNMI Investor status file applications requesting such status with USCIS in accordance with instructions on the application form. *See* proposed 8 CFR 214.2(e)(23)(v). In accordance with instructions on the application form, E–2 CNMI investors whose spouses and children seek to accompany or follow-to-join him or her will utilize Form I–539, ''Application to Extend/Change Nonimmigrant Status'' as the application form for requesting E–2 CNMI Investor status for dependants. The current fee for Form I–539 is $300.

C. Work Authorization

The proposed rule would amend 8 CFR 214.2(e) and 274a.12 to provide for the work authorization of certain E–2 CNMI Investors and their spouses. Work authorization is not permitted for children of E–2 CNMI Investors. The E–2 CNMI Investor is authorized to work for a specific employer incident to status to the extent that such work authorization is for a qualifying entity that was the basis for the long-term investor status under CNMI law upon which the grant of E–2 CNMI Investor status is based. For example, an authorized investment in a business operated by the investor in the CNMI under a Long-Term Business Permit granted prior to the transition program effective date will permit the investor to operate that business as an E–2 CNMI Investor. E–2 CNMI Investors obtaining status under a Retiree Investment Permit are not work-authorized, since, by definition, coming to the CNMI as a ''retiree'' is inconsistent with obtaining employment there.

After each spouse of E–2 CNMI Investors lawfully obtains E–2 CNMI Investor status, and upon lawful admission to the CNMI, each spouse may request employment authorization by filing Form I–765, Application for

Employment Authorization, with USCIS. However, spouses of E–2 CNMI Investors who obtained that status as retirees are not eligible for work authorization, for the reason stated above. This is consistent with the level of benefits currently afforded under CNMI law, as neither retiree investors nor their spouses are permitted to work. Employment authorization is inconsistent with being a ''retiree''. DHS understands that the spouse of a retiree may not in all cases also be a retiree, but notes that retiree spouses may qualify for transition worker or other specific work-authorized statuses if eligible. However, DHS specifically invites comments on whether work authorization should be permitted for spouses of retiree investors.

All E–2 CNMI Investor principal and spousal employment authorization is expressly limited to employment in the CNMI.

D. Changes in the Terms and Conditions of E–2 CNMI Investor Status

If there are any substantive changes to aliens' compliance with the terms and conditions of qualification for E–2 CNMI Investor status, the rule proposes to require those aliens to file with USCIS new copies of Form I–129 and Supplement E with respect to the changes. An unauthorized change of employment to a new employer would constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the INA, 8 U.S.C. 1227(a)(1)(C)(i).

E. Period of Admission

This rule proposes to provide an initial admission period of two years for aliens with E–2 CNMI Investor status. The spouse and minor children accompanying or following-to-join an E–2 CNMI Investor would be admitted for the same period that the principal alien is in valid E–2 CNMI Investor status. If an E–2 CNMI Investor temporarily departs the CNMI, the derivative status of the dependent spouse and children would not be affected, provided that the familial relationship continues to exist and the principal remains eligible for admission as an E–2 CNMI Investor.

F. Extensions of Stay

This proposed rule provides for extensions of E–2 CNMI Investor status, until the end of the transition period, in two-year increments, which is the same increment permitted for non-CNMI E–2 nonimmigrants. To apply for an extension of stay, each E–2 CNMI Investor would be required to file with USCIS a new Form I–129 and Supplement E with the required evidence and fee. To qualify for an extension of stay, each E–2 CNMI Investor would be required to demonstrate that he or she:

(i) Continuously maintained the terms and conditions of E–2 CNMI Investor status;

(ii) Was physically present in the CNMI at the time of filing the application for extension of stay; and

(iii) Did not abandon the request for extension of stay.

G. Travel

E–2 status provided to long-term CNMI investors is a ''CNMI-only nonimmigrant'' status. *See* section 6(c)(1) of the Covenant Act, as added by section 702 of the CNRA. Consistent with this provision, the proposed rule provides that a grant of E–2 CNMI investor status is a grant of status valid within the CNMI only, and not within the United States as a whole. It does not authorize admission or travel to Guam or to any other part of the United States. However, it does not bar such travel if the alien is otherwise authorized and admissible to the United States in another status. For example, an E–2 CNMI Investor who wishes to make a tourist or business visit to Guam or another part of the United States (including but not limited to transit through the Guam airport) may do so if he or she has a B nonimmigrant visa or is eligible under an applicable visa waiver program. However, the alien may not do so based upon the current E–2 CNMI Investor status, or based upon any E–2 CNMI Investor visa.

The proposed rule provides that travel or attempted travel from the CNMI to another part of the United States without the appropriate visa or other authorization, or violation of the terms applicable to the authorized status, would constitute violation of the E–2 CNMI Investor status. For example, if an E–2 CNMI Investor were identified by U.S. Customs and Border Protection as seeking to board a plane in Saipan for Guam, and the alien lacked a B nonimmigrant visa or other visa (or eligibility for a visa waiver) that would authorize the alien to have traveled from a foreign place to Guam and to be admitted there, then the alien would have failed to comply with the conditions of the E–2 CNMI Investor status and would be deportable from the CNMI or any other U.S. location under section 237(a)(1)(C) of the INA, 8 U.S.C. 1227(a)(1)(C).

With respect to travel from the CNMI to a foreign place and return to the CNMI, if an E–2 CNMI Investor obtained his or her status from USCIS in the CNMI, he or she would need to obtain an E–2 CNMI Investor visa from a U.S. embassy or consulate in order to be readmitted to the CNMI, regardless of nationality. USCIS approval of E–2 CNMI Investor status provides status while present in the CNMI, but does not preclude the requirement of a visa for admission to the CNMI.

H. Change of Status to E–2 CNMI Investor Status

This rule proposes to permit aliens eligible for E–2 CNMI investor status on the transition program effective date, but who obtain other valid nonimmigrant visa statuses, to apply to change to E–2 CNMI Investor status by filing Form I–129 and Supplement E in accordance with the current regulations at 8 CFR 214.2(e)(21). However, applications for this change in status would have to be filed within the two-year filing period for obtaining initial grants of E–2 CNMI Investor status. Note that during the transition period, E–2 CNMI Investors may apply for changes of status to any other nonimmigrant or immigrant visa classifications for which they may qualify.

I. Post-Transition Period

As previously discussed, E–2 CNMI Investors may maintain status and apply for subsequent extensions of this status until the end of the transition period. After the transition period, however, the E–2 CNMI Investor classification will cease to exist. Absent delay, the transition period will end on December 31, 2014. Although the Secretary of Labor is authorized under section 702 of the CNRA to extend the transition provisions relating to temporary workers in additional increments of up to five years each, this authority is limited to extension of those provisions relating to temporary workers and not the investor provisions. Therefore, the investor provisions will terminate on December 31, 2014, regardless of whether the temporary worker provisions are extended.

IV. Regulatory Requirements

A. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule, with its impact limited to addressing eligible aliens currently in one of the CNMI long term investor classifications, will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

B. Executive Order 12866

In accordance with Executive Order 12866, USCIS is required to prepare an assessment of the benefits and costs anticipated to occur as a result of this regulatory action and to provide the assessment to the Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs. The analysis below is the DHS Economic Analysis as required by the Executive Order.

(1) Background

The CNMI lies north of Guam, between the Philippines and Japan. S. Rep. No. 110–324, at 2 (2008). The United States captured the islands of the CNMI in World War II and they became a district of the U.S.-administered United Nations Trust Territory of the Pacific Islands. *Id.* Under the Covenant through which the CNMI joined the United States in 1976, the CNMI was exempted from most provisions of U.S. immigration laws and allowed to control its own immigration; however, the Covenant gave the U.S. Congress the authority to modify that arrangement through Federal legislation. *Id.*

The United States enacted the CNRA amending the level of control the CNMI would have over its immigration system to more closely harmonize it with the laws and procedures applicable to other U.S. jurisdictions, particularly those designed to ensure that border control, national security, and homeland security issues are properly addressed. *See* CNRA Section 701.

(2) Changes Made in This Rule

In order to reduce the opportunity for fraud and to improve homeland security, USCIS is proposing in this rule that foreign investors who wish to reside in the CNMI must reapply every two years using USCIS Form–129, Petition for a Nonimmigrant Worker. Requiring renewal every two years will help USCIS make sure investors have maintained their eligibility, update their biometrics, or allow USCIS to advise them whether they are potentially eligible for another program under the INA that will allow them to stay in legal nonimmigrant status after the end of the transition program, currently December 31, 2014. The CNRA generally extends Federal control of immigration in the CNMI to combat fraud and abuse, and the requirement for renewal within this period is consistent with current practice for non-CNMI E–2 treaty investor non-immigrants.

However, USCIS is aware of and sensitive to the potential economic impact of new Federal immigration requirements on the CNMI economy, and this rule's proposed requirements have been developed with that in mind. According to an economic study performed by the Northern Marianas College, employment grew in the CNMI by 12.7 percent annually between 1980 and 1995, because of expansion of the garment and tourism sectors.[2] During that time, the garment and tourism industries accounted for 85 percent of the CNMI economy.[3] Recently, economic conditions have changed dramatically for these two CNMI industries. Due to changes in trade agreements, the value of CNMI textile exports to the United States dropped from $1.1 billion in 1998 to $317 million in 2007. The number of licensed apparel manufacturers dropped from 34 to 3 in 2008.[4] The remaining three garment factories have closed or suspended their operations in early 2009.[5] The CNMI tourism industry also has been in decline in recent years. The terrorist attacks on the United States on September 11, 2001, the Severe Acute Respiratory Syndrome (SARS) epidemic which began in Asia in 2003 and led to the death of 774 worldwide, the downturn in many Asian economies, changes in airline service, and other concerns have reduced the number of tourists traveling to the CNMI from 736,117 in 1996 to 389,345 in 2007.[6] Because of the decline of the CNMI economy, USCIS has sought to minimize the impact of any additional visa requirements, while recognizing that Federal oversight of CNMI immigration is necessary to reduce fraud and ensure U.S. homeland security.

(3) Alternatives Considered

USCIS considered a narrow construction for implementation of the CNMI-only nonimmigrant investor visa as required by section (6)(c) of the Covenant Act, as added by section 702 of the CNRA. Possible constructions would have limited the categories of investors under current CNMI law who would be permitted to become CNMI E–2 Investors. Possible constructions analyzed included limiting which investor-based categories under current CNMI law would be permitted to become CNMI E–2 Investors. Specifically, DHS discussed options wherein only CNMI perpetual foreign investors would be permitted, as well as options wherein only long-term business permit holders or a combination of only perpetual foreign investors and long-term business permit holders would be permitted. However, in light of the potential adverse economic impact of such limitations and the goal of limiting adverse economic impact on the CNMI, such limiting options were not chosen. USCIS chose the broadest interpretation possible, whereby long-term business permit holders, foreign investors and retiree investors (other than investors under a short-term program not believed to qualify under the CNRA) would be eligible for CNMI E–2 Investor status, because it believes such an interpretation is most in keeping with the mandate to limit adverse economic impact.

(4) The Total Cost of This Regulation

(a) Fees

This proposed regulation will require all foreign investors wishing to remain in the CNMI to reapply for investor registration every two years using USCIS Form I–129, Petition for a Non-Immigrant Worker. The application fee for this form is $320. Additionally, this rule will require CNMI investors to provide their biometrics and imposes an additional $80 biometrics fee. Thus, the total fees for each initial and biennial registration are $400 ($320 + $80). Fee waivers for inability to pay are available.

(b) *Paperwork Burden*

It takes approximately 2.75 hours to complete the Form I–129, according to the instructions to the form. Since most of the respondents under this rule will be business investors, their average hourly costs will be much higher than the average hourly costs of the average salaried worker. Thus, for the purpose of this analysis, USCIS based hourly costs on the average hourly salary for ''chief executives'' from the Department of Labor's May 2007 National Occupational Employment and Wage Estimates to determine the cost associated with the hours necessary to

[2] Northern Marianas College, Business Development Center, An Economic Study of the Commonwealth of the Northern Mariana Islands (Saipan, MP: Northern Marianas College 1999).

[3] Ibid.

[4] CNMI Comprehensive Economic Development Strategic Plan 2009–2014. CNMI CEDS Commission Updated 1/29/09.

[5] *See,* Walt F. J. Goodridge, ''The Last Garment Factory is Closing,'' Saipan Times, January 14, 2009, *http://www.saipantribune.com/newsstory.aspx?cat=3&newsID=86872.*

[6] United States Government Accountability Office, Commonwealth of the Northern Mariana Islands Managing Economic Impact of Applying U.S. Immigration Law Requires Coordinated Federal Decisions and Additional Data (July 2008).

complete the Form I–129. The hourly wage for chief executives is $72.77. If we multiply $72.77 by 1.4 to account for fringe benefits, the hourly cost is $101.88. Multiplying $101.88 by the 2.75 hours required to fill out the I–129 results in paperwork burden cost per form of $280.16. However, because of generally lower wage levels in the CNMI and because some CNMI investors are retirees, this is a maximum cost estimate and the likely actual cost is lower.

Additionally, if a foreign investor wishes to bring along his or her family they will have to complete Form I–539, Application to Extend/Change Status. The application fee for this form is $300 and this form takes approximately 45 minutes to complete according to the form instructions. If the foreign investor fills out this form himself, the paperwork cost to complete this form is $101.88 × .75, or $76.41 per investor.

(c) Cost per Foreign Investor

Adding the estimated paperwork burden cost for completing Form I–129 of $280 to the $400 application and biometrics fee, the total cost for each CNMI foreign investor to submit the I–129 as required under this rule every two years is $680. Since re-registration is only required every other year, annual costs are $340 per year ($680/2). In addition, the $76 paperwork cost of completing the I–539 plus the $300 application fee costs a total of $376. Form I–539 is a one time only application. So the first year cost for foreign investors to complete and submit the two forms combined is $716 ($340 + $376). Each additional year is only $340.

Currently foreign investors are charged $1,000 every two years or $500 per year by the CNMI government. CNMI fee setting methodology is unknown to USCIS. For this analysis it is assumed that the CNMI fees resemble U.S. Government agency service and user fees in that they are set at the amount necessary to recover costs in accordance with Office of Management and Budget guidance, and are not intended to generate a profit. Thus, while fees collected by the CNMI for the foreign investor program will no longer be collected by the CNMI Government, the cost of administering that program will not be incurred, resulting in a neutral financial effect. To the extent that the CNMI government used such fees to raise revenue, such excess will be lost as a result of this rule.

Additionally, spouses and children who wish to receive the same status as their foreign investor spouse or parent may be required to provide biometrics at a cost of $80 per person. According to a recent GAO report the average family in the Marianas Islands includes 2 children.[7] However, biometrics are only required for children between the ages of 14 and 21. Therefore, for purposes of analysis, we assume that each foreign investor's family will be required to provide biometric fees for one spouse and only one child for an additional cost of $160. This will be required only every other year for an average annual cost of $80 ($160/2). Adding this cost to the above fees will lead to a cost per investor family of $796 in the first year ($340 + $376 + $80) and $420 in the second year ($340 + $80) and every subsequent year until the end of the transition period. Once the Federal regulations are in place the CNMI government will no longer charge the $1,000 fee they have been charging foreign investors every two years as foreign investors will now be subject to the Federal regulations. Therefore, this rule will raise the foreign investor's annual cost by $296 in the first year ($796—$500), but reduce the cost in second and future years until the end of the transition period in 2014 by $80 ($500—$420).[8]

The above annual cost estimates represent the costs for those investors with a spouse and one child between the ages of 14 and 21. For those investors with a spouse and more than 1 child between the ages of 14 and 21 these cost estimates may be too low. For those investors, particularly those who are retired, these estimates may be too high. Lack of data on foreign investors does not allow us to further refine our estimates.

(5) Number of Filings Expected

USCIS projects that most foreign investors plan to re-register their status Although a small number of foreign investors may be found ineligible, USCIS lacks data on the basis of which to estimate to what extent that may occur. USCIS therefore is soliciting comments on the subject along with any supporting material, data, or calculations that support the estimated rejection rate so that we may consider this information and place it in the public docket for this rulemaking.

Additionally, given the decline in the textile and tourist businesses in the CNMI as discussed earlier, even the small fee imposed by this rule may lead some foreign investors not to re-register. Since data on which to base a reliable estimate of the numbers of foreign investors who may choose not to re-register are lacking, USCIS is interested in comments containing information concerning the likelihood of re-registration.

In 2006–2007, there were 464 long-term business entry permit holders and 20 foreign investor entry permit holders and retiree investor permit holders, totaling 484, or approximately 500 foreign registered investors. In its recent report, the GAO estimates that the number of long-term business and perpetual foreign investor entry permits active and valid in 2008 were 506. In another measure, the GAO suggests that 448 businesses were associated with long-term business entry permits and 56 additional perpetual foreign entry permits were associated with 30 businesses.[9] This analysis assumes that 500 foreign investors would be affected because of the constantly changing economic environment in CNMI. The first year costs, as discussed above, would be an additional $296 per investor for a total first year cost of $148,000 ($296 × 500) for all CNMI foreign investors. The additional transition years will see a savings of $80 per investor or a total foreign investor savings of $40,000 ($80 × 500 = $40,000) per year until 2014.

Foreign investors who travel to and from CNMI will now be required to have visas. USCIS, however, is not requiring foreign investors who travel to the United States to have visas in this rule, as that requirement will exist irrespective of this rule. Thus the costs to obtain a visa are not a cost of this rule but rather the cost of the CNRA, and the CNMI adopting the INA.

(6) The Cost to the Federal Government

There are no additional costs to the Federal Government as USCIS is a generally a fee funded agency. USCIS will recoup its costs through the collection of Form I–129 and Form I–539 fees.

(7) Effects after 2014

(a) The CNRA and This Rule

The CNRA was intended to ensure effective border control procedures and to properly address national security and homeland security concerns by

[7] GAO–08–791 Commonwealth of the Northern Mariana Islands, Managing Potential Impact of Applying U.S. Immigration Law requires Coordinated Federal Decisions and Additional Data, August 2008.

[8] This estimate considers the added time burden costs of the new USCIS paperwork but includes no similar cost savings from eliminating the paperwork burden associated with the CNMI's current program. Thus actual costs savings are likely to be greater than estimated here.

[9] GAO, GAO–08–791, Commonwealth of the Northern Mariana Islands, Managing Potential Economic Impact of Applying U.S. Immigration Law Required Coordinated Federal Decisions and Additional Data, August 2008.

extending U.S. immigration law to the CNMI, and to maximize the CNMI's potential for future economic and business growth under U.S. immigration law. This rule proposes temporary regulatory provisions to transition the CNMI to the INA and to mitigate harm to the CNMI economy before investors in the CNMI are required to obtain U.S. immigrant or nonimmigrant visa classifications. The CNMI investor program proposed in this rule will last until the end of the transition program, currently December 31, 2014, at which time, the CNMI E–2 Investor must apply and be approved for another immigrant or nonimmigrant status under the INA. It is assumed that the data provided by the CNMI and other interested parties, gathered by Congress, and considered in development and passage of the CNRA showed significant differences in the non-immigrant visa programs under the INA and the visa and certificate programs offered by the CNMI. Current foreign workers and investors in the CNMI would mostly not be eligible for a status under the INA, or else legislation of a transition period and temporary mitigating regulations as proposed under this rule would be unnecessary. Thus, while one stated goal of the CNRA is the economic and business growth of the CNMI, by providing a mitigating transition program, the legislation implies that goal will require at least 5 years to be achieved. This rule will operate during that time.

(b) Effect on Investors

This rule links investment levels to those required for CNMI status for a long-term business investor at $150,000; a perpetual foreign investor at $100,000, in an aggregate approved investment in excess of $2,000,000, or a minimum of $250,000 in a single investment; and, a retiree investor at $100,000 in Saipan, $75,000 in Tinian or Rota, or $150,000 elsewhere in the CNMI. To qualify as a U.S E–2 treaty investor with nonimmigrant status, the applicant must invest a substantial amount of capital in a bona fide enterprise in the United States, must be seeking entry solely to develop and direct the enterprise, and must intend to depart the United States when their treaty investor status ends. Next, the treaty investor must be a national of a country with which the United States has a treaty of friendship, commerce, or navigation and must be entering the United States pursuant to treaty provisions.

USCIS has not analyzed the data on current CNMI long-term business entry permit holders and foreign investor entry permit holders to determine who would qualify as U.S. E–2 Investors. There is no accurate way to estimate for what other visa or nonimmigrant status the 500 foreign registered investors may qualify. However, a review of the CNMI eligibility criteria and anecdotal evidence indicates that many of them would not meet the minimum financial investment necessary to be eligible for U.S. E–2 status currently. Further, the retiree investor permit holders do not qualify as U.S. E–2 Investors in their current status, notwithstanding that they may have access to or be able to acquire enough capital to invest and qualify. Finally, according to the GAO Report, about 18 percent of foreign investors in the CNMI are from countries with which the United States does not have a treaty of friendship, commerce, or navigation.[10] Thus of the 500 foreign registered investors in the CNMI, many of them will need to spend the transition period making themselves eligible for another status under the INA. Anecdotal evidence indicates that at least a few of the affected investors from countries without treaties of friendship, commerce or navigation with the United States may be eligible for L–1A executive or managerial visas; thus the possibility exists that some of these investors may be able to stay in the CNMI in another status after the end of the transition program, currently December 31, 2014.[11]

(c) Effect on the CNMI Economy

USCIS has not analyzed the precise effect of increased or decreased investments in the CNMI. Nevertheless, as indicated before, the differences between the CNMI foreign investor programs before the CNRA takes effect and those available afterward under the INA are certain to change the mix of foreign investors eligible for a new status and maintaining a presence in the CNMI after the end of the transition program, currently December 31, 2014. An immigrant investor program, or immigration through investment, seeks to promote economic growth through increased export sales, improved regional productivity, creation of new jobs, and increased domestic capital investment. The presumption is that the investment opportunity coupled with the opportunity to live in the country offering the program offers advantages, or at least appears to offer advantages, to the investor over investments and residence in his or her country of origin. Assuming that these goals are generally achieved, withdrawal of the alien's investment without substitution of a substantially similar investment, would, at the least, end what positive results had been started, and, at the worst, have the reverse effect and retard growth, sales, productivity, jobs, and investment. Thus, if a substantial number of the 500 foreign investors in the CNMI are required to leave, liquidate their investments, and their investments are not replaced by another equal or greater investment, then it will likely have a negative impact on the CNMI economy. This rule is intended to mitigate that impact.

(8) Benefits

CNMI administration of an immigration system outside U.S. immigration law has led to an abuse of the visa system in the CNMI. S. Rep. No. 110–324, at 3 (2008). Given this abuse, there are concerns not only for the well-being of foreign employees working in the CNMI, but also for the potential abuse of the visa system by those seeking to illegally emigrate from the CNMI to Guam or elsewhere in the United States. *Id.* at 3–5. This reduces the integrity of the U.S. immigration system by increasing the ease by which aliens may unlawfully enter the United States through the CNMI. Federal oversight and regulation of CNMI foreign investors should help reduce abuse by foreign investors in the CNMI, and should help reduce the opportunity for aliens to use the CNMI as an entry point into the United States. *Id.* at 2, 4–5. Because oversight of immigration by the CNMI government is thought to be less stringent than that of the United States Federal Government, there is presently the opportunity by individuals seeking entrance to the United States to seek admittance to CNMI as an opportunity to gain, in turn, illegal entrance into the United States. By the Federal Government taking over responsibility for immigration enforcement in CNMI, the opportunity for abuse of the CNMI immigration regime for illegal access to the United States is reduced.

(9) Conclusion

This proposed rule responds to a Congressional mandate that requires the Federal Government to assume responsibility for all immigration to the CNMI by foreign investors, whether temporary or permanent. This proposed rule will implement this mandate and thus contribute to U.S. homeland security. USCIS concludes that the alternative chosen for this proposed rule represents the most cost-effective means

[10] GAO, GAO–08–791, Commonwealth of the Northern Mariana Islands, Managing Potential Economic Impact of Applying U.S. Immigration Law Required Coordinated Federal Decisions and Additional Data, August 2008.

[11] *See,* INA Section 101(a)(15)(L); 8 CFR 214.2(l).

of implementing its Congressional mandate while having only minimal negative impact on the CNMI economy. Comments are welcome on these conclusions.

D. Regulatory Flexibility Act—Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the impact of their regulatory proposals on small entities.

1. Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

a. Regulated Entities

This proposed rule would affect foreign investors in the CNMI. As previously stated, foreign investors can apply for the following CNMI entry permits: foreign investor permits, long-term business permits, and retiree investor permits.

b. Number of Small Entities to Which the Proposed Rule Will Apply

Data available on the present 464 long-term permit holders reveal that they account for 419 businesses with about 4,592 employees, approximately 11 employees per business. In additional, as discussed above, there are an additional 20 foreign investor entry permit holders and retiree investor permit holders for a total of 484. Since the economic situation in the CNMI is dynamic, this analysis approximates the number of affected businesses at 500 total. Now that the last garment factory in the CNMI has closed, the remaining industries affected by this rule are tourism (lodging and recreation) which are North American Industry Classification System (''NAICS'') codes 72111 and 7139, respectively, miscellaneous manufacturing (NAICS code 339999), and retail sales (NAICS Code 445). According to the Small Business Administration guidelines firms in the accommodation and food services and recreation industries are considered small if they have sales of less than $7 million per year.[12] Miscellaneous manufacturing firms are considered small if they have fewer than 500 employees, and specialty retail food stores are small if they have sales of less than $7 million. The firms affected by this rule have an average of 11 employees, however, USCIS has no data on the average annual sales of those firms. Thus, for the purposes of this analysis, under the requirements of the RFA, USCIS assumes that all of the foreign investor owned businesses in the CNMI affected by this rule are small entities.

According to the 2005 CNMI Household, Income, and Expenditures Survey, there were 35,365 employed workers in the CNMI. Dividing the 4,592 employees who are employed in foreign investor businesses by the total employment of 35,365 shows that approximately 13 percent of the CNMI labor force works directly for foreign investor owned businesses that this proposed rule would require to register. This may constitute a significant percentage of employers in the CNMI, particularly considering current economic trends that show a continued decline in both the garment and tourism industries, which comprise a significant share of the CNMI economy. Therefore, while 500 total petitioners appear to be a small number, 13 percent may be a sufficiently high percentage of workers in the economy to represent a substantial number of small entities in the CNMI.

2. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

As discussed above, the average petitioner will be required to pay fees of $796 in the first year ($340 for I–129 + $376 for I–539 + $80 for biometrics), $420 in the second ($340 + $80) and subsequent years, and the CNMI government will no longer charge their $1,000 fee every two years. Therefore, this rule will raise the foreign investor's annual cost by $296 per year in the first year ($796–$500), and decline by $80 per year for the remaining years of the transition. USCIS believes that this additional fee in the first year should have little to no impact on the decision of foreign investors to remain in CNMI. However, USCIS welcomes public comments explaining how this conclusion may be in error.

a. Paperwork Reduction Act—New Reporting Requirement

Foreign investors who wish to reside in the CNMI will have to apply in the first year and reapply every two years using USCIS Form-129, Petition for a Nonimmigrant Worker. This is a new requirement within the meaning of the Paperwork Reduction Act. As stated above, Form I–129 results in paperwork burden cost per form of $280.16. Additionally, a foreign investor who brings along his or her family will have to complete Form I–539, Application to Extend/Change Status. The paperwork cost to complete this form is $76.41. This rule does not require professional skills for the preparation of reports or records.

3. Identification of Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules. As noted below, DHS seeks comments and information about any such rules, as well as any other State, local, or industry rules or policies that impose similar requirements as those in this proposed rule.

4. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered, Such As: (1) Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities; (2) Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities; (3) Use of Performance Rather Than Design Standards; (4) Any Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

Throughout the development of the proposed rule DHS has made every effort to gather information regarding the economic impact of the rule's requirements on all operators, including small entities. USCIS considered limiting the categories of investors under current CNMI law who would be permitted to become CNMI E–2 Investors, and limiting which investor-based categories under current CNMI law would be permitted to become CNMI E–2 Investors. However, in light of the goal of limiting adverse economic impact on the CNMI, USCIS chose the broadest interpretation possible, whereby long-term business permit holders, foreign investors and retiree investors (other than investors under a short term program not believed to qualify under the CNRA) would be eligible for CNMI E–2 Investor status, because it believes such an interpretation is most in keeping with

[12] U. S. Small Business Administration, Table of Small Business Size Standards, Matched to North American Industry Classification System Codes. Viewed April 2, 2009, at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

the mandate to limit adverse economic impact.

Since all of the entities affected by this rule are small, this rule provides no different requirements or any exemption from coverage of the rule based on entity size. USCIS welcomes public comment regarding the costs and benefits associated with the proposed rule with respect to how operators, including small entities, can comply with the rule's requirements. It should be noted, however, that small entities may request a waiver of their fees under this rule, if they do not have the ability to pay.

5. Questions for Comment To Assist Regulatory Flexibility Analysis

Please provide comment on any or all of the provisions in the proposed rule with regard to:

a. The number of small entities to which the proposed rule will apply.

b. The economic impact of the provision(s), if any; including:

i. The new reporting requirements on CNMI investors, including the time frame for reporting and mechanisms for reporting.

ii. Costs to ''implement and comply'' with the rule including expenditures of time and money for any employee training; attorney, computer programmer, or other professional time; preparing relevant materials; processing materials, including, materials or requests for access to information; and recordkeeping.

iii. Any other requirement not mentioned above.

c. Costs to implement and comply with this rule including expenditures of time and money for professional time; preparing relevant materials; processing materials, including, materials or requests for access to information; and recordkeeping. As stated above, this rule has a direct impact on about 500 small entities. USCIS believes that most if not all foreign investors will be eligible for re-registration and will choose to re-register to participate in the foreign investor program in the CNMI during the transition period. As indicated above, USCIS believes that the additional costs required by this proposed rule are low enough that the vast majority of foreign investors will not be deterred from re-registering. USCIS welcomes comments from the public on the impact of this proposed rule on the eligibility and capability of foreign investors to re-register in the CNMI and the economic impacts on the CNMI, its inhabitants, and employers.

d. Any industry rules or policies that already require compliance with the requirements of the DHS proposed rule.

e. Any relevant Federal, State or local rules that may duplicate, overlap or conflict with the proposed rule. In addition, please identify any industry rules or policies that already require compliance with the requirements of the DHS proposed rule.

f. Ways in which the rule could be modified to reduce any costs or burdens for small entities consistent with the Immigration and Nationality Act's requirements.

g. Whether and how technological developments could reduce the costs of implementing and complying with the rule for small entities or other operators.

h. Any information quantifying the economic benefits of:

i. Minimizing immigration fraud and protect against abuses.

ii. Ensuring that border control, national security, and homeland security issues are properly addressed.

iii. Reducing the opportunity for fraud and to improve homeland security.

iv. Amending the level of control the CNMI would have over its immigration system to more closely harmonize it with the laws and procedures applicable to other U.S. jurisdictions.

v. Any other requirement not mentioned above.

E. Executive Order 13132

Executive Order 13132 requires each Federal agency to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The phrase ''policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects 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.'' USCIS has considered the Federalism implications of this proposed rule under the Executive Order.

Executive Order 13132 is based upon the role and authorities of ''States'' under the U.S. Constitution. The CNMI is not a ''State'' as defined by section 1(b) of Executive Order 13132 to include ''the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.'' Therefore, USCIS has determined that no actions are required under Executive Order 13132. USCIS has, however, solicited the input of the CNMI government and other CNMI stakeholders on issues relating to treatment of investors under Public Law 110–229, and encourages further comment on all aspects of the proposed rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a regulatory action. The information collection requirements contained in this rule, Form I–129, Form I–539, and Form I–765 have been previously approved for use by OMB. The OMB control numbers for these collections are 1615–0009, 1615–0003, and 1615–0040 respectively. The evidentiary requirements contained in this proposed rule at 8 CFR 214.2(e)(23)(vi) are not new requirements and are currently contained on the instructions to From I–129. Accordingly, these evidentiary requirements will not add to the burden for completing Form I–129 and Supplement E.

However, it is estimated that there will be an increase in the number of filings of Form I–129 and Form I–765. Accordingly, USCIS will prepare the OMB 83–Cs (correction worksheets) for both these forms, and will submit them to OMB once this proposed rule is submitted to OMB as a final rule.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by adding paragraph (c)(5)(iv) to read as follows:

§ 103.7 Fees.

* * * * *

(c) * * *

(5) * * *

(iv) Form I–129, only in the case of an alien applying for E–2 CNMI Investor nonimmigrant status under 8 CFR 214.2(e)(23).

* * * * *

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; Title VII of Pub. L. 110–229; 8 CFR part 2.

2. Section 214.2 is amended by adding a new paragraph (e)(23) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(e) * * *

(23) *Special procedures for classifying foreign investors in the Commonwealth of the Northern Mariana Islands (CNMI) as E–2 nonimmigrant treaty investors under Title VII of the Consolidated Natural Resources Act of 2008 (Pub. L. 110–229).*

(i) *E–2 CNMI Investor eligibility.* During the period ending on the date that is two years after the transition program effective date, an alien may, upon application to the Secretary of Homeland Security, be classified as a CNMI-only nonimmigrant treaty investor (E–2 CNMI Investor) under section 101(a)(15)(E)(ii) of the Act (8 U.S.C. 1101(a)(15)(E)(ii)) if the alien:

(A) Has been lawfully admitted to the CNMI in long-term investor status under the immigration laws of the CNMI before the transition program effective date and has that status on the transition program effective date;

(B) Has continuously maintained residence in the CNMI under such long-term investor status;

(C) Is otherwise admissible to the United States; and

(D) Maintains the investment or investments that formed the basis for such long-term investment status.

(ii) *Definitions.* For purposes of paragraph (e)(23) of this section, the following definitions apply:

(A) *Approved investment or residence* means an investment or residence approved by the CNMI government.

(B) *Approval letter* means a letter issued by the CNMI government certifying the acceptance of an approved investment subject to the minimum investment criteria and standards provided in 4 N. Mar. I. Code section 5941 *et seq.* (long-term business certificate), 4 N. Mar. I. Code section 5951 *et seq.* (foreign investor certificate), and 4 N. Mar. I. Code section 50101 *et seq.* (foreign retiree investment certificate).

(C) *Certificate* means a certificate or certification issued by the CNMI government to an applicant whose application has been approved by the CNMI government.

(D) *Continuously maintained residence in the CNMI* means that the alien has maintained his or her residence within the CNMI since being lawfully admitted as a long-term investor and has been physically present therein for periods totaling at least half of that time. Absence from the CNMI for any period of more than six months but less than one year after such lawful admission shall break the continuity of such residence, unless the subject alien establishes to the satisfaction of the Secretary of Homeland Security that he or she did not in fact abandon residence in the CNMI during such period. Absence from the CNMI for any period of more than one year during the period for which continuous residence is required shall break the continuity of such residence.

(E) *Public organization* means a CNMI public corporation or an agency of the CNMI government.

(F) *Transition period* means the period beginning on the transition program effective date and ending on December 31, 2014.

(G) *Transition program effective date* means November 28, 2009.

(iii) *Long-term investor status.* Long-term investor status under the immigration laws of the CNMI only includes the following investor classifications under CNMI immigration laws as in effect on May 8, 2008:

(A) *Long-term business investor.* An alien who has an approved investment of at least $150,000 in the CNMI, as evidenced by a Long-Term Business Certificate.

(B) *Foreign investor.* An alien in the CNMI who has invested either a minimum of $100,000 in an aggregate approved investment in excess of $2,000,000, or a minimum of $250,000 in a single approved investment, as evidenced by a Foreign Investment Certificate.

(C) *Retiree investor.* An alien in the CNMI who is:

(*1*) Over the age of 55 years who has invested a minimum of $100,000 in an approved residence on Saipan or $75,000 in an approved residence on Tinian or Rota, as evidenced by a Foreign Retiree Investment Certification; or

(*2*) Over the age of 55 years who has invested a minimum of $150,000 in an approved residence to live in the CNMI, as evidenced by a Foreign Retiree Investment Certificate.

(iv) *Maintaining investments.* An alien in long-term investor status under the immigration laws of the CNMI is maintaining his or her investments if that alien investor is in compliance with the terms upon which the investor certificate was issued.

(v) *Filing procedures.* An alien seeking classification under E–2 CNMI Investor nonimmigrant status must file an application for E–2 CNMI investor nonimmigrant status, along with accompanying evidence, with USCIS in accordance with the form instructions within two years of the transition program effective date. An application filed after the two-year period will be rejected.

(vi) *Accompanying evidence.* Documentary evidence establishing eligibility for E–2 CNMI nonimmigrant investor status is required.

(A) Required evidence of admission includes a properly endorsed, unexpired CNMI admission document (*e.g.,* entry permit, certificate, or foreign investor visa) reflecting lawful admission to the CNMI in long-term business investor, foreign investor, or retiree foreign investor status.

(B) Required evidence of long-term investor status includes:

(*1*) An unexpired Long-Term Business Certificate, in the case of an alien in long-term business investor status.

(*2*) An unexpired Foreign Investment Certificate, in the case of an alien in foreign investor status.

(*3*) A Foreign Retirees Investment Certification or a Foreign Retiree Investment Certificate, in the case of an alien in retiree investor status.

(C) Required evidence that the long-term investor is maintaining his or her investment includes all of the following, as applicable:

(*1*) An approval letter issued by the CNMI government.

(*2*) Evidence that capital has been invested, including bank statements showing amounts deposited in CNMI business accounts, invoices, receipts or contracts for assets purchased, stock purchase transaction records, loan or other borrowing agreements, land leases, financial statements, business gross tax receipts, or any other agreements supporting the application.

(*3*) Evidence that the applicant has invested at least the minimum amount required, including evidence of assets which have been purchased for use in the enterprise, evidence of property transferred from abroad for use in the enterprise, evidence of monies transferred or committed to be transferred to the new or existing enterprise in exchange for shares of stock, any loan or mortgage, promissory note, security agreement or other evidence of borrowing which is secured by assets of the applicant.

(*4*) A comprehensive business plan for new enterprises.

(*5*) Articles of incorporation, by-laws, partnership agreements, joint venture agreements, corporate minutes and annual reports, affidavits, declarations or certifications of paid-in capital.

(*6*) Current business licenses.

(*7*) Foreign business registration records, recent tax returns of any kind, evidence of other sources of capital.

(*8*) A listing of all resident and nonresident employees.

(*9*) A listing of all holders of business certificates for the business establishment.

(*10*) A listing of all corporations in which the applicant has a controlling interest.

(*11*) In the case of a holder of a certificate of foreign investment, copies of annual reports of investment activities in the CNMI containing sufficient information to determine whether the certificate holder is under continuing compliance with the standards of issuance, accompanied by annual financial audit reports performed by an independent certified public accountant.

(*12*) In the case of an applicant who is a retiree investor, evidence that he or she has an interest in property in the CNMI (*e.g.,* lease agreement), evidence of the value of the property interest (*e.g.,* an appraisal regarding the value of the property), and, as applicable, evidence of the value of the improvements on the property (*e.g.,* receipts or invoices of the costs of construction, the amount paid for a preexisting structure, or an appraisal of improvements).

(vii) *Physical presence in the CNMI.* Physical presence in the CNMI at the time of filing or during the pendency of the application is not required, but an application may not be filed by, or CNMI Investor status granted to, any alien present in U.S. territory other than in the CNMI. If an alien with CNMI long-term investor status departs the CNMI on or after the transition program effective date but before being granted E–2 CNMI Investor status, he or she may not be re-admitted to the CNMI without a visa or appropriate visa waiver under the U.S. immigration laws. If USCIS grants E–2 CNMI Investor nonimmigrant status to an alien who is not physically present in the CNMI at the time of the grant, such alien must obtain an E–2 CNMI Investor nonimmigrant visa at a consular office abroad in order to seek admission to the CNMI in E–2 CNMI Investor status.

(viii) *Biometrics.* USCIS may require an applicant for E–2 CNMI Investor status, including but not limited to any applicant for derivative status as a spouse or child, to submit biometric information. An applicant present in the CNMI must pay or obtain a waiver of the biometric service fee described in 8 CFR 103.7(b).

(ix) *Denial.* A grant of E–2 CNMI Investor status is a discretionary determination, and the application may be denied for failure of the applicant to demonstrate eligibility or for other good cause. Denial of the application may be appealed to the USCIS Administrative Appeals Office.

(x) *Spouse and children of an E–2 CNMI Investor.*

(A) *Classification.* The spouse and children of an E–2 CNMI Investor accompanying or following-to-join the principal alien, if otherwise admissible, may receive the same classification as the principal alien. The nationality of a spouse or child of an E–2 CNMI investor is not material to the classification of the spouse or child.

(B) *Employment authorization.* The spouse of an E–2 CNMI Investor lawfully admitted in the CNMI in E–2 CNMI Investor nonimmigrant status, other than the spouse of an E–2 CNMI investor who obtained such status based upon a Foreign Retiree Investment Certificate, is eligible to apply for employment authorization under 8 CFR 274a.12(c)(2) while in E–2 CNMI Investor nonimmigrant status. Employment authorization acquired under this paragraph is limited to employment in the CNMI only.

(xi) *Terms and conditions of E–2 CNMI Investor nonimmigrant status.*

(A) *Nonimmigrant status.* E–2 CNMI Investor nonimmigrant status and any derivative status are only applicable in the CNMI. Entry, employment, and residence in the rest of the United States (including Guam) require the appropriate visa or visa waiver eligibility. An E–2 CNMI Investor who enters, attempts to enter or attempts to travel to any other part of the United States without the appropriate visa or visa waiver eligibility, or who violates conditions of nonimmigrant stay applicable to any such authorized status in any other part of the United States, will be deemed to have violated the terms and conditions of his or her E–2 CNMI Investor status. An E–2 CNMI Investor who departs the CNMI will require an E–2 CNMI investor visa for reentry to the CNMI.

(B) *Employment authorization.* An alien with E–2 CNMI Investor nonimmigrant status is employment authorized in the CNMI only for the enterprise that is the basis for his or her CNMI Foreign Investment Certificate or Long Term Business Certificate, to the extent that such Certificate authorized such activity. An alien with E–2 CNMI Investor nonimmigrant status based upon a Foreign Retiree Investor Certificate is not employment authorized.

(C) *Changes in E–2 CNMI investor nonimmigrant status.* If there are any substantive changes to aliens' compliance with the terms and conditions of qualification for E–2 CNMI Investor nonimmigrant status, each subject alien must file a new application for E–2 CNMI Investor nonimmigrant status, in accordance with the instructions on Form I–129 requesting extension of stay in the United States. Prior approval is not required if corporate changes occur that do not affect a previously approved employment relationship, or are otherwise non-substantive.

(D) *Unauthorized change of employment.* An unauthorized change of employment to a new employer will constitute a failure to maintain status within the meaning of section 237(a)(1)(C)(i) of the Act (8 U.S.C. 1227(a)(1)(C)(i)).

(E) *Periods of admission.*

(*1*) An E–2 CNMI Investor may be admitted for an initial period of not more than two years.

(*2*) The spouse and children accompanying or following-to-join an E–2 CNMI Investor may be admitted for the period during which the principal alien is in valid E–2 CNMI Investor nonimmigrant status. The temporary departure from the United States of the principal E–2 CNMI Investor shall not affect the derivative status of the dependent spouse and children, provided the familial relationship continues to exist and the principal

alien remains eligible for admission as an E–2 CNMI Investor.

(xii) *Extensions of stay.* Requests for extensions of E–2 CNMI Investor nonimmigrant status may be granted in increments of not more than two years, until the end of the transition period. To request an extension of stay, an E–2 CNMI Investor must file with USCIS an application for extension of stay, with required accompanying documents, in accordance with the instructions on Form I–129. To qualify for an extension of E–2 CNMI Investor nonimmigrant status, each alien must demonstrate:

(A) Continuous maintenance of the terms and conditions of E–2 CNMI Investor nonimmigrant status;

(B) Physical presence in the CNMI at the time of filing the application for extension of stay; and

(C) That he or she did not leave during the pendency of the application.

(xiii) *Change of status.* An alien eligible for E–2 CNMI Investor status on the transition program effective date, but who obtains another valid nonimmigrant status, may apply to change nonimmigrant status to E–2 CNMI Investor in accordance with paragraph (e)(21) of this section and within the period of time provided by paragraph (e)(23)(v).

(xiii) *Expiration of transition period.* Upon expiration of the transition period, the E–2 CNMI Investor nonimmigrant status will automatically terminate.

(xiv) *Fee waiver.* An alien applying for E–2 CNMI Investor nonimmigrant status is eligible for a waiver of the fee for Form I–129 based upon inability to pay as provided by 8 CFR 103.7(c)(1).

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

4. Section 274a.12 is amended by:

a. Removing the ''or'' at the end of paragraph (b)(20);

b. Removing the period at the end of paragraph (b)(21) and adding a ''; or'' in its place;

c. Adding a new paragraph (b)(22); and by

d. Adding a new paragraph (c)(12) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

* * * * *

(22) An alien in E–2 CNMI Investor nonimmigrant status pursuant to 8 CFR 214.2(e)(23). An alien in this status may be employed only by the qualifying company through which the alien attained the status. An alien in E–2 CNMI Investor nonimmigrant status may be employed only in the Commonwealth of the Northern Mariana Islands for a qualifying entity. An alien who attained E–2 CNMI Investor nonimmigrant status based upon a Foreign Retiree Investment Certificate or Certification is not employment-authorized. Employment authorization does not extend to the dependents of the principal investor (also designated E–2 CNMI Investor nonimmigrant) other than those specified in paragraph (c)(12) of this section;

* * * * *

(c) * * *

(12) An alien spouse of a long-term investor in the Commonwealth of the Northern Mariana Islands (E–2 CNMI Investor) other than an E–2 CNMI investor who obtained such status based upon a Foreign Retiree Investment Certificate, pursuant to 8 CFR 214.2(e)(23). An alien spouse of an E–2 CNMI Investor is eligible for employment in the CNMI only;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. E9–21967 Filed 9–11–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. FSIS 2006–0040A]

Product Labeling: Use of the Voluntary Claim ''Natural'' in the Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to assist the Agency in defining the conditions under which it will permit the voluntary claim ''natural'' to be used in the labeling of meat and poultry products. After considering comments on the ''natural'' claim submitted by the public in response to a **Federal Register** notice that the Agency issued on December 5, 2006, and the comments presented at a public meeting held by the Agency on December 12, 2006, FSIS has decided to solicit additional public input. FSIS has concluded that a further solicitation of comments could produce information that would help to clarify and resolve the issues surrounding the ''natural'' claim. Moreover, additional comment will help FSIS to assess how best to coordinate its regulation of ''natural'' claims with the standards for voluntary marketing claims developed by the Agricultural Marketing Service (AMS), particularly with AMS's ''naturally raised'' marketing claim standard.

DATES: Comments are due by November 13, 2009.

ADDRESSES: Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2006–0040A to submit or view public comments and to view supporting and related material available electronically. This docket can be viewed using the ''Advanced Search'' function in Regulations.gov.

Mail, including floppy disks or CD–ROMs, and hand or courier-delivered items: Send to FSIS, OPPD, Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, 5601 Sunnyside Avenue, Room 2–2127, Beltsville, Maryland 20705.

All submissions received by mail and electronic mail must include the Agency name and docket number FSIS–2006–0040A. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted to the regulations.gov Web site and on the Agency's Web site at: *http://www.fsis.usda.gov/regulations_&_policies/2009_Notices_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Sally Jones, Acting Director, Labeling and Program Delivery Division, Office of Policy and Program Development USDA, FSIS, 5601 Sunnyside Avenue, Beltsville, Maryland 20705, (202) 205–0623, e-mail: *Sally.Jones@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION: