

MEMORANDUM

RE Revised Draft of Proposed Rules

FROM: Arthur H. Travers

DATE: May 27, 2013

Having at last read the proposed rules, I have a few suggestions and a few questions.

Page 4, line 18: “file” should be “filing”.

Page 4, line 22: I would delete “or other good cause” since so far as I am aware there is none that could not be brought under the hardship exception.

Page 4, lines 31-34: If I understand this rule, you are saying that the time of filing occurs when the record is first examined even if it has not been accepted. So I would delete “at the earlier of.”

Page 8, lines 8-11: Does “EFS record” refer to the single filing intended to be effective under both Article 9 and Article 9.5? I didn’t see a definition. Should this be later in the rules dealing with EFS?

Page 10, lines 12-20 and lines 25-29: It appears that you permit so many characters that truncation should not cause any problems. Is there any limit on the number of characters that a registered organization may have in its name? I could conjure up some organizational names that would exceed 255 characters, but they are not likely to exist in the real world.

Page 14, lines 34-36: Since an information statement cannot correct anything, I would change this to read: “A filer may file an amendment to correct or an information statement to disclose any perceived error.”

Page 22, line 32: Insert “was” at the beginning of the line.

I have two substantive issues left over from last year. With respect to EFSs, when I last checked the USDA regulations, the filing office had to provide a paper copy of the master list unless the registrant asked for a different format. In other words, one had to “opt in” to electronic distribution. Under these regulations, a registrant must opt out of electronic distribution to get the hard copy. In view of the history, this seems a trivial discrepancy. Have you run this past the USDA? Although the burden that is shifted is slight, if the USDA considers this non-complying, the consequences could be serious.

I gather that the file will be kept current and that search will disclose any EFS as it is filed (or with a short delay) even if it is filed after the master list has been compiled. If

that is so, it may mean that a registrant will need to search the file before making a purchase and can no longer rely on the master list. This could create problems. Again, I hope that the USDA has signed off on this.